

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Shari T. Wilson, Secretary

BILL NO: House Bill 1153

COMMITTEE: Environmental Matters

POSITION: Support with Amendments

TITLE: Environment – Reducing Lead Risk in Housing – Lead Paint Dust Testing

BILL ANALYSIS: The proposed legislation changes the requirements for how an owner of a pre-1950 property may comply with lead risk reduction standards pursuant to the Reduction of Lead Risk in Housing Act, Title 6, Subtitle 8 of the Environment Article. The bill would require a property owner to perform both a dust test and a series of lead hazard reduction treatments with a visual inspection when a change of occupancy occurs, the tenant issues a notice of defect, or an elevated blood lead (EBL) level is reported. The bill also requires that only leaded or untested window wells be encapsulated, repair of a top sash only if the repair would not violate local fire codes, and repainting, replacing or encapsulating leaded or untested window sills.

POSITION AND RATIONALE: Support with Amendments.

Requiring the dust test, in addition to certain lead risk reduction treatments, is an effective way to quantify how well lead risk reduction work has been performed.

The first amendment removes references to lead-based paint and untested paint. Historically, the Department has been opposed to any treatment requirements or inspection standards that are contingent on whether a painted surface is leaded. In order for a third party inspector to verify compliance with the standards, the inspector would need a detail report illustrating every painted surface on a window and whether or not it contains lead. This process could result in errors by inspectors and would be difficult for the Department to enforce. The first amendment also adds reference to State fire code standards to ensure that the top sash would not have to be fixed if an activity violates State fire codes. Some counties do not have local fire codes and only State codes are applicable.

The second amendment removes existing language that would become unnecessary, since both a lead dust test and risk reduction treatments would be required under this bill.

The third amendment adds language currently in § 6-815(a)(1) of the law to correct a provision in § 6-819 (a)(1) that was inadvertently missed in a prior statutory change to § 6-815.

The final amendment removes existing in § 6-819(f)-(k) of the law to eliminate the option for property owners to satisfy the modified risk reduction by tenant sign-off without having any inspection. The tenant has no knowledge or training to determine whether a home's risks of lead hazards have been reduced and would need an inspection to be ensured that sign off on the work is proper. This section should be replaced with a provision that makes it clear when an inspection is

required to verify compliance with the Reduction of Lead Risk in Housing standard. In addition, new provisions are proposed to clarify what happens if a property fails inspection.

The Department recognizes the progress made in reducing elevated blood lead levels in the State since 1994. Initially, the law enacted gave the option of a dust test or a visual inspection to meet the law's requirement for risk reduction. The Department's amendments would be consistent with the bill's objective to properly measure the compliance by property owners in reducing lead paint risk in their rental properties.

FOR MORE INFORMATION,
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By: Maryland Department of the Environment

AMENDMENTS TO HOUSE BILL 1153
(First Reading File Bill)

AMENDMENT NO. 1

On page 2 in line 20 and on page 4 in line 2, strike “LEAD-BASED PAINT OR UNTESTED” and on page 2 in line 25 and on page 4 in line 7, strike “WHERE LEAD-BASED PAINT OR UNTESTED PAINT EXISTS”.

On page 2 in line 28 and on page 4 in line 10, after “TO”, insert “STATE OR”.

AMENDMENT NO. 2

On page 3 in line 15 after “.” insert “(c) [Except for affected properties that pass a test for lead-contaminated dust under § 6-816 of this subtitle, at] AT each change in occupancy, an owner of an affected property shall have the property inspected to verify that the risk reduction standard specified in this section has been satisfied.”

AMENDMENT NO. 3

On page 3 in line 23, after “SUBTITLE”, insert “PROVIDED THAT ANY CHIPPING, PEELING, OR FLAKING PAINT HAS BEEN REMOVED OR REPAINTED ON:

- (I) THE EXTERIOR PAINTED SURFACES OF THE RESIDENTIAL BUILDING IN WHICH THE RENTAL DWELLING UNIT IS LOCATED; AND
- (II) THE INTERIOR PAINTED SURFACES OF THE RENTAL DWELLING UNIT”

AMENDMENT NO. 4

On page 4 in line 19 after “.”: insert “(f) (1) AN OWNER OF AN AFFECTED PROPERTY SHALL HAVE THE PROPERTY INSPECTED TO VERIFY THAT THE RISK REDUCTION STANDARD SPECIFIED IN THIS SECTION HAS BEEN SATISFIED. [An owner of an affected property shall verify satisfaction of the modified risk reduction standard by submitting a statement of the work performed on the property, verified by the tenant and an accredited supervisor or contractor, to the Department on or before the tenth day of the month following the month in which the work was completed.]

(2) (i) [If the tenant fails or refuses to verify the statement of work performed on the affected property, the owner shall within 5 business days of the failure or refusal, contact an inspector accredited under § 6-818(a) of this subtitle to inspect the affected property. (ii) The inspector’s report shall either certify that the work required to be performed under this section was satisfactorily completed or specify precisely what additional work is required. (iii)

(II) If additional work is required: 1. The owner shall have 20 days after receipt of the inspector’s report in which to perform the work, subject to a weather delay under the provisions of subsection [(j) (I) of this section; and 2. The inspector shall reinspect the affected property after the additional work is completed; and

- A. Issue a report certifying that the work is complete; and

B. Mail a copy of the report to the tenant, the owner, and the Department within 10 days after the inspection or reinspection.

[(g) In lieu of satisfying the modified risk reduction standard, the owner of an affected property may elect to pass the test for lead-contaminated dust under § 6-816 of this subtitle provided that any chipping, peeling, or flaking paint has been removed or repainted on:

(1) The exterior painted surfaces of the residential building in which the rental dwelling unit is located; and

(2) The interior painted surfaces of the rental dwelling unit.]

[(h)] (G) Notice given under this section shall be written, and shall be sent by:

(1) Certified mail, return receipt requested; or

(2) A verifiable method approved by the Department.

[(i)] (H) The Department may, by regulation, eliminate any treatment from the modified risk reduction standard if the Department finds that performing the treatment in an occupied property is harmful to public health.

[(j)] (I) (1) Exterior work required to satisfy the modified risk reduction standard may be delayed pursuant to a waiver approved by the appropriate person under paragraph (2) of this subsection, during any time period in which exterior work is not required to be performed under an applicable local housing code or, if no such time period is specified, during the period from November 1 through April 1, inclusive.

(2) A waiver under paragraph (1) of this subsection may be approved by the code official for enforcement of the housing code or minimum livability code of the local jurisdiction, or, if there is no such official, the Department of Housing and Community Development.

(3) Notwithstanding the terms of the waiver, all work delayed in accordance with paragraph (1) of this subsection shall be completed within 30 days after the end of the applicable time period.

(4) Any delay allowed under paragraph (1) of this subsection may not affect the obligation of the owner to complete all other components of the risk reduction standard and to have those components inspected and verified.

[(k)] (J) [(1)] The [statement verified by the owner and the tenant of work performed on the affected property in accordance with subsection (f)(1) of this section or the] final report of the inspector verifying that the work was performed on the affected property in accordance with subsection (f)(2) of this section shall create a rebuttable presumption, that may be overcome by clear and convincing evidence, that the owner is in compliance with the modified risk reduction standard for the affected property unless there is:

[(i)] (1) Proof of actual fraud as to that affected property; or

[(ii)] (2) Proof that the work performed on the affected property was not performed by or under the supervision of personnel accredited under § 6-1002 of this title.

[(2) The statement verified by the owner and the tenant of work performed on the affected property in accordance with subsection (f)(1) of this section shall contain a statement:

(i) Describing the modified risk reduction standard required under this subtitle;

(ii) That execution of this statement by the tenant can affect the tenant's legal rights; and

(iii) That if the tenant is not satisfied that the modified risk reduction standard has been met, the tenant should not execute the statement and should inform the owner and that the owner will have the affected property inspected by a certified inspector at the owner's expense.]”