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SENATE BILL 5586

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State of Washington

58th Legislature

2003 Regular Session

By Senators Hargrove, Hewitt, Carlson, Oke, Fraser, Regala, Keiser and Kline

Read first time 01/31/2003. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to granting authority to the department of ecology  
2 to address concerns with lead-based paint activities; adding a new  
3 chapter to Title 70 RCW; and 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 ecology.  
36 Therefore, the lead-based paint activities accreditation, training, and  
37 certification program shall be established in accordance with this  
38 chapter. The lead-based paint activities accreditation, training, and

1 certification program shall be administered by the department of  
2 ecology and shall be used as a means to assure the protection of the  
3 general public from exposure to lead hazards.

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

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

11 (1) "Abatement" has the same meaning as set forth in 40 C.F.R. Sec.  
12 745.223 (1996) as now existing or hereafter amended.

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

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

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

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

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

34 (7) "Certified risk assessor" means an individual who has been  
35 trained by an accredited training program, meets all the qualifications  
36 established by the department, and is certified by the department to

1 conduct risk assessments and sample for the presence of lead in dust  
2 and soil for the purposes of abatement clearance testing.

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

8 (9) "Department" means the Washington state department of ecology.

9 (10) "Director" means the director of the Washington state  
10 department of ecology.

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

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

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

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

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

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

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

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

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

1 (17) "Risk assessment" means:

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

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

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

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

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

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

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

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

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

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

31 (g) Provide for decertification, deaccreditation, and financial  
32 assurance for a person certified by or a training provider accredited  
33 by the department; and

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

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

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

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

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

19 (2) Rules adopted under this section shall:

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

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

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

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

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

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

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

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

36 (3) This program shall equal, but not exceed, legislative authority  
37 under federal requirements as set forth in Title IV of the toxic

1 substances control act (15 U.S.C. Sec. 2601 et seq.), the residential  
2 lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et  
3 seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the  
4 housing and community development act of 1992 (P.L. 102-550).

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

13 (5) The department may accept federal funds for the administration  
14 of the program.

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

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

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

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

34 (3) Certify individuals involved in lead-based paint activities  
35 that:

- 36 (a) Ensure certified individuals:
  - 37 (i) Are trained by an accredited training program; and

- 1 (ii) Possess appropriate educational or experience qualifications  
2 for certification;
- 3 (b) Establish procedures for recertification;
- 4 (c) Require the conduct of lead-based paint activities in  
5 accordance with work practice standards;
- 6 (d) Establish procedures for the suspension, revocation, or  
7 modification of certifications; and
- 8 (e) Establish requirements for the administration of third-party  
9 certification exams;
- 10 (4) Use laboratories accredited under the environmental protection  
11 agency's national lead laboratory accreditation program;
- 12 (5) Establish work practice standards for the conduct of lead-based  
13 paint activities for:
- 14 (a) Inspection for presence of lead-based paint;
- 15 (b) Risk assessment; and
- 16 (c) Abatement;
- 17 (6) Establish an enforcement response policy that shall include:
- 18 (a) Warning letters, notices of noncompliance, notices of  
19 violation, or the equivalent;
- 20 (b) Administrative or civil actions, including penalty authority,  
21 including accreditation or certification suspension, revocation, or  
22 modification; and
- 23 (c) Authority to apply criminal sanctions or other criminal  
24 authority using existing state laws as applicable; and
- 25 (7) Prepare and submit a biennial report to the legislature  
26 regarding the program's status, its costs, and the number of persons  
27 certified by the program.

28 NEW SECTION. **Sec. 6.** (1) The department is designated as the  
29 official agency of this state for purposes of cooperating with, and  
30 implementing the state lead-based paint activities program under the  
31 jurisdiction of the United States environmental protection agency.

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

35 (3) The department may deny, suspend, or revoke a certificate for  
36 failure to comply with the requirements of this chapter or any rule  
37 adopted under this chapter. No person whose certificate is revoked



1 under this chapter shall be eligible to apply for a certificate for one  
2 year from the effective date of the final order of revocation. A  
3 certificate may be denied, suspended, or revoked on any of the  
4 following grounds:

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

10 (b) The certificate was obtained by error, misrepresentation, or  
11 fraud.

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

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

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

24 (c) Obtaining certification through fraud or misrepresentation;

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

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

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

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

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

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

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

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