

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 859

(Senator Eckardt)

Judicial Proceedings

Lead - Risk Reduction Standard - Exemption for Affected Properties

This bill establishes an exemption from specified lead risk reduction standards for an affected property if the owner has maintained a specified exemption certification for two consecutive certification periods and submits proof of the exemption certification for the two periods to the Maryland Department of the Environment (MDE). In order to maintain the exemption established by the bill, the owner must (1) have the windows and any other surface subject to repeated friction in the affected property tested for lead-contaminated dust every five years, as specified, and (2) on the completion of the test, submit to MDE a certification stating that all tested surfaces have passed the test for lead-contaminated dust. An affected property that is exempt under the bill's provisions for two consecutive certification periods is also exempt from *all* of the requirements of the Reduction of Lead Risk in Housing Subtitle, including the requirement to annually register the property with MDE.

Fiscal Summary

State Effect: Potential decrease in special fund revenues beginning in FY 2020 from annual registration fees to the extent additional properties become exempt from the lead law as a result of the bill. Expenditures are not directly affected.

Local Effect: The bill's requirements are not expected to significantly impact local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Reduction of Lead Risk in Housing Law – Generally

Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. The stated purpose of the law is to reduce the incidence of childhood lead poisoning while maintaining the stock of available affordable renting housing. 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.

The Reduction of Lead Risk in Housing Subtitle does not apply to (1) property that is not considered “affected property,” unless the owner of residential rental property voluntarily chooses to comply with the law; (2) affected property owned or operated by a unit of federal, State, or local government, or any public, quasi-public, or municipality, if the affected property is subject to lead standards that are equal to, or more stringent than, the risk reduction standards established in statute; or (3) affected property that is certified to be lead-free.

Registration Requirements

An owner of affected property (generally, any residential rental dwelling unit built prior to 1978) must register the property with MDE each year; the annual registration fee is \$30. An owner who submits a report to MDE stating that the rental dwelling unit has been certified as lead-free is not subject to the annual registration requirements but must pay a one-time \$10 processing fee. Initial registration and renewal fees must be paid on the date of registration of the affected property and by December 31 of each year or according to a schedule developed by MDE through regulations. An owner who first acquires an affected property must register within 30 days of acquisition.

An owner who fails to pay the registration fee, fails to register, renew, or update his/her registration, or who willfully and knowingly falsifies information included in a registration or renewal, is subject to specified penalties.

Risk Reduction Standards

An affected property is required to pass an inspection for lead-contaminated dust, performed by an MDE-accredited inspection contractor, prior to every change in occupancy. In order to pass the inspection, the property must be free of chipping, peeling, or flaking paint on the interior and exterior of the property.

An affected property is exempt from the risk reduction standards if the owner submits to MDE an inspection report that (1) indicates that the affected property has been tested in accordance with standards and procedures established by MDE; (2) states that all interior and exterior surfaces of the affected property are lead-free (lead-free exemption), *or* that all interior surfaces are lead-free and all exterior surfaces that were chipping, peeling, or flaking have been restored with nonlead-based paint and that no exterior painted surfaces of the affected property are chipping, peeling, or flaking (limited lead-free exemption); and (3) is verified by the MDE-accredited inspector who performed the test. In order to maintain a limited lead-free exemption, the owner must submit to MDE every two years a certification by an accredited inspector stating that no exterior painted surface of the affected property is chipping, peeling, or flaking.

Outside surfaces of an affected property, including windows, doors, trim, fences, porches, and other buildings or structures that are part of the affected property, are exempt from the risk reduction standards if all exterior surfaces of an affected property are lead-free and the owner submits to MDE an inspection report that (1) indicates that the outside surfaces have been tested for the presence of lead-based paint in accordance with standards and procedures established by MDE; (2) states that all outside surfaces of the affected property are lead-free; and (3) is verified by the MDE-accredited inspector who performed the test.

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 monies 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.

Background:

Lead Poisoning in Children

According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure to lead for children in Maryland. 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 adopted 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 MDE's 2013 Childhood Lead Registry, the percentage of children with lead poisoning remained at about 0.3% statewide, the lowest percentage recorded since 1993. In 2013, 371 children had an elevated blood lead level. Statewide, 110,082 (21.2%) of 518,865 children younger than age six were tested. According to MDE, much of the decline in blood lead levels is the result of implementation and enforcement of Maryland's lead law.

Limited Lead-free Certificates

MDE reports that approximately 25,888 housing units are currently covered by limited lead-free certificates. There are approximately 330 certified third-party inspectors in the State qualified to perform inspections for the limited lead-free certificate. On average, between calendar 2011 and 2014, limited lead-free inspections were performed for 1,221 certificates per year, covering an average of 5,880 units per year.

State Revenues: The bill may result in a decrease in special fund revenues from annual registration fees if any properties become certified as limited lead-free under the bill's provisions and, therefore, also become exempt from annual registration requirements. Affected properties that are not exempt from the lead law must register with MDE and pay an annual fee of \$30 per dwelling unit. If additional properties become exempt, this reduces special fund revenues paid into the Lead Poisoning Prevention Fund from registration fees. The number of property owners that choose to maintain a limited lead-free exemption through the new option for dust testing, instead of the existing two-year visual reinspection provision, is unknown. Thus, a reliable estimate of any decrease in special fund revenues cannot be made at this time. Any impact does not occur prior to fiscal 2020, however, due to the bill's requirement that, to be exempt, an affected property must maintain an exemption certification for two consecutive certification periods; thus, an affected property must still register with MDE and have visual reinspections conducted every two years for two consecutive cycles before the property becomes exempt from the registration requirements.

Small Business Effect: The new category of exemption requires an owner of affected property to hire an accredited inspector to perform lead dust testing every five years after two consecutive visual reinspections. MDE advises that dust testing is significantly more expensive than a visual inspection, which is currently required every two years for a property that has obtained a limited lead-free certification. MDE advises that a visual inspection costs approximately \$75 per property, while in general, a dust sample costs approximately \$10 per sample and could total several hundred dollars per dwelling unit depending on the number of samples needed. However, an affected property that becomes

exempt under the bill's provisions also benefits from being exempt from the other requirements in the Reduction of Lead Risk in Housing Subtitle, including the requirement to register the property annually with MDE.

Small businesses that conduct dust testing and visual inspections may also be affected to the extent the bill has an impact on the demand for their services.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Maryland Department of the Environment, Department of Health and Mental Hygiene, Maryland Association of County Health Officers, Department of Legislative Services

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