

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 2456

INTRODUCER: Senator Joyner

SUBJECT: Lead Poisoning Prevention

DATE: March 28, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Garner</u>	<u>Wilson</u>	<u>HR</u>	Fav/1 amendment
2.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	Favorable
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill creates a training, certification, and accreditation program within the Florida Department of Health (DOH) for persons who perform lead-based paint abatement activities. This industry is currently regulated by the U.S. Environmental Protection Agency (EPA).

The bill provides definitions for a number of terms as they apply to this program, including: abatement, affected property, accredited training program, certified firm, certified abatement worker, certified risk assessor, certified supervisor, child-occupied facility, clearance inspection, department, dust-lead hazard, elevated blood-lead level, inspection, lead-based paint, lead-based paint activities, lead-based paint hazard, person at risk, reduction, residential dwelling, risk assessment, and target housing.

The bill prohibits individuals from performing, or offering to perform, an inspection, risk assessment, or abatement of a target facility, affected property, or child-occupied facility unless the individual is certified by the DOH pursuant to this act. The bill also requires the DOH to develop course accreditation and certification standards and requirements for individuals performing inspections, risk assessments, or abatements. The bill prohibits firms and entities

from conducting these activities without certification or employing an uncertified individual to perform these activities. The bill provides the DOH rule-making authority under this section.

The bill specifies that a renewal of certification must take place every 36 months; provides for certification and accreditation fees under the program; and requires individuals to notify the DOH if they are conducting an abatement.

The bill requires the DOH to adopt standards established by the U.S. EPA to ensure that an abatement performed under this section results in the elimination of lead-based paint hazards. It also requires an inspection, risk assessment, or an abatement performed under this section to be performed in accordance with the procedures defined by rules of the DOH. The DOH must prepare a fact sheet on abatement for distribution to consumers which lists certified firms and various measures known to the DOH for the abatement of target housing and child-occupied facilities.

The bill requires the DOH to adopt rules related to this program

This bill creates s. 381.99, F.S.

II. Present Situation:

Childhood Lead Poisoning

The federal Centers for Disease Control and Prevention (CDC) have termed excessive absorption of lead as a serious pediatric health problem in the United States, especially in older communities, and it is entirely preventable. In 2006, approximately 300,000 (or 1.2 percent) U.S. children aged one to five were estimated to have elevated blood-lead levels (i.e., blood-lead levels greater than the CDC recommended level of 10 micrograms of lead per deciliter (ug/dL) of blood). This is dramatically lower than the 7.6 percent reported only ten years earlier.¹ The CDC attributes much of the reduction in reported lead-poisoning to federal and state efforts to control lead exposure, which they identify as one of the most significant public health successes of the last half of the 20th century.²

Lead poisoning can affect nearly every system in the body. Because lead poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can result in learning disabilities, behavioral problems, delayed cognitive development, interference with metabolizing calcium, reduced heme syntheses (or the body's ability to manufacture red blood cells), reduced kidney function, and damage to the central nervous system and, at very high levels, seizures, coma, and even death. The damage to the central nervous system is not reversible. The extent to which these effects will be present in a child depends on a number of factors, including the duration and intensity of exposure. These factors are still being studied to determine long-term effects of exposure on children.

¹ <http://www.cdc.gov/nceh/lead/surv/stats.htm> (last visited on March 24, 2008).

² U.S. Centers for Disease Control and Prevention. *Preventing Lead Poisoning in Young Children*, 2005. Found at: <http://www.cdc.gov/nceh/lead/publications/PrevLeadPoisoning.pdf> (last visited on March 24, 2008).

The main source of lead exposure among U.S. children is lead-based paint and lead-contaminated dust found in deteriorating buildings. Lead-based paints were banned from use in housing in 1978; however, approximately 24 million housing units in the U.S. still contain deteriorated leaded paint and elevated levels of lead-contaminated house dust. More than 4 million of these dwellings are homes to one or more young children.

Children are at particular risk for lead exposure due to their regular hand-to-mouth activity during daily play where lead-based paint is peeling or flaking. The dust from this deteriorating paint is easily ingested and is a significant source of exposure. According to the DOH, children 9 months of age to 2-1/2 years of age are at the greatest risk of lead poisoning; they have greater hand-to-mouth activity, their brains are more sensitive to the toxic effects of lead, and they absorb a greater percentage of the lead that is ingested.³

In recent years, however, other sources of lead poisoning in children have been identified. With an increasing number of refugees and other immigrants entering the United States, a corresponding increase has been seen in non-paint lead exposure (e.g., lead has been found in some homeopathic remedies, candies, and pottery and other dishes used in food storage, preparation and serving). As a result, federal lead poisoning prevention activities have expanded beyond just leaded paint exposure. For example, recently the U.S. Food and Drug Administration (FDA) developed new guidelines for lead levels in candies, primarily imported from Mexico or other Latin American countries, to reduce childhood lead exposure.⁴

The CDC believes that with a continued concerted effort, especially in the area of primary prevention, lead poisoning will be virtually eliminated by 2010, and the nation's health objective to "eliminate blood lead levels in children," as presented in the U.S. Department of Health and Human Services' "Healthy People 2010" (objective no. 8-11), will be achieved.

To accomplish this goal, the CDC recommends that federal and state program efforts need to increase focus in the area of housing-based primary prevention policy development and provide the necessary data to policymakers that will assure their support of those policies. Housing-based primary prevention policy will assure lead-safe housing is available for families with young children beyond 2010.

After 2010, program efforts will continue to focus on blood-lead surveillance; however, other surveillance activities that reveal changes in housing risk status and non-paint exposure sources will likely be added.

Lead-based Paint Inspection and Abatement Regulations

In Florida, the regulation of professionals conducting lead-based paint abatements, inspections, and risk assessments are regulated by the U.S. EPA. The EPA requires individuals conducting lead-based paint activities (abatement, inspection, and risk assessment) in target housing and

³ Florida Department of Health, Childhood Lead Poisoning Prevention Program. 2005 Annual Surveillance Report. Found at: <http://www.doh.state.fl.us/Environment/community/lead/faq.htm> (last visited March 24, 2008).

⁴ Center for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., *Lead in Candy Likely To Be Consumed Frequently by Small Children: Recommended Maximum Level and Enforcement Policy* (2006). Found at: <http://www.cfsan.fda.gov/~dms/pbguid2.html> (last visited March 24, 2008)

child-occupied facilities to be trained and certified. The trainers are accredited to ensure quality, and certified individuals must follow specific work practices ensuring that lead hazards are addressed.⁵

The goal of the EPA's regulations is to protect the public from hazards of improperly conducted lead-based paint activities. The federal regulations contain several elements, including:

- Training and certification requirements to ensure the proficiency of contractors who offer to conduct lead-based paint inspection, risk assessment and abatement services in residences and day care centers.
- Accreditation requirements to ensure that training programs provide quality instruction in current and effective work practices.
- Work practice standards to ensure that lead-based paint activities are conducted safely, reliably and effectively.

The program applies only in those states, territories and Indian Tribes that are not authorized by the EPA to operate their own lead program. Currently 39 states and the District of Columbia conduct their own accreditation and certification program under the authority of the EPA. Federal authority for the program comes from the Residential Lead-Based Paint Hazard Reduction Act of 1992 (PL. 102-550) and related regulations.

According to the DOH, the EPA currently operates this program in Florida and collects the generated revenue from 131 accredited training providers, 117 certified firms, and 364 certified individuals (who have a total of 503 professional certifications). These entities currently pay fees to the EPA of approximately \$565,756 over a three to four year period for their accreditation and certification.

Sunrise Act

Section 11.62, F.S., the Sunrise Act, expresses the Legislature's intent that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose. The Sunrise Act provides criteria for the Legislature to consider in determining whether to regulate a profession or occupation and requires proponents of legislation that provides for the regulation of a profession or occupation not already expressly subject to state regulation to provide certain information to the state agency that is proposed to have jurisdiction over the regulation and to the appropriate legislative committees.

Since lead-abatement accredited training providers, certified firms, and certified individuals are already regulated by the U.S. EPA, many of the questions that the Sunrise Act provides for the Legislature to consider have been answered, as well as the questions that proponents of the regulation are required to address. The U.S. EPA is encouraging states to take over the program.

⁵ U.S. Environmental Protection Agency. Found at: <http://www.epa.gov/lead/pubs/traincert.htm#purpose> (last visited on March 24, 2008)

III. Effect of Proposed Changes:

The bill provides a number of whereas clauses relating to the importance of properly conducted lead abatement for public health and safety, especially for children.

Section 1. Creates s. 381.99, F.S., to establish a program within the DOH for the purpose of regulating persons who perform lead-based paint abatement activities.

Subsection 1 provides that this act may be cited as the “Florida Lead-based Paint Reduction Program Act.”

Subsection 2 provides definitions for this section.

“Abatement” means any measure or set of measures designed to permanently eliminate lead-based paint hazards, including but not limited to:

- The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;
- All preparation, cleanup, disposal, and postabatement clearance-testing activities associated with the measures specified above;
- Any project for which there is a written contract or other documentation providing that an individual or certified firm will be conducting activities in or to a residential dwelling or child-occupied facility which results in the permanent elimination of lead-based paint hazards or is designed to permanently eliminate lead-based paint hazards;
- Any project resulting in the permanent elimination of lead-based paint hazards which is conducted by a firm or individual certified in accordance with this section;
- Any project resulting in the permanent elimination of lead-based paint hazards which is conducted by a firm or individual who, through the company name or promotional literature, represents, advertises, or holds himself or herself out to be in the business of performing lead-based paint activities; or
- Any project resulting in the permanent elimination of lead-based paint hazards which is conducted in response to abatement orders by the state or local government.

The term does not include renovation, remodeling, landscaping, or other activities when such activities are not designed to permanently eliminate lead-based paint hazards, but are designed to repair, restore, or remodel a given structure or residential dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. The term does not include interim controls, operations, and maintenance activities or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

“Affected property” means a room or group of rooms within a property constructed before January 1, 1960, or within a property constructed between January 1, 1960, and January 1, 1978, where the owner has knowledge of the presence of lead-based paint, which form a single, independent habitable dwelling unit for occupation by one or more individuals and has facilities for living, sleeping, eating, cooking, and sanitation. The term does not include:

- An area that is not used for living, sleeping, eating, cooking, or sanitation, such as an unfinished basement;
- A unit within a hotel, motel, or similar seasonal or transient facility, unless such unit is occupied by one or more persons at risk for a period exceeding 30 days;
- An area that is secured and inaccessible to occupants; or
- A unit that is not offered for rent.

“Accredited training program” means a training program that has been accredited by the DOH to provide training for individuals engaged in lead-based paint activities.

“Certified firm” means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities and that is certified by the department.

“Certified abatement worker” means an individual who has successfully completed an accredited training program and who is certified by the DOH to perform lead-based paint abatement activities.

“Certified risk assessor” means an individual who is trained by an accredited training program and certified by the DOH to conduct risk assessments and to take samples for the presence of lead in paint chips, dust, and soil for the purposes of clearance inspections.

“Certified supervisor” means an individual who is trained by an accredited training program and certified by the DOH to supervise and conduct abatements and prepare occupant-protection plans and abatement reports.

“Child-occupied facility” means a building, or portion of a building, constructed before 1978, visited regularly by the same child who is 6 years of age or younger on at least 2 days within any week if each day’s visit lasts at least 3 hours and the combined annual visits last at least 60 hours. The term includes, but is not limited to, day care centers, preschools, and kindergarten classrooms.

“Clearance inspection” means a visual inspection and the collection of environmental samples by an inspector or risk assessor and analysis by an accredited laboratory, as determined by the National Lead Laboratory Accreditation Program of the EPA, upon completion of an abatement project, interim control intervention, or maintenance job that disturbs lead-based paint.

“Department” means the Department of Health.

“Dust-lead hazard” means surface dust in a residential dwelling or a facility occupied by a person at risk which contains a mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot on interior floors or 250 micrograms per square foot on interior window sills based on wipe samples.

“Elevated blood-lead level” means a quantity of lead in whole venous blood which exceeds 10 micrograms per deciliter.

“Inspection” means a room-by-room, surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation in accordance with current guidelines of the U.S. Department of Housing and Urban Development.

“Lead-based paint” means paint or other surface coatings that contain lead equal to, or exceeding 1 milligram per square centimeter, 0.5 percent by weight, or 5,000 parts per million by weight.

“Lead-based paint activities” means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

“Lead-based paint hazard” means any one of the following:

- Any lead-based paint on a friction surface that is subject to abrasion and where the lead levels on the nearest horizontal surface underneath the friction surface, such as the windowsill or floor, are equal to or greater than the dust-lead hazard levels.
- Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building material, such as a door knob that knocks into a wall or a door that knocks against its door frame.
- Any chewable lead-based painted surface on which there is evidence of teeth marks.
- Any other deteriorated lead-based paint in or on the exterior of any residential building or any facility occupied by a person at risk.

“Person at risk” means a child younger than 6 years of age or a pregnant woman who resides in or regularly spends at least 24 hours per week in an affected property.

“Reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods that include interim controls and abatement.

“Residential dwelling” means:

- A detached single-family dwelling unit, including attached structures, such as porches and stoops; or
- A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit and that is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

“Risk assessment” means:

- An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and
- The provision of a report by the individual or the firm conducting the risk assessment which explains the results of the investigation and options for reducing lead-based paint hazards.

“Target housing” means any housing constructed before 1978, except housing for the elderly or persons with disabilities, unless one or more children 6 years of age or younger reside or are expected to reside in such housing and any zero-bedroom dwelling.

Subsection 3 prohibits individuals from performing, or offering to perform, an inspection, risk assessment, or an abatement of a target facility, affected property, or child-occupied facility unless the individual is certified by the DOH pursuant to this act. It requires the DOH to develop course accreditation standards for each type of certification training. Professional certification shall only be obtained if an individual successfully completes a DOH-accredited training course from an accredited training provider. The bill specifies that the certification requirement does not apply to an individual who performs an abatement of a residential dwelling that the individual owns and occupies as a residence, unless the residential dwelling is occupied by an individual or individuals other than the owner or the owner's immediate family before, or for 1 year after, an abatement is performed.

Subsection 4 prohibits a firm or other entity from performing, or offering to perform, an inspection, risk assessment, or an abatement of a target facility, affected property, or child-occupied facility unless the firm or entity is certified by the DOH pursuant to this act. The bill also prohibits a firm or entity from employing an uncertified individual for the purpose of performing an inspection, risk assessment, or an abatement. This subsection also requires the DOH to adopt rules that establish the minimum qualifications for firms and training providers.

Subsection 5 specifies that a certification of an individual, course provider, or firm issued under this section expires on the last day of the 36th month after the date of issuance. A certification shall be renewed by paying the renewal fee within the established timeframe and according to the adopted minimum qualifications for certification of firms, course providers, and individuals.

Subsection 6 requires the DOH to establish fees for: examination for individual certification; individual certification as an abatement worker; individual certification as a risk-assessor; individual certification as an inspector; individual certification as a supervisor; initial course provider accreditation; renewal course accreditation; and firm certification.

The fees imposed by this subsection apply to each category in which a person is examined for certification or receives certification, and must be sufficient to meet the cost of administering this section. The fees must be deposited by the DOH into the Lead Poisoning Prevention Trust Fund and used solely to support the Florida Lead-based Paint Reduction Program and the training and certification required under the program.

Subsection 7 prohibits a person from conducting an abatement of a target facility, a child-occupied facility, a residential dwelling, or an affected property unless the person has provided notification to the DOH. The DOH shall establish a procedure for providing notification which authorizes the DOH to enter and assess the identified abatement worksite for the purpose of enforcing the requirements of this bill. A person conducting an abatement on his or her personal residence is exempt from this provision in certain circumstances.

Subsection 8 requires the DOH to adopt standards established by the U.S. EPA to ensure that an abatement performed under this section results in the elimination of lead-based paint hazards. An inspection, risk assessment, or an abatement performed under this section must be performed in accordance with the procedures defined by rules of the DOH. The DOH shall prepare a fact sheet on abatement for distribution to consumers which lists certified firms and various measures known to the DOH for the abatement of target housing and child-occupied facilities.

Subsection 9 requires the DOH to adopt rules related to this program.

Section 2. Provides this act shall take effect July 1, 2008, if SB 2280, or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals and firms who perform, or offer to perform an inspection, risk assessment, or lead-based paint abatement of a target facility, affected property, or child-occupied facility must be certified by the federal EPA. In addition, training programs for these individuals must be accredited through the EPA. The EPA collects fees of approximately \$565,756 over a 3 to 4-year period for this accreditation and certification program.

To the extent that the state program's fees are less than the EPA fees, individuals and firms should incur less cost for their accreditation and/or certification.

C. Government Sector Impact:

Florida Department of Health

This bill establishes the Florida Lead-based Paint Reduction Program which should eventually generate sufficient revenue to be self-sustaining. The EPA currently operates this program in Florida and collects the generated revenue from 131 accredited training providers, 117 certified firms, and 364 certified individuals. These entities currently pay fees that yield to the EPA revenue of approximately \$565,756 over a 3 to 4-year period.

Individuals and firms currently certified to operate in Florida by the EPA will continue to be able to operate until their 3-year federal certifications expire. The expirations of these certifications are staggered; therefore, it is impossible to anticipate when Florida will actually receive a full year of revenue. The EPA must also approve Florida's program before it can begin operation. Information from states that have assumed this federal program indicate it may be some months before approval is granted. Once becoming accredited by the EPA to operate, the DOH will begin collecting the fees that now go to the EPA.

Since it is not known when federal certifications will expire for all individuals and firms, the DOH does not project revenue until the third year. It is anticipated that collections will begin prior to the third year, but these fees alone likely will not be sufficient to sustain the program.

It is estimated that fee collection will be sufficient to cover the cost of two full time equivalents (FTE) and program costs beginning in year three and thereafter. According to projected calculations, the DOH should be able to operate the EPA's program at a lower cost. This would mean a lower cost for lead-based paint remediation and removal professionals who operate in Florida.

It should be noted that the EPA is authorized to make grants to states as an incentive for the development and implementation of a state program. While grant funding from the EPA is not a certainty, this funding could be of great benefit during the transition period and beyond should fees be insufficient.

Establishing the Florida Lead-based Paint Reduction Program also puts the DOH and other entities within the state in a better position to leverage federal grants for lead hazard reduction from the U.S. Agency for Housing and Urban Development (HUD). States without EPA-authorized lead-based paint training and certification programs are ineligible for HUD's lead hazard control grants under Title X (42 U.S.C. 4852 (n)). HUD grants may fund various lead poisoning prevention activities including, but not limited to: blood lead screening, environmental investigations, health education, and abatement services for homeowners and tenants living in pre-1978 housing.

VI. Technical Deficiencies:

Page 11, line 299. The reference to the linked bill that creates a trust fund for this program is blank. The bill should be amended to reflect this bill is linked to SB 2280.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 466348 by Health Regulation on March 26, 2008:

Specifies a cross reference in the effective date to a linked bill (SB 2280) that creates a trust fund for this program.