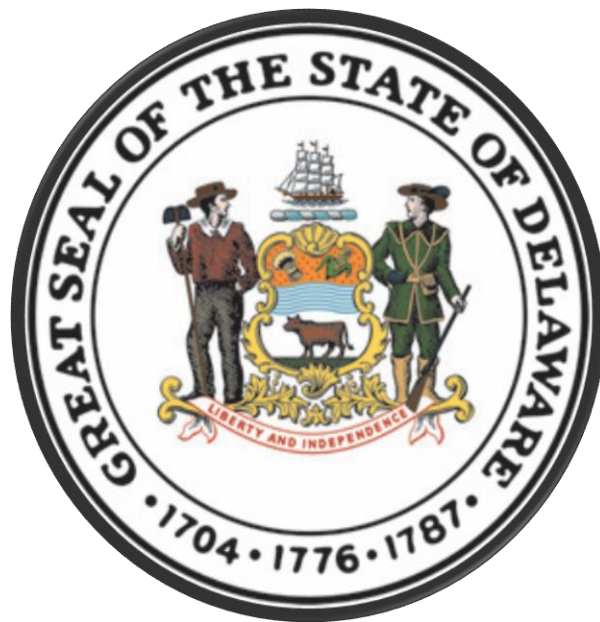


Report on Potential Funding Sources for the
Delaware State Lead-Based Paint Program

Department of Finance



January 1, 2024



**STATE OF DELAWARE
DEPARTMENT OF FINANCE
OFFICE OF THE SECRETARY**

**RICHARD J. GEISENBERGER
SECRETARY OF FINANCE**

January 1, 2024

TO: The Honorable John Carney, Governor
The Honorable Kimberly Williams, Representative
The Honorable Trey Paradee, Senator
Mr. Mark Cutrona, Director, Division of Research
Mr. Joel Rudnick, Legislative Librarian, Division of Research

Pursuant to Section 4, of Senate Bill 9, as amended by Senate Amendment 1 and House Amendment 1, and signed into law on July 17, 2023, I respectfully submit the attached report of Department of Finance findings related to potential sources of funding for the Delaware State Lead-Based Paint program.

Thank you to the Department of Finance's Office of Research and Analysis for their work on this report. Special thanks are also extended to the Department of Health and Social Services and the Department of Insurance for their assistance in gathering information and data.

This report is not intended to be an exhaustive analysis of each potential option for funding the Delaware State Lead-Based Paint Program, but rather to give an overview of the possible funding sources and associated advantages and disadvantages of each policy choice. It is important to note that for several options, administrative costs appear high. As costs consume a disproportionate amount of generated revenue, it may become more difficult to achieve policy objectives. In addition, our research identified that other program constraints may also exist as lead paint remediation services and staffing appear to be in low supply.

The Department of Finance is not recommending any one policy option but is providing this report as information to the General Assembly and others for use in further discussions about this important public health issue. I hope you find the information contained herein useful.

Sincerely,

A handwritten signature in black ink that reads 'Rebecca Goldsmith'.

Rebecca Goldsmith
Deputy Secretary of Finance

I. Introduction

Pursuant to the requirements set forth in Delaware Senate Bill 9, as amended by Senate Amendment 1 and House Amendment 1, this report serves as the Department of Finance's investigation into funding sources for the Delaware State Lead-Based Paint Program.

II. Background

Lead poisoning is a preventable problem but continues to be a significant environmental hazard for children in Delaware and across the country. Young children up to age six are at greatest risk of harm from lead exposure, which can cause significant neurological damage and lifelong health concerns. The most common source of lead exposure is lead-based paint and dust from the paint, which was banned federally for residential use in 1978. In Delaware, according to the US Census Bureau, approximately 41% of homes were built before 1978. Rates of lead in the home are more prevalent among low-income families' residences, which are often older rental properties. While rates of child lead poisoning have significantly dropped in Delaware in the last several decades, the problem persists.

III. Current Lead Poisoning Management

In accordance with the Childhood Lead Poisoning Prevention Act, healthcare providers are mandated to conduct lead screenings for children at approximately 12 and 24 months of age, subsequently reporting the findings to the Division of Public Health (DPH) in the Department of Health and Social Services (DHSS). According to DPH, they are notified of approximately 800-1000 children in Delaware annually with elevated blood levels (EBLL), meeting or exceeding the threshold of 3.5 micrograms per deciliter, as defined by the code. In Fiscal Year 2023, out of the 11,725 initial tests conducted on children tested aged 0-72 months, DPH reported that 694 tested positive for EBLL. Since the passage of Senate Bill 9 on August 1, 2023 through November 2023, there have been over 250 EBLL children identified with approximately 225 living in pre-1978 housing.

Within the lead case framework outlined in the Childhood Lead Poisoning Prevention Act, children with EBLL who reside in pre-1978 dwellings are referred to the Delaware State Lead-Based Paint Program (DSLPP), initiating the scheduling of a lead risk assessment (LRA) of the child residence. DPH estimates that approximately 80% of evaluated properties are identified as hazardous, prompting DSLPP to engage a certified abatement contractor for the scheduled remediation work. All entities conducting lead-based paint activities in Delaware must hold certification from the Division of Public Health (DPH). LRAs cost approximately \$1,200, while abatement expenses average around \$20,000 per property, according to DPH estimates.

IV. Current Program Limitations

According to DPH there are two main constraints that restrict the annual capacity for lead abatement in Delaware. First is the constrained availability of internal and private-sector personnel. The Delaware State Lead-Based Paint Program has a limited number of employees for



program and case management relative to the magnitude of the issue. Additionally, there is a relatively small LRA and abatement workforce in Delaware. Currently, the state of Delaware has approximately 10 certified LRA firms and 6 certified abatement firms. Secondly, abatement work is time-intensive and can span several months depending on the extent of the issue in an affected property. As a result of these issues, there is a limit on the number of properties that the program can service every year.

Notably, in 2014, following the acquisition of a \$3.7 million Housing and Urban Development (HUD) grant to the Division of Public Health for lead remediation, around 175 homes underwent abatement services over a three-year period. Subsequently, DPH has indicated they consistently complete around 30-40 home lead risk assessments annually, with DSLPP actively pursuing an expansion to 80 or more homes per year. Given these capacity limitations, the amount of revenue that can productively be spent annually may help inform the choice of funding mechanism.

V. Potential Funding Options

The goal of this report is to detail potential funding sources for lead-based paint prevention programs. DOF is not recommending any particular approach to generating additional funding for lead-based paint programs. This report attempts to identify varying approaches in common use across the country, however as funding of lead paint programs is frequently at a county or municipal level, some existing alternatives may not be addressed.

A. General Fund Appropriation

The most widely used method for funding state lead poisoning prevention programs, other than federal grants, is a general fund appropriation. Illinois, Massachusetts, Ohio, and numerous other states appropriate various amounts annually to partially or fully fund their programs. Given the prevalence of lead poisoning, a general fund appropriation would provide the flexibility and consistent funding source needed to effectively address this issue and demonstrate that lead poisoning prevention is a public health priority in Delaware. Funding through the budget process would also allow proper prioritization among other public health programs and, in fact, all public spending. It would also entail no direct administrative costs or complexities, which may be significant for several of the below options.

The Fiscal Year 2024 One-Time Supplemental Bill (HB 196) appropriated \$2,000,000 for Residential Lead Remediation, which will be used as the initial start-up for the Delaware Lead-Based Paint Remediation and Abatement Fund, to address costs associated with residential lead remediation including the identification of lead-based hazards, abatement, and the temporary displacement of residents. Because any of the below funding options likely entail considerable time, effort or cost to implement, it may be prudent to provide for continuing General Fund appropriations to the extent feasible until any alternative is authorized and implemented.



B. Children’s Health Insurance Program (CHIP) Federal Funding Match

Title XXI of the Social Security Act, authorizing CHIP, permits states to access federal matching funds for specific non-coverage expenses, not exceeding 10% of the annual CHIP program costs. These eligible expenses encompass Health Service Initiatives (HSIs), as defined by federal regulations: activities promoting public health, enhancing well-being, strengthening public health service capacity, and supporting resources to improve child health, including low-income children (42 CFR 457.10). Several states, such as Indiana, Maryland, Michigan, Missouri, and Ohio, have employed CHIP funds for lead testing, prevention, and/or abatement.

In Federal Fiscal Year 2024, Delaware's CHIP budget of approximately \$33.6 million had an administrative cap of \$3.4 million. Delaware’s actual administrative costs were only 40% (\$1.36 million), mirroring the trend of Federal Fiscal Year 2023 where costs were 46% of the cap. As such, up to \$2.0 million annually could be potentially utilized for other qualifying purposes like lead paint prevention programs.

Although Delaware’s 10% cap is not fully utilized, significant concerns arise when relying on federal CHIP funds for the Delaware State Lead-Based Paint Program. CHIP authorization depends on federal approval, making it susceptible to disruptions due to government closures or lapses in reauthorization. More importantly, the anticipated rise in CHIP enrollments due to the resumption of Medicaid disenrollment starting April 1, 2023 has increased case management demands and, subsequently, administrative costs. Given the current uncertainties surrounding future administrative funding needs, which may or may not be resolved by the end of fiscal year 2024, DHSS does not currently recommend using CHIP HSI funding for the Delaware State Lead-Based Paint Program.

C. Certification/License Fees

In the majority of states, certification is a prerequisite for lead-abatement professionals. A prevalent approach for financing lead programs involves levying fees associated with accreditation and subsequent renewal to fund the state's respective lead poisoning prevention program.

In Delaware, individuals and entities engaged in lead-based paint activities must obtain certification from the Division of Public Health (DPH) within their respective sectors—Renovation, Repair, and Painting or Lead Abatement. The associated fees for accreditation and renewals vary but typically range from \$250 to \$500 for a five-year certification. Presently, all generated fees from lead-based activities in Delaware are allocated to the DPH. DPH collects approximately \$12,000 in fees annually.

While the concept of funding the Delaware State Lead-Based Paint Program (DSLPP) through lead-related certifications makes intuitive sense, it is important to note that states employing similar strategies only partially finance their lead prevention initiatives through this revenue source. Furthermore, given the current limited size of the lead abatement workforce in Delaware,



increasing fees might not be a feasible option. This approach could create unintentional barriers to entry by unnecessarily burdening the relatively small, existing workforce.

D. Non-Compliance Fees

Currently in Delaware, non-compliance with lead statutes results in owners charged with criminal nuisance as outlined in Title 16, Chapter 26, §2612 of the Delaware Code. If a court finds there is a criminal nuisance, the landlord forfeits the right to state-funded abatement or remediation unless the court specifically orders otherwise. Ultimately, this is a lengthy and time-consuming process that does not result in direct fines fees and/or jail time.

In numerous states and municipalities, however, lead paint statutes incorporate non-compliance fees (not established in Delaware), with the resulting revenue often allocated to their respective lead poisoning prevention initiatives. Typically, these fees are specifically targeted at non-compliant landlords, with the amounts varying significantly. For instance, according to their respective codes, in Missouri, landlords violating the lead statute face fines capped at \$50, while in Philadelphia, landlords may incur fines ranging from \$300 to \$2,000 per day of non-compliance.

The potential revenue generated from implementing non-compliance fees would hinge on the fee amount and the extent of enforcement. Also, it is improbable that this method alone would yield sufficient revenue to fully fund DSLPP annual objectives. Additionally, while non-compliance fees hold landlords financially accountable for legal violations, landlords may become less forthcoming with the Division of Public Health (DPH) or less inclined to independently address lead hazards on their properties due to concerns about financial and other repercussions.

E. Rental Fees

Several lead poisoning prevention programs on the state and local level are fully or partially funded through the implementation of rental registration fees. Maryland, for instance, has instituted a comprehensive statewide Rental Registry, mandating the registration and annual renewal of all residential rental properties constructed before 1978. The associated fees, ranging from \$5 to \$15 per unit, are contingent upon the age of the dwelling, with exemptions granted for rental properties certified as lead-free. This type of rental registry is much more widely used on a local level, with cities and counties such as Cleveland establishing local rental registries with similar fee structures to fund their lead poisoning prevention programs.

According to the US Census data, there are approximately 104,260 renter occupied units in Delaware and 41% of all Delaware housing was constructed prior to 1978, which translates to an estimated 42,782 pre-1978 renter occupied units assuming owner-occupied and rental properties have the same age distribution. It may be the case that rental properties are generally older than owner-occupied properties, in which case the number of pre-1978 rental properties could be significantly higher. Based on that estimate, a Delaware statewide rental registry for rental properties built before 1978 with a flat fee of \$10 per unit for registration and annual renewal has



the potential to generate at least \$428,000 annually. This revenue estimate is subject to adjustment depending on the specified fee amount the potential exemption of pre-1978 properties from fees if they are certified lead free. In this case, annual revenue generated from fees would decline over time as more properties become certified.

Introducing a rental registry and fee collection system presents administrative challenges, both in terms of financial resources and personnel requirements. While the associated fees have the potential to generate revenue, a portion of these funds would need to be used for the establishment and ongoing maintenance of the rental registry, which may decrease the funds available for actual abatement work. Several municipalities in the State already have rental registries, covering several hundred rentals each. Reviewing and processing each application can take 20-60 minutes, in addition to costs for forms and postage (electronic registration could eliminate that cost but would introduce others). Since 2017, New Castle County has maintained a rental registry that is required for all rental properties. Rental property owners incur no costs, provided they register and renew biannually. Failure to comply prompts a scheduled hearing, and fines may be imposed. Currently, New Castle County dedicates about a quarter of a position to registry maintenance. It is likely that the staffing requirement for Kent and Sussex, if administered at the county level, would be less; if administered by the State, it is likely a rental registry would require about half of a position.

Given that the majority of children with elevated blood levels live in rental properties, rental fees on property owners would ensure lead-related remediation expenses come from those directly contributing to the problem. On the other hand, to the extent lead poisoning represents a societal problem, a broader approach involving all rental properties, or all residential properties may be more appropriate. It is also possible that these costs will ultimately be borne by affected renters if property owners increase rent fees to cover their expenses.

F. Homeowners Insurance Surcharge

Since 2019, Connecticut has funded their Healthy Homes Fund, which assists homeowners with structural damages and lead abatement, through a \$12 annual surcharge on homeowners insurance policies. This surcharge applies to owned homes with four or fewer units, individual condominium units, or units exclusively used for rental purposes.

According to the US Census, Delaware has approximately 298,075 owner-occupied properties, with around 188,400 of them having a mortgage. Since most mortgage lenders mandate homeowners to obtain insurance, both owner-occupied with a mortgage and overall owner-occupied properties provide a basis for calculating potential revenue. With this data in mind, if Delaware were to implement a \$12 surcharge on homeowners' insurance, the estimated annual revenue would fall within the range of \$2.2 million to \$3.6 million.

A notable advantage of this funding approach, in comparison to other potential mechanisms such as a rental registry or CHIP, is its relatively low administrative burden to the State. Implementing an insurance surcharge would require the Department of Insurance to review and process



surcharge filings by insurers and handle related calls. However, this appears unlikely to impose substantial upfront or ongoing administrative costs. In the private sector, the addition of a surcharge could potentially create an administrative burden for insurance companies due to changing rates because of the addition of the surcharge. At the same time, this surcharge would place the financial responsibility for funding the program widely among property owners as opposed to solely rental property owners, who, as previously mentioned, may be more likely to have lead paint on property. Policymakers may also wish to consider that a flat fixed surcharge would be regressive, and that such surcharges could accumulate over time to address other societal ills, thereby materially raising the costs of homeownership.

G. Realty Transfer Surtax

While other states have not appeared to adopt this mechanism for funding their lead paint poisoning prevention programs, one option is the consideration of an increase or addition to the Realty Transfer Tax (RTT). A potential approach involves an increase in the transfer tax on properties built before 1978 and subject, in whole or in part, to a rental agreement, as was contemplated in Senate Bill 9 as originally introduced.

For the calendar year 2022, Delaware Division of Revenue (DOR) data indicates approximately 17,500 properties were subject to the Realty Transfer Tax (RTT). Based on US Census data, approximately 41% are likely built pre-1978, and 22% are rental properties. Applying these statistics, an estimated 1,580 properties in 2022 would have been subject to an increased RTT if it were in place. According to the US Census, the average home price for a pre-1978 home in Delaware is \$273,800. Additional fees or realty transfer taxes could be added to these transactions to generate additional remediation revenue.

Ensuring compliance with a surtax for certain kinds of properties (rental) built before a specific date (1978) may be difficult and particularly burdensome on counties because of review requirements. The absence of an indicator for property age necessitates a redesign of current forms. Addressing potential challenges in adopting new forms and mitigating negative data impacts from scanning errors with outdated forms could lead to sustained costs. An estimated 2,500 RTT transactions annually would be subject to the surtax. If audit times align with First Time Homebuyer reviews, the Division of Revenue would likely require two additional tax auditors, resulting in an annual cost of \$150,000 for FTEs, alongside potential one-time expenses for administrative software implementation.

Moreover, while such a surtax would allocate the financial responsibility to a portion of the demographic most likely to be responsible for the problem (and to benefit from DSLPP lead abatement services), this would only apply to those properties transferred during the year, which is a small subset of all properties. From an administrative perspective, there are substantial inequities related to a collection of fees only from properties who are transferred in a given year. Additionally, RTT is a relatively volatile revenue source, which would introduce a notable degree of variability to this potential revenue source.



H. Property Tax Surtax

Rather than an RTT surtax as a funding mechanism, the property tax may be a more appropriate vehicle to fund lead paint abatement, as by definition it would cover all affected properties. The surtax could be a flat dollar amount or a rate; it could apply only to pre-1978 rental properties, to all rental properties, or to all residential properties. To account for the fact that larger properties would likely have higher remediation costs, the surtax could be based on square footage (value may or may not be a relevant representation of size). Given the wide variety of possible implementations (and difficulty determining an average effective tax rate until after reassessments are complete), it is difficult to place a reasonable estimate on this proposal. The broader the surtax applies, however, the lower the rate could be to generate the same amount of revenue.

As the counties administer the property tax, there would likely be a negligible administrative impact on the State, but the counties may have difficulty incorporating a surtax in their systems. Administrative issues could be increasingly problematic the more specific such a surtax becomes.

I. Paint Tax

Taxation has been employed by various states to generate dedicated revenue for their lead poisoning prevention programs. Notably, Maine and New Jersey have implemented a 25 cent and 50 cent tax per gallon of paint sold within their states, respectively. To ensure that taxation would not continue after the state's lead problem was rectified, Maine's legislation specifies that the tax will be repealed two years after the state Commissioner of Health and Human Services certifies the absence of elevated blood lead levels in children.

In Delaware, levying a tax per gallon of paint sold could yield an annual estimated revenue of approximately \$637,500 for a 25 cent tax or \$1,275,000 for a 50 cent tax. These estimates are based on PaintCare (a national paint recycling non-profit founded by paint manufacturers) statistics that show approximately 850 million gallons of paint sold nationally in 2022 and a Delaware market share of 0.3%. However, even with a 50 cent tax, it may prove insufficient to entirely fund the Delaware State Lead-Based Paint Program (DSLPP), especially considering the associated upfront implementation costs. Consequently, a higher tax per gallon of paint might be necessary.

Furthermore, the introduction of a new tax carries the potential for both political and consumer resistance, adding complexity to its implementation. As Delaware does not have a general sales tax, the administrative structure is not currently in place to impose such a tax. However, if a Paint Tax withstands political scrutiny, the administrative burden is expected to be comparable to the current Scrap Tire fee or the temporary Bottle Fee imposed by Delaware 13 years ago. According to the Division of Revenue, auditing such taxes typically incurs an annual cost of \$50,000 - \$100,000 for a subject matter expert, along with potential one-time expenses for administrative software implementation.



J. Market Share Liability Tax

Currently California taxes manufacturers and persons engaged in lead product commerce by imposing a fee based on past and present responsibility for environmental lead contamination. This fee extends across lead paint, petroleum, and the ambient air industries (i.e. sources that contribute to lead in the ambient air such as mining operations, waste incinerators, battery recycling). California's Childhood Lead Poisoning Prevention Fee varies for corporations based on industry, employing a complex calculation based on the historical and present distribution and consumption of lead products. More detailed information on the calculation of the can be found [here](#).

To impose this type of taxation, Delaware would need to identify parties with current and historical participation in lead-related industries and develop a taxation calculation that would effectively capture the costs associated with lead-related negative externalities. Although such a tax would place the burden directly on parties responsible for lead contamination—to the extent the State has tax and regulatory authority over them, which could be questionable—the administration of this tax presents significant challenges. The complex calculation methodology designed for California would have to be adjusted for Delaware; simply investigating sources of lead contamination in order to determine the appropriate tax calculation could be a significant cost. Furthermore, the introduction of this tax would require additional staffing and ongoing administrative costs for the Division of Revenue for effective monitoring and compliance.

VI. Conclusion

In addition to the continuation of General Fund appropriations, our research has identified a number of other alternatives for funding lead-based paint remediation, including ones in use in other states or local jurisdictions. For many of the alternatives, implementation and administrative costs appear to have the potential to consume a disproportionately high percentage of revenue generated. Options that piggyback on existing charges and systems may be less costly to administer. It would be advisable to evaluate all the alternatives in light of the complexity and time to administer, ability to generate sufficient revenues in excess of administrative costs, and/or their anticipated impact on private sector activities and behaviors.

