

HOUSE BILL REPORT

2SHB 1913

As Passed House:

March 14, 2003

Title: An act relating to granting authority to the department of community, trade, and economic development to address concerns with lead-based paint activities.

Brief Description: Granting authority to the department of community, trade, and economic development to address concerns with lead-based paint activities.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Darneille, Mastin, Schual-Berke, Campbell, Cody, Moeller, Grant, Edwards and Santos).

Brief History:

Committee Activity:

Fisheries, Ecology & Parks: 2/27/03 [DPS];

Appropriations: 3/6/03, 3/8/03 [DP2S(w/o sub FEP)].

Floor Activity:

Passed House: 3/14/03, 95-0.

Brief Summary of Second Substitute Bill

- Establishes a state program for worker training, certification, and training program accreditation for lead-based paint activities at the Department of Community, Trade, and Economic Development.
- Creates the Lead Paint Account and establishes fees for certification and accreditation to be used to support the program along with federal funds.
- Creates a lead-based paint advisory board to provide scientific input and the opportunity for involvement of state research facilities in the preparation, conduct, and evaluation of the training programs and the certification process.

HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cooper, Chair; Berkey, Vice Chair; Sump, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Buck, Hatfield, O'Brien, Pearson and Uptegrove.

Staff: Jeff Olsen (786-7157).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Fisheries, Ecology & Parks. Signed by 27 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Conway, Cox, DeBolt, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

Staff: Heather Flodstrom (786-7391).

Background:

In the United States, deteriorated lead-based paint in older homes and high levels of lead-contaminated house dust are the most common sources of lead poisoning in children. Lead paint is present in an estimated 24 million U.S. homes where 4.4 million children younger than six years old live, according to the Centers for Disease Control and Prevention. Lead is highly toxic and is especially dangerous to young children because they are more likely to ingest lead dust.

In 1992 Congress passed the Residential Lead-Based Paint Hazard Reduction Act, also known as Title X. Under Title X, the Environmental Protection Agency (EPA) and other federal agencies developed a national program to prevent and reduce lead-based paint exposures and hazards. Title X allows states to provide for the accreditation of lead-based paint activities programs, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors under standards developed by the EPA. States that undertake a lead-based paint program are eligible for federal grants from the United State Department of Housing and Urban Development (HUD).

Summary of Second Substitute Bill:

The Department of Community, Trade, and Economic Development (DCTED) must administer and enforce a state program for worker training, certification, and training program accreditation for lead-based paint activities. The DCTED is authorized to adopt rules that are consistent with federal requirements necessary to implement a state program. The rules must establish minimum accreditation requirements for lead-based paint activities for training providers; establish work practice standards; establish certification requirements; require the use of certified personnel in all lead-based paint activities; be revised to comply with federal laws and rules; facilitate reciprocity with

other states; provide for decertification, deaccreditation and financial assurance; and be issued in accordance with the Administrative Procedures Act. The DCTED must prepare and submit a biennial report to the Legislature regarding the program's status, cost, and the number of persons certified by the program.

The DCTED must also adopt the following rules:

1. Establish procedures and requirements for the accreditation of lead-based paint activities training programs;
2. establish procedures for certification and for the acceptance of training offered by an accredited training provider in a state or Indian tribe authorized by the EPA;
3. certify individuals involved in lead-based paint activities;
4. use laboratories accredited under the EPA's national lead laboratory accreditation program;
5. establish work practice standards for the conduct of lead-based activities; and
6. establish an enforcement response policy including administrative or civil actions; and authority to apply criminal sanctions under existing state laws;

Lead-based paint activities includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, or abatement of lead-based paint hazards. Abatement of lead-based paint includes: (1) projects with written contracts for the permanent removal of lead-based paint; (2) projects conducted by certified individuals or firms; (3) projects conducted by individuals or firms that claim to be qualified to remove lead-based paint; or (4) projects conducted under state or local abatement orders.

The DCTED is designated as the official agency for purposes of implementing the state lead-based paint activities program under the jurisdiction of the EPA. No individual or firm can perform, offer, or claim to perform lead-based paint activities without certification from the DCTED to conduct these activities. The DCTED may deny, suspend, or revoke a certification for failure to comply with rule requirements. Persons whose certificate is revoked are eligible to apply for a certificate one year from the effective date of the revocation.

The DCTED must collect a \$25 fee for certification and recertification of lead paint firms, inspectors, project developers, risk assessors, supervisors, and abatement workers. The DCTED is also directed to collect \$250 for the accreditation of lead paint training programs. Revenues from the fee are deposited in the newly created Lead Paint Account and moneys may only be spent for the purposes of the lead-based paint chapter.

Persons violating the following provisions are guilty of a misdemeanor: (1) Failure to comply with requirements of the law; (2) Failure or refusal to establish required records; (3) Obtaining certification through fraud; (4) Failure to obtain certification; or (5) Fraudulently obtaining certification and engaging in any lead-based paint activities.

The DCTED must appoint a lead-based paint activities advisory board (Board). The Board provides scientific input and the opportunity for involvement of state research facilities in the preparation, conduct, and evaluation of the specific training programs and the certification process. The board consists of at least five volunteer members experienced in one or more of the following activities: environmental health; medical or environmental science; industrial hygiene, construction; real estate; environmental regulatory oversight; property owners; parents of leaded children; or lead hazard identification. In addition, the board consists of the following ex officio members or their designees including: the Director of the Department of Labor and Industries; the Director of the Department of Ecology; the Secretary of the Department of Health; and the Director of the Department of Agriculture. At least one member shall serve as a representative of the medical community. Members of the board shall be reimbursed for travel expenses and meet not more often than quarterly.

The DCTED is authorized to enter premises or facilities where lead-based activities violations have occurred and take samples and review records. The DCTED must notify persons prior to giving them federal funds that an inspection may be conducted.

The DCTED must seek funding for the administration of the program from the federal government. If the Director determines that there are not sufficient federal funds for the program by October 15 of each year, the Director shall terminate the program.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Fisheries, Ecology & Parks) Federal legislation passed in 1992 addressing the issue of exposure to lead in older homes. Prior to 1978, lead-based paint was used in homes. Children exposed to lead may experience serious health problems and loss of IQ. There are estimates that 1.5 million homes in Washington have lead paint and 700,000 are low income households.

This is a tremendous opportunity to gain access to federal grant funds from HUD for abatement. If the state establishes their own program, fees for certification and accreditation will be much lower than what the EPA currently charges. Currently, federal fees for certification and accreditation range from \$640 - \$2,500. Under the

proposed substitute, fees would range from \$25 - \$250. Federal funding is available to the state to take over the EPA certification. EPA will provide annual grants in the amount of \$400,000 to run the state program if this program legislation passes. Once a state assumes the program, HUD will make federal grants available, ranging from \$1.5 million - \$2 million, for the removal of lead paint.

(In support with concerns) The DCTED may not be the most appropriate agency to implement the program. The EPA has not approved the state legislation, and current budget issues make it a difficult time to implement a new program. If federal funds for the program go away, the state may be expected to fund the program. If a new program is created, persons currently certified should be ensured that their certifications are still valid.

Testimony For: (Appropriations) This bill will allow Washington to adopt a law that 37 other states have adopted. Washington will be eligible for substantial federal funding for lead-based paint abatement purposes if this bill is adopted, and there is actually more federal funding this year for those purposes. The average grants to states for abatement programs are \$1 million to \$3 million per year and the state can receive that funding year after year. This bill is good for children, for the economy, and for business. Washington will receive \$400,000 per year from the federal Environmental Protection Agency (EPA) if this bill is passed. The EPA has been running the program in Washington for the last four years, and they don't believe any state funds are needed to run this program because it will be fully funded with federal funds.

(With concerns) The DCTED is concerned about being the agency chosen to house this program. The bill needs a provision authorizing the DCTED to "enter and inspect" facilities, and the full funding from the federal government language in Section 10 needs to be modified. There is concern about investigation or search warrant language being put in the bill. A request was made to put a rental-housing owner on the Rental Advisory Board. There is concern about what the federal funding actually covers. They want to make sure it covers the FTEs and their health insurance, etc. A sunset clause should be added to Section 10, and the fee levels should be set appropriately to address federal funding shortfalls.

Testimony Against: (Fisheries, Ecology & Parks) None.

Testimony Against: (Appropriations) None.

Testified: (Fisheries, Ecology & Parks) (In support) Representative Darnielle, prime sponsor; Seth Dawson, Washington State Association for Community Action and Washington State Coalition for the Homeless; Jon Martin, Blue Mountain Action Council, Ken Sterner, North Columbia Community Action Council; and Tom Eaton and Barbara Eaton, Environmental Protection Agency.

(In support with concerns) Jerry Smedes, Northwest Environmental Business Council; and Grant Neslon, Association of Washington Business.

Testified: (Appropriations) (In support) Seth Dawson, Washington State Association for Community Action and the Washington State Coalition for the Homeless; Barbara Ross, United States Environmental Protection Agency; and Patty VanDerBrook.

(With concerns) Tom McBride, Department of Community, Trade and Economic Development; and Grant Nelson, Association of Washington Business.