

# HOUSE BILL REPORT

## ESSB 5586

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**As Reported by House Committee On:**  
Fisheries, Ecology & Parks

**Title:** An act relating to granting authority to address concerns with lead-based paint activities.

**Brief Description:** Granting authority to address concerns with lead-based paint activities.

**Sponsors:** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Hargrove, Hewitt, Carlson, Oke, Fraser, Regala, Keiser and Kline).

**Brief History:**

**Committee Activity:**

Fisheries, Ecology & Parks: 3/21/03, 4/1/03 [DPA].

**Brief Summary of Engrossed Substitute Bill**  
**(As Amended by House Committee)**

- 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 (DCTED).
- Creates the Lead Paint Account and establishes fees for certification and accreditation to be used to support the program along with federal funds.
- Directs the DCTED to adopt rules that are consistent with federal requirements necessary to implement a state lead-based activities program.

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### HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

**Majority Report:** Do pass as amended. 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 Upthegrove.

**Staff:** Jeff Olsen (786-7157).

**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 6 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 these activities are eligible for federal grants from the EPA to support the state program and grants from the United States Department of Housing and Urban Development for abatement.

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### **Summary of Amended 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 may delegate components of the program to local governments or private entities. 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.

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 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.

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 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 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 is authorized to inspect premises or facilities where those engaged in training for lead-based paint activities conduct business, including the review of business records and the taking of samples. When feasible, 24 hours notice of the inspection is required. If access is denied, the DCTED may revoke an accreditation or certification.

The DCTED is granted the right to inspect premises and facilities, with the consent of the owner or owner's agent, where violations may occur concerning lead-based paint activities. When feasible, 48 hours notice is required prior to the inspection. Anyone applying for federal funds must be advised of the inspections and will not be eligible to receive the funds if they are unwilling to consent to the inspections.

The DCTED's duties under the bill are subject to federal authorization within two years of the effective date of the bill. The DCTED is authorized to accept federal funds and must seek funding for the administration of the program from the federal government. If the Director of DCTED determines that there are not sufficient federal funds, the Director of DCTED shall terminate the program.

**Amended Bill Compared to Engrossed Substitute Bill:**

The amended bill added the following three provisions:

- 1) Authorization for DCTED to enter into agreements with local governments or private entities for implementation of components of the state lead-based activities program;
- 2) The requirement that the owner or the owner's agent must provide consent for an inspection; and
- 3) The DCTED's responsibility to implement the act is subject to federal authorization of the state program within two years of the effective date of the act.

The following two provisions relating to inspections were removed by the amended bill:

- 1) Specific consent for inspections of facilities owned by state or local governments, a housing authority, or a community action agency where federal funds were received; and
- 2) Inspection authority for facilities where federal funds have been received expires 90 days after completion of the activity.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Substantial work has been done on the bill to work on concerns expressed by stakeholders. The current version of the bill removes the advisory board, includes a grandfather clause for existing certified workers, and inspection language has been developed that satisfies concerns for both the EPA and business'. A state program would provide better service to the businesses in the state and fees would be defined and affordable. Currently builders and contractors are travelling to Oregon for training that could be done here in Washington.

(In support with amendments) The DCTED should be the agency to implement the program, and fees should remain set in statute. Inspection authority should be limited and must include the consent of the property owner. If a person does not consent to an inspection, the agency must obtain a criminal search warrant. The Governor's Office has

met with several agencies to discuss which agency is the best fit for this program. The DCTED should have the flexibility to enter into agreements with other state agencies and set fees by rule.

**Testimony Against:** None.

**Testified:** (In support) Seth Dawson, Coalition for the Homeless and Washington State Coalition for Community Action; Jerry Smedes, Northwest Environmental Business Council; and Nancee Wintermuth, Associated Builders and Contractors.

(In support with amendments) Grant Nelson, Association of Washington Business; John Woodring, Pacific Northwest Paint Council and Rental Housing Association of Puget Sound; and Ron Shultz, Governor's Office.