

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 888 (Delegate Stein, *et al.*)
Environmental Matters

Environment - Reduction of Lead Risk in Housing - Applicability and
Registration Requirements

This bill repeals the mandatory application of the Reduction of Lead Risk in Housing Law and the numerous risk reduction standards, requirements, and penalties applicable to owners of residential rental property built from 1966 through 1977 and, instead, subjects such owners only to specified registration requirements. The bill maintains an annual registration fee of \$30 per unit for those properties but limits the imposition of registration fees per owner to 750 units (or \$22,500). The bill also establishes civil penalties applicable to these properties for failure to register a property or renew or update a registration.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: Potential decrease in Lead Poisoning Prevention Fund revenues beginning in FY 2014 to the extent that owners of more than 750 units of rental property built in the specified timeframe pay decreased registration fees under the bill. The exact amount of any such decrease cannot be reliably estimated at this time, as discussed below. Special fund revenues from penalties may also decrease. Expenditures are not directly affected.

Local Effect: Potential significant decrease in expenditures beginning in FY 2015 for any locally owned housing entities that are excused from having to comply with certain risk reduction standards. Revenues are not affected.

Small Business Effect: Potential significant savings beginning in FY 2015 for any small business rental property owners that (1) own rental property built in the specified timeframe and are excused, under the bill, from having to comply with certain risk

reduction standards and/or (2) own more than 750 units of such property and, therefore, pay decreased registration fees under the bill.

Analysis

Bill Summary: An owner of property constructed between January 1, 1966, and December 31, 1977, that contains at least one rental dwelling unit and has not been certified to be lead-free must, by December 31, 2014, register each property with the Maryland Department of the Environment (MDE). Any such property owner must also renew the registration of the property annually and update the information contained in the owner's registration within 30 days after any change in the required information. An owner who fails to register a property by December 31, 2014, is subject to a civil penalty of up to triple the amount of each registration fee that is due, and an owner who fails to renew or update the registration is subject to a civil penalty of up to double the amount of each registration fee that is due. An owner that first acquires property after December 31, 2014, must register the property within 30 days after the acquisition.

The annual fee for a property that is required to be registered is \$30 per unit (up to a maximum of 750 units per owner). The fee must be paid by December 31, 2014, or the date of registration of the property, and by December 31 of each year thereafter or according to a schedule established by MDE in regulation.

MDE is prohibited from disclosing an inventory or list of properties owned by an owner.

Current Law/Background:

Reduction of Lead Risk in Housing Law

According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland. Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. Chapter 114 established a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements.

Qualified Offer and Recent Court of Appeals Case

Previously, if a landlord complied with the program's regulatory provisions, Chapter 114 provided liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to not more than \$7,500 for all medically

necessary treatments and to not more than \$9,500 for relocation benefits, for a total of \$17,000. However, in a decision filed October 24, 2011, the Court of Appeals ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights. Article 19 protects a right to a remedy for an injury and a right of access to the courts.

The court stated that the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable. The court found that the \$17,000 remedy available under Chapter 114 was “miniscule” and, thus, not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

Owners of pre-1950 rental units that are in compliance with Chapter 114 and owners of rental units built between 1950 and 1978 that voluntarily opted to comply may be impacted by the court’s decision, as they no longer have the liability protection previously afforded to them.

Recent Study and Changes to the Reduction of Lead Risk in Housing Law

Unrelated to the Court of Appeals decision, Chapter 610 of 2011 required MDE to conduct a study in consultation with members of the General Assembly and representatives of several State and local agencies and organizations reflecting the interests of landlords, housing owners, lead poisoning prevention advocates, and others. The study was required to evaluate processes that reduce the incidence of lead poisoning in residential properties not currently regulated by MDE, including rental properties built from 1950 through 1978 and owner-occupied properties.

The study group met seven times between July and December of 2011 and made recommendations regarding six different issues, including, among other things, expanding the scope of regulation to include rental properties built before 1978 and owner-occupied properties; increasing the program’s property registration fee to address the program’s declining revenue sources; and evaluating whether to require MDE to seek delegation of the federal renovation, repair, and repainting rule, which requires renovation companies to be registered and follow lead safe work practices while doing renovation in pre-1978 constructed homes.

Chapter 387 of 2012 made various changes to the Reduction of Lead Risk in Housing Law to address the Court of Appeals decision and some of the issues examined by the study group. Changes under Chapter 387 include (1) expanding the application of the law to owners of residential rental property built between 1950 and 1978 beginning January 1, 2015; (2) increasing the annual registration fee from \$15 to \$30; (3) altering

the definition of “abatement” to include renovation, repair, and painting in specified properties built before 1978; (4) authorizing MDE to adopt regulations related to abatements involving renovation, repair, and painting; (5) repealing a rebuttable presumption that an owner of property that is not in compliance with the lead law is presumed to have failed to exercise reasonable care; (6) providing that evidence that a property owner was or was not in compliance with the lead law is admissible to prove that the owner exercised or failed to exercise reasonable care; and (7) requiring a party who makes certain allegations or denials without a good faith basis to pay reasonable costs, including attorney’s fees, incurred by the adverse party in opposing the allegation or denial.

Lead Poisoning Prevention Fund and Enforcement

Various administrative and civil penalties apply to violations of the Reduction of Lead Risk in Housing Subtitle. Any penalties collected are paid into the Lead Poisoning Prevention Fund. That fund, which is administered by MDE, also consists of any fees collected by MDE under the Reduction of Lead Risk in Housing Subtitle and moneys received by grant, donation, appropriation, or from any other source. MDE must use the fund to cover the costs of specified duties and responsibilities of MDE and the Lead Poisoning Prevention Commission. For each fiscal year, MDE must use at least \$750,000 from the fund for community outreach and education programs and enforcement efforts.

Lead Poisoning in Children

According to the federal Centers for Disease Control and Prevention (CDC), adverse health effects exist in children at blood lead levels less than 10 micrograms per deciliter. Recently, CDC decided to adopt the 5 micrograms per deciliter as the reference blood lead level and is no longer using the 10 micrograms per deciliter level or referring to a “level of concern.” The new reference level represents the blood lead levels of children (ages one through five) in the highest 2.5 percentiles for blood lead levels.

According to the most recent data available, the number of children in Maryland with elevated blood lead levels has continued to decrease since the onset of the program. At the State level, out of the 110,539 children younger than age six who were tested for lead in 2012, 364 (0.3%) were found to have blood lead levels greater than or equal to 10 micrograms per deciliter. This compares with 23.9% in 1993, the first year in which these data were tracked, and is the twentieth straight year in which the rate has dropped in Maryland.

In 2012, according to MDE, 40% of new childhood lead poisoning cases in Maryland involved children identified as residing in rental properties built after 1949.

State Revenues:

Registration Fees

A reliable estimate of the decrease in special fund registration fee revenues cannot be made due to uncertainty regarding the number of rental buildings in Maryland built from 1966 through 1977 and the number of units in each building. However, *for illustrative purposes only*, special fund revenues for MDE may decrease by \$33,900 annually under the following information and assumptions:

- 922,460 apartment units exist in Maryland, according to 2012 U.S. Census Bureau data, of which 250,910 units were built in the 1960s and 1970s;
- 155,370 rental units were built from 1966 through 1977, assuming an equal number of units were built each year from 1960 through 1979;
- 19,520 rental units are in buildings of 100 units or more, based on national data from the National Multifamily Housing Council;
- one-quarter of such units (4,880) are assumed to be in buildings of 750 units or more;
- all such units are within five buildings with an average of 976 units per building; and
- 1,130 units are, therefore, exempt from payment of the \$30 fee.

The Department of Legislative Services advises that the actual reduction in special fund fee revenues for MDE likely varies and depends on the number of buildings with more than 750 units and, more specifically, the actual number of units found within such buildings. However, any such reduction is unlikely to exceed \$100,000 annually.

Penalties

Under current law, property owners who fail to register or renew or update their registration as required are subject to an administrative penalty of up to \$20 per day for each affected property. Under this bill, owners of property constructed from 1966 through 1977 are subject to a civil penalty of up to triple the amount of each registration fee due (or up to \$90) for failure to initially register, or up to double the amount of each registration fee due (or up to \$60) for failure to renew or update the registration. Also, these properties are no longer subject to requirements they otherwise would be subject to under current law beginning in fiscal 2015.

Thus, special fund penalty revenues may decrease under the bill beginning in fiscal 2015.

Additional Information

Prior Introductions: A similar bill, HB 924 of 2013, received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Housing and Community Development, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Centers for Disease Control and Prevention, Department of Legislative Services

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