
SUBSTITUTE SENATE BILL 5586

State of Washington

58th Legislature

2003 Regular Session

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

READ FIRST TIME 02/24/03.

1 AN ACT Relating to granting authority to address concerns with
2 lead-based paint activities; adding a new chapter to Title 70 RCW; and
3 prescribing penalties.

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

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

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

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

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

4 (ii) The lead contamination control act;

5 (iii) The safe drinking water act;

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

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

8 and

9 (b) Implementing regulations of:

10 (i) The environmental protection agency;

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

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

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

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

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

1 accreditation, training, and certification program shall be
2 administered by the department of community, trade, and economic
3 development and shall be used as a means to assure the protection of
4 the general public from exposure to lead hazards.

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

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

13 (1) "Abatement" means any measure or set of measures designed to
14 permanently eliminate lead-based paint hazards.

15 (a) Abatement includes, but is not limited to:

16 (i) The removal of paint and dust, the permanent enclosure or
17 encapsulation of lead-based paint, the replacement of painted surfaces
18 or fixtures, or the removal or permanent covering of soil, when lead-
19 based paint hazards are present in such paint, dust, or soil; and

20 (ii) All preparation, cleanup, disposal, and postabatement
21 clearance testing activities associated with such measures.

22 (b) Specifically, abatement includes, but is not limited to:

23 (i) Projects for which there is a written contract or other
24 documentation, which provides that an individual or firm will be
25 conducting activities in or to a residential dwelling or child-occupied
26 facility that:

27 (A) Shall result in the permanent elimination of lead-based paint
28 hazards; or

29 (B) Are designed to permanently eliminate lead-based paint hazards
30 and are described in (a)(i) and (ii) of this subsection;

31 (ii) Projects resulting in the permanent elimination of lead-based
32 paint hazards, conducted by certified firms or individuals, unless such
33 projects are covered by (c) of this subsection;

34 (iii) Projects resulting in the permanent elimination of lead-based
35 paint hazards, conducted by firms or individuals who, through their
36 company name or promotional literature, represent, advertise, or hold

1 themselves out to be in the business of performing lead-based paint
2 activities as identified and defined by this section, unless such
3 projects are covered by (c) of this subsection; or

4 (iv) Projects resulting in the permanent elimination of lead-based
5 paint hazards, that are conducted in response to state or local
6 abatement orders.

7 (c) Abatement does not include renovation, remodeling, landscaping,
8 or other activities, when such activities are not designed to
9 permanently eliminate lead-based paint hazards, but, instead, are
10 designed to repair, restore, or remodel a given structure or dwelling,
11 even though these activities may incidentally result in a reduction or
12 elimination of lead-based paint hazards. Furthermore, abatement does
13 not include interim controls, operations and maintenance activities, or
14 other measures and activities designed to temporarily, but not
15 permanently, reduce lead-based paint hazards.

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

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

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

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

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

37 (7) "Certified risk assessor" means an individual who has been
38 trained by an accredited training program, meets all the qualifications

1 established by the department, and is certified by the department to
2 conduct risk assessments and sample for the presence of lead in dust
3 and soil for the purposes of abatement clearance testing.

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

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

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

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

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

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

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

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

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

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

35 (15) "State program" means a state administered lead-based paint
36 activities certification and training program that meets the federal
37 environmental protection agency requirements.

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

4 (17) "Risk assessment" means:

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

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

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

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

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

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

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

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

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

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

34 (g) Provide for decertification, deaccreditation, and financial
35 assurance for a person certified by or a training provider accredited
36 by the department; and

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

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

5 (4) 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.), and Title X of the housing and community development act of 1992
10 (P.L. 102-550).

11 (5) 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), and rules
16 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
17 regulatory action. The rules may not be more restrictive than
18 corresponding federal and state regulations unless such stringency is
19 specifically authorized by this chapter.

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

24 (2) Rules adopted under this section shall:

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

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

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

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

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

35 (f) Facilitate reciprocity and communication with other states
36 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), and rules
16 adopted pursuant to chapter 70.105D RCW, to ensure consistency in
17 regulatory action. The rules may not be more restrictive than
18 corresponding federal and state regulations unless such stringency is
19 specifically authorized by this chapter.

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

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

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

- 26 (a) Training curriculum;
- 27 (b) Training hours;
- 28 (c) Hands-on training;
- 29 (d) Trainee competency and proficiency;
- 30 (e) Training program quality control;
- 31 (f) Procedures for the reaccreditation of training programs;
- 32 (g) Procedures for the oversight of training programs; and
- 33 (h) Procedures for the suspension, revocation, or modification of
34 training program accreditations, or acceptance of training offered by
35 an accredited training provider in another state or Indian tribe
36 authorized by the environmental protection agency;

1 (2) Establish procedures for the purposes of certification, for the
2 acceptance of training offered by an accredited training provider in a
3 state or Indian tribe authorized by the environmental protection
4 agency;

5 (3) Certify individuals involved in lead-based paint activities to
6 ensure that certified individuals are trained by an accredited training
7 program and possess appropriate educational or experience
8 qualifications for certification;

9 (4) Establish procedures for recertification;

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

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

14 (7) Establish requirements for the administration of third-party
15 certification exams;

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

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

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

21 (b) Risk assessment; and

22 (c) Abatement;

23 (10) Establish an enforcement response policy that shall include:

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

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

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

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

34 NEW SECTION. **Sec. 6.** The lead paint account is created in the
35 state treasury. All receipts from section 7 of this act shall be
36 deposited into the account. Moneys in the account may be spent only

1 after appropriation. Expenditures from the account may be used only
2 for the purposes of this chapter.

3 NEW SECTION. **Sec. 7.** (1) The department shall collect a fee in
4 the amount of twenty-five dollars for certification and recertification
5 of lead paint firms, inspectors, project developers, risk assessors,
6 supervisors, and abatement workers.

7 (2) The department shall collect a fee in the amount of two hundred
8 dollars for the accreditation of lead paint training programs.

9 NEW SECTION. **Sec. 8.** The director or his or her designee is
10 authorized to inspect premises or facilities, at reasonable times, with
11 twenty-four hour prior notification, in order to determine compliance
12 with laws and rules administered by the department for the purpose of
13 regulating lead paint activities. If entry or inspection is denied,
14 the director or his or her designee may apply for an administrative
15 search warrant to a court official authorized to issue a criminal
16 search warrant. An administrative search warrant may be issued solely
17 for the purposes of inspecting or examining property, buildings,
18 premises, place, books, records, or other physical evidence, or
19 conducting tests or taking samples to determine compliance with this
20 chapter or the department's associated rules. The warrant shall be
21 issued upon probable cause. It is sufficient probable cause to show
22 any of the following:

23 (1) The inspection, examination, test, or sampling is pursuant to
24 a general administrative plan to determine compliance with laws or
25 rules, on lead paint, administered by the department; or

26 (2) The director or his or her designee has reason to believe that
27 a violation of a law or rule, on lead paint, administered by the
28 department has occurred or is occurring.

29 NEW SECTION. **Sec. 9.** (1) The department is designated as the
30 official agency of this state for purposes of cooperating with, and
31 implementing the state lead-based paint activities program under the
32 jurisdiction of the United States environmental protection agency.

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

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

8 (a) A risk assessor, inspector, contractor, project designer, or
9 worker violates work practice standards established by the United
10 States environmental protection agency or the United States department
11 of housing and urban development governing work practices and
12 procedures; or

13 (b) The certificate was obtained by error, misrepresentation, or
14 fraud.

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

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

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

27 (c) Obtaining certification through fraud or misrepresentation;

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

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

32 NEW SECTION. **Sec. 10.** The department shall appoint a lead-based
33 paint activities advisory board for the purposes of advising the
34 department. The board shall:

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

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

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

20 NEW SECTION. **Sec. 11.** The director or his or her designee shall
21 seek full funding of the department's efforts under this chapter from
22 the federal government. The department shall cease all efforts
23 required under this chapter if full funding of the department's efforts
24 is not provided, or guaranteed, by the federal government on or before
25 October 15th of each year. The director shall provide the legislature
26 with seven days' advance written notice of its intent to cease efforts
27 under this chapter due to the lack of federal funding. The
28 department's efforts shall cease within fifteen days of the notice to
29 the legislature.

30 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act
31 constitute a new chapter in Title 70 RCW.

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