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HOUSE BILL 1913

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State of Washington

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2003 Regular Session

By Representatives Darneille, Mastin, Schual-Berke, Campbell, Cody, Moeller, Grant, Edwards and Santos

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1 AN ACT Relating to granting authority to the department of  
2 community, trade, and economic development to address concerns with  
3 lead-based paint activities; adding a new chapter to Title 70 RCW; and  
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that lead hazards  
7 associated with lead-based paint represent a significant and  
8 preventable environmental health problem. Lead-based paint is the most  
9 widespread of the various sources of lead exposure to the public.  
10 Census data show that one million five hundred sixty thousand homes in  
11 Washington state were built prior to 1978 when the sale of residential  
12 lead-based paint was banned. These are homes that are believed to  
13 contain some lead-based paint.

14 Lead negatively effects every system of the body. It is harmful to  
15 individuals of all ages and is especially harmful to children, fetuses,  
16 and adults of childbearing age. The effects of lead on a child's  
17 cognitive, behavioral, and developmental abilities may necessitate  
18 large expenditures of public funds for health care and special

1 education. The irreversible damage to children and subsequent  
2 expenditures could be avoided if exposure to lead is reduced.

3 (2) The federal government regulates lead poisoning and lead hazard  
4 reduction through:

5 (a)(i) The lead-based paint poisoning prevention act;

6 (ii) The lead contamination control act;

7 (iii) The safe drinking water act;

8 (iv) The resource conservation and recovery act of 1976; and

9 (v) The residential lead-based paint hazard reduction act of 1992;

10 and

11 (b) Implementing regulations of:

12 (i) The environmental protection agency;

13 (ii) The department of housing and urban development;

14 (iii) The occupational safety and health administration; and

15 (iv) The centers for disease control and prevention.

16 (3) In 1992, congress passed the federal residential lead-based  
17 paint hazard reduction act, which allows states to provide for the  
18 accreditation of lead-based paint activities programs, the  
19 certification of persons completing such training programs, and the  
20 licensing of lead-based paint activities contractors under standards  
21 developed by the United States environmental protection agency.

22 (4) The legislature recognizes the state's need to protect the  
23 public from exposure to lead hazards. A qualified and properly trained  
24 work force is needed to assist in the prevention, detection, reduction,  
25 and elimination of hazards associated with lead-based paint. The  
26 purpose of training workers, supervisors, inspectors, risk assessors,  
27 and project designers engaged in lead-based paint activities is to  
28 protect building occupants, particularly children ages six years and  
29 younger from potential lead-based paint hazards and exposures both  
30 during and after lead-based paint activities. Qualified and properly  
31 trained individuals and firms will help to ensure lead-based paint  
32 activities are conducted in a way that protects the health of the  
33 citizens of Washington state and safeguards the environment. The state  
34 lead-based paint activities program requires that all lead-based paint  
35 activities be performed by certified personnel trained by an accredited  
36 program, and that all lead-based paint activities meet minimum work  
37 practice standards established by the department of community, trade,  
38 and economic development. Therefore, the lead-based paint activities

1 accreditation, training, and certification program shall be established  
2 in accordance with this chapter. The lead-based paint activities  
3 accreditation, training, and certification program shall be  
4 administered by the department of community, trade, and economic  
5 development and shall be used as a means to assure the protection of  
6 the general public from exposure to lead hazards.

7 (5) For the welfare of the people of the state of Washington, this  
8 chapter establishes a lead-based paint activities program within the  
9 department of community, trade, and economic development to protect the  
10 general public from exposure to lead hazards and to ensure the  
11 availability of a trained and qualified work force to identify and  
12 address lead-based paint hazards.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply  
14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Abatement" has the same meaning as set forth in 40 C.F.R. Sec.  
16 745.223 (1996) as now existing or hereafter amended.

17 (2) "Accredited training program" means a training program that has  
18 been accredited by the department to provide training for individuals  
19 engaged in lead-based paint activities.

20 (3) "Certified inspector" means an individual who has been trained  
21 by an accredited training program, meets all the qualifications  
22 established by the department, and is certified by the department to  
23 conduct inspections.

24 (4) "Certified abatement worker" means an individual who has been  
25 trained by an accredited training program, meets all the qualifications  
26 established by the department, and is certified by the department to  
27 perform abatements.

28 (5) "Certified firm" includes a company, partnership, corporation,  
29 sole proprietorship, association, agency, or other business entity that  
30 meets all the qualifications established by the department and performs  
31 lead-based paint activities to which the department has issued a  
32 certificate.

33 (6) "Certified project designer" means an individual who has been  
34 trained by an accredited training program, meets all the qualifications  
35 established by the department, and is certified by the department to  
36 prepare abatement project designs, occupant protection plans, and  
37 abatement reports.

1 (7) "Certified risk assessor" means an individual who has been  
2 trained by an accredited training program, meets all the qualifications  
3 established by the department, and is certified by the department to  
4 conduct risk assessments and sample for the presence of lead in dust  
5 and soil for the purposes of abatement clearance testing.

6 (8) "Certified supervisor" means an individual who has been trained  
7 by an accredited training program, meets all the qualifications  
8 established by the department, and is certified by the department to  
9 supervise and conduct abatements, and to prepare occupant protection  
10 plans and abatement reports.

11 (9) "Department" means the Washington state department of  
12 community, trade, and economic development.

13 (10) "Director" means the director of the Washington state  
14 department of community, trade, and economic development.

15 (11) "Federal laws and rules" means:

16 (a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et  
17 seq.) and the rules adopted by the United States environmental  
18 protection agency under that law for authorization of state programs;

19 (b) Any regulations or requirements adopted by the United States  
20 department of housing and urban development regarding eligibility for  
21 grants to states and local governments; and

22 (c) Any other requirements adopted by a federal agency with  
23 jurisdiction over lead-based paint hazards.

24 (12) "Lead-based paint" means paint or other surface coatings that  
25 contain lead equal to or in excess of 1.0 milligrams per square  
26 centimeter or more than 0.5 percent by weight.

27 (13) "Lead-based paint activity" includes inspection, testing, risk  
28 assessment, risk reduction, lead-based paint hazard reduction project  
29 design or planning, or abatement of lead-based paint hazards.

30 (14) "Lead-based paint hazard" means any condition that causes  
31 exposure to lead from lead-contaminated dust, lead-contaminated soil,  
32 or lead-contaminated paint that is deteriorated or present in  
33 accessible surfaces, friction surfaces, or impact surfaces that would  
34 result in adverse human health effects as identified by the  
35 administrator of the United States environmental protection agency  
36 under the toxic substances control act, section 403.

37 (15) "State program" means a state administered lead-based paint

1 activities certification and training program that meets the federal  
2 environmental protection agency requirements.

3 (16) "Person" includes an individual, corporation, firm,  
4 partnership, or association, an Indian tribe, state, or political  
5 subdivision of a state, and a state department or agency.

6 (17) "Risk assessment" means:

7 (a) An on-site investigation to determine the existence, nature,  
8 severity, and location of lead-based paint hazards; and

9 (b) The provision of a report by the individual or the firm  
10 conducting the risk assessment, explaining the results of the  
11 investigation and options for reducing lead-based paint hazards.

12 NEW SECTION. **Sec. 3.** (1) The department shall administer and  
13 enforce a state program for worker training and certification, and  
14 training program accreditation, which shall include those program  
15 elements necessary to assume responsibility for federal requirements  
16 for a program as set forth in Title IV of the toxic substances control  
17 act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint  
18 hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R.  
19 Part 745, Subparts L and Q (1996), and Title X of the housing and  
20 community development act of 1992 (P.L. 102-550).

21 (2) The department is authorized to adopt rules that are consistent  
22 with federal requirements to implement a state program. Rules adopted  
23 under this section shall:

24 (a) Establish minimum accreditation requirements for lead-based  
25 paint activities for training providers;

26 (b) Establish work practice standards for conduct of lead-based  
27 paint activities;

28 (c) Establish certification requirements for individuals and firms  
29 engaged in lead-based paint activities;

30 (d) Require the use of certified personnel in all lead-based paint  
31 activities;

32 (e) Be revised as necessary to comply with federal law and rules  
33 and to maintain eligibility for federal funding;

34 (f) Facilitate reciprocity and communication with other states  
35 having a lead-based paint certification program;

36 (g) Provide for decertification, deaccreditation, and financial

1 assurance for a person certified by or a training provider accredited  
2 by the department; and

3 (h) Be issued in accordance with the administrative procedure act,  
4 chapter 34.05 RCW.

5 (3) The department may accept federal funds for the administration  
6 of the program.

7 (4) This program shall equal, but not exceed, legislative authority  
8 under federal requirements as set forth in Title IV of the toxic  
9 substances control act (15 U.S.C. Sec. 2601 et seq.), the residential  
10 lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et  
11 seq.), and Title X of the housing and community development act of 1992  
12 (P.L. 102-550).

13 (5) Any rules adopted by the department shall be consistent with  
14 federal laws, regulations, and requirements relating to lead-based  
15 paint activities specified by the residential lead-based paint hazard  
16 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the  
17 housing and community development act of 1992 (P.L. 102-550), to ensure  
18 consistency in regulatory action. The rules may not be more  
19 restrictive than corresponding federal regulations unless such  
20 stringency is specifically authorized by this chapter.

21 NEW SECTION. **Sec. 4.** (1) The department shall establish a program  
22 for certification of persons involved in lead-based paint activities  
23 and for accreditation of training providers in compliance with federal  
24 laws and rules.

25 (2) Rules adopted under this section shall:

26 (a) Establish minimum accreditation requirements for lead-based  
27 paint activities for training providers;

28 (b) Establish work practice standards for conduct of lead-based  
29 paint activities;

30 (c) Establish certification requirements for individuals and firms  
31 engaged in lead-based paint activities;

32 (d) Require the use of certified personnel in any lead-based paint  
33 hazard reduction activity;

34 (e) Be revised as necessary to comply with federal law and rules  
35 and to maintain eligibility for federal funding;

36 (f) Facilitate reciprocity and communication with other states  
37 having a lead-based paint certification program;

1 (g) Provide for decertification, deaccreditation, and financial  
2 assurance for a person certified or accredited by the department; and

3 (h) Be issued in accordance with the administrative procedure act,  
4 chapter 34.05 RCW.

5 (3) This program shall equal, but not exceed, legislative authority  
6 under federal requirements as set forth in Title IV of the toxic  
7 substances control act (15 U.S.C. Sec. 2601 et seq.), the residential  
8 lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et  
9 seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the  
10 housing and community development act of 1992 (P.L. 102-550).

11 (4) Any rules adopted by the department shall be consistent with  
12 federal laws, regulations, and requirements relating to lead-based  
13 paint activities specified by the residential lead-based paint hazard  
14 reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the  
15 housing and community development act of 1992 (P.L. 102-550), to ensure  
16 consistency in regulatory action. The rules may not be more  
17 restrictive than corresponding federal regulations unless such  
18 stringency is specifically authorized by this chapter.

19 (5) The department may accept federal funds for the administration  
20 of the program.

21 NEW SECTION. **Sec. 5.** The department shall adopt rules to:

22 (1) Establish procedures and requirements for the accreditation of  
23 lead-based paint activities training programs including, but not  
24 limited to, the following:

25 (a) Training curriculum;

26 (b) Training hours;

27 (c) Hands-on training;

28 (d) Trainee competency and proficiency;

29 (e) Training program quality control;

30 (f) Procedures for the reaccreditation of training programs;

31 (g) Procedures for the oversight of training programs; and

32 (h) Procedures for the suspension, revocation, or modification of  
33 training program accreditations, or acceptance of training offered by  
34 an accredited training provider in another state or Indian tribe  
35 authorized by the environmental protection agency;

36 (2) Establish procedures for the purposes of certification, for the

1 acceptance of training offered by an accredited training provider in a  
2 state or Indian tribe authorized by the environmental protection  
3 agency;

4 (3) Certify individuals involved in lead-based paint activities  
5 that:

6 (a) Ensure certified individuals:

7 (i) Are trained by an accredited training program; and

8 (ii) Possess appropriate educational or experience qualifications  
9 for certification;

10 (b) Establish procedures for recertification;

11 (c) Require the conduct of lead-based paint activities in  
12 accordance with work practice standards;

13 (d) Establish procedures for the suspension, revocation, or  
14 modification of certifications; and

15 (e) Establish requirements for the administration of third-party  
16 certification exams;

17 (4) Use laboratories accredited under the environmental protection  
18 agency's national lead laboratory accreditation program;

19 (5) Establish work practice standards for the conduct of lead-based  
20 paint activities for:

21 (a) Inspection for presence of lead-based paint;

22 (b) Risk assessment; and

23 (c) Abatement;

24 (6) Establish an enforcement response policy that shall include:

25 (a) Warning letters, notices of noncompliance, notices of  
26 violation, or the equivalent;

27 (b) Administrative or civil actions, including penalty authority,  
28 including accreditation or certification suspension, revocation, or  
29 modification; and

30 (c) Authority to apply criminal sanctions or other criminal  
31 authority using existing state laws as applicable; and

32 (7) Prepare and submit a biennial report to the legislature  
33 regarding the program's status, its costs, and the number of persons  
34 certified by the program.

35 NEW SECTION. **Sec. 6.** (1) The department is designated as the  
36 official agency of this state for purposes of cooperating with, and

1 implementing the state lead-based paint activities program under the  
2 jurisdiction of the United States environmental protection agency.

3 (2) No individual or firm can perform, offer, or claim to perform  
4 lead-based paint activities without certification from the department  
5 to conduct these activities.

6 (3) The department may deny, suspend, or revoke a certificate for  
7 failure to comply with the requirements of this chapter or any rule  
8 adopted under this chapter. No person whose certificate is revoked  
9 under this chapter shall be eligible to apply for a certificate for one  
10 year from the effective date of the final order of revocation. A  
11 certificate may be denied, suspended, or revoked on any of the  
12 following grounds:

13 (a) A risk assessor, inspector, contractor, project designer, or  
14 worker violates work practice standards established by the United  
15 States environmental protection agency or the United States department  
16 of housing and urban development governing work practices and  
17 procedures; or

18 (b) The certificate was obtained by error, misrepresentation, or  
19 fraud.

20 (4) Any person convicted of violating any of the provisions of this  
21 chapter is guilty of a misdemeanor. A conviction is an unvacated  
22 forfeiture of bail or collateral deposited to secure the defendant's  
23 appearance in court, the payment of a fine, a plea of guilty, or a  
24 finding of guilt on a violation of this chapter, regardless of whether  
25 imposition of sentence is deferred or the penalty is suspended, and  
26 shall be treated as a violation conviction for purposes of  
27 certification forfeiture under this chapter. Violations of this  
28 chapter include:

29 (a) Failure to comply with any requirement of this chapter;

30 (b) Failure or refusal to establish, maintain, provide, copy, or  
31 permit access to records or reports as required;

32 (c) Obtaining certification through fraud or misrepresentation;

33 (d) Failure to obtain certification from the department and  
34 performing work requiring certification at a job site; or

35 (e) Fraudulently obtaining certification and engaging in any lead-  
36 based paint activities requiring certification.

1        NEW SECTION.    **Sec. 7.** The department shall appoint a lead-based  
2 paint activities advisory board for the purposes of advising the  
3 department. The board shall:

4        (1) Provide scientific input to ensure that this program continues  
5 to be in synchronism with scientifically substantiated needs for either  
6 abatement or monitoring activities; and

7        (2) Provide the opportunity for involvement of state research  
8 facilities in the preparation, conduct, and evaluation of the specific  
9 training programs and the certification process.

10       The board shall consist of at least five volunteer members who are  
11 residents of the state and skilled and experienced in one or more of  
12 the following activities:       Environmental health, medical or  
13 environmental science, industrial hygiene, construction, real estate,  
14 environmental regulatory oversight, property owners, parents of leaded  
15 children, or lead hazard identification. In addition to the five  
16 volunteer members, the following persons, or their designees, may serve  
17 as ex officio members of the board: The director of the department of  
18 labor and industries; the director of the department of ecology; the  
19 secretary of the department of health; and the director of the  
20 department of agriculture. At least one member shall serve as a  
21 representative of the medical community. Members of the board shall be  
22 reimbursed for travel expenses as provided in RCW 43.03.050 and  
23 43.03.060. Members of the board may be reimbursed for customary  
24 expenses as set out in RCW 43.03.220. The board shall meet no more  
25 often than quarterly.

26       NEW SECTION.    **Sec. 8.** Sections 1 through 7 of this act constitute  
27 a new chapter in Title 70 RCW.

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