

LEAD ABATEMENT

**House Bill 5561 as enrolled
Public Act 219 of 1998
Sponsor: Rep. Gloria Schermesser**

**Senate Bill 1047 as enrolled
Public Act 220 of 1998
Sponsor: Sen. Dale L. Shugars**

**House Committee: Health Policy
Senate Committee: Health Policy and
Senior Citizens**

Second Analysis (11-25-98)

THE APPARENT PROBLEM:

According to information supplied by the Senate Fiscal Agency, the federal Toxic Substances Control Act (TSCA) contains requirements for the certification of individuals engaged in lead-based paint activities and for the accreditation of lead-based paint activity training programs, and provides that a state may administer and enforce these requirements if the state's program receives federal authorization (15 USC 2682 & 2684). Michigan administratively established a certification program in the Department of Community Health and, in March 1994, the state was awarded a grant of \$4.9 million from the U.S. Department of Housing and Urban Development (HUD) to address childhood exposure to lead-based paint. The state also receives funds from the U.S. Environmental Protection Agency (EPA) to administer training and certification requirements for lead abatement workers. In August 1996, the EPA promulgated final regulations for the accreditation of lead-based paint activity training programs, the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. The regulations require states to have an EPA-authorized program in place as of August 31, 1998; in a state that does not have an authorized program, no individual or firm may perform lead-based paint activity without certification from the EPA. According to the Department of Community Health, the state must enact legislation by June 1, 1998, in order to continue administering the lead program under the TSCA and receive federal funds.

THE CONTENT OF THE BILLS:

House Bill 5561 and Senate Bill 1047, which are tied to each other, would create the "Lead Abatement Act" as Part 54a of the Public Health Code (MCL 333.5451 - 333.5478) to require the certification of individuals performing a lead-based paint activity, and require the accreditation of training programs for lead-based paint activity, beginning March 1, 1999. The bills would establish training program requirements, and require the Department of Community Health (DCH) to accredit a training program if it were registered under the department's voluntary registration program by August 30, 1998; establish accreditation and certification fees; require the legislature annually to appropriate to the DCH an amount sufficient to administer and enforce Part 54a, and provide that these funds would have to be offset by federal funds; and establish an administrative fine and a misdemeanor penalty for violations. More specifically, the bills would do the following:

Under the legislation, "lead-based paint activity" would mean inspection, risk assessment, and abatement (measures designed to eliminate lead-based paint hazards permanently) in target housing and child occupied facilities. "Target housing" would mean housing constructed before 1978, except for 1) housing for the elderly or persons with disabilities, unless one or more children aged six or younger lived or were expected to live in the housing, or 2) a zero-bedroom dwelling. "Child occupied facility" would mean a building or portion of a building constructed

before 1978 that was visited regularly by a child aged six or less, on at least two different days within a given week, if each day's visit were at least three hours and the combined weekly visit was at least six hours in length, and the combined annual visits were at least 60 hours. "Lead-based paint hazard" would mean a condition causing exposure from lead-contaminated dust, lead-contaminated soil, or lead-based or lead-contaminated paint that was deteriorated or present in an accessible surface, friction surface, or impact surface that would result in adverse human health effects.

Accreditation of a Training Program. A person could seek accreditation for a training program to offer courses in lead-based paint activities in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, and/or abatement worker. A person also could seek accreditation for a training program to offer refresher courses for each of those disciplines.

A person seeking accreditation for a training program would have to submit to the DCH a written application containing the required fee and information specified in the bills, including a list of courses and disciplines for which it was seeking accreditation, a copy of the student and instructor manuals or other materials to be used for each course, a description of the facilities and equipment to be used for lecture and hands-on training, and a copy of the course test blueprint for each course. To be accredited, a training program would have to meet all of the following requirements:

--Employ a training manager who had training, education, and experience as described in rules promulgated by the DCH.

--Provide that the training manager designate for each course a qualified principal instructor who had training, education, and experience as described in DCH rules.

--Provide that the principal instructor be responsible for the organization of the course and oversight of the teaching of all course material.

The following documents would be recognized by the DCH as evidence that a training manager or a principal instructor had the education, work experience, training requirements, or demonstrated experience specifically listed in DCH rules: an official academic transcript or diploma as evidence of meeting the education requirements; a resume, letter of

reference, or documentation of work experience, as evidence of meeting the work experience requirements; and a certificate from a train-the-trainer course or a lead-specific training course, or both, as evidence of meeting the training requirements. This documentation would not have to be submitted with the application but, if it were not submitted, it would have to be retained by the training program as required by the record-keeping requirements of Part 54a.

The DCH would have to approve an application for accreditation within 180 days after receiving a complete application from the training program, if the department determined that the applicant met the requirements of Part 54a and the rules promulgated under it. In the case of approval, the DCH would have to send a certificate of accreditation to the applicant. Before disapproving an applicant, the DCH would have to advise the applicant as to specific requirements in the application or specific instances in which the training program did not meet the requirements of Part 54a or the rules, or both. The DCH could request additional information or materials from the training program. If the department disapproved a program's application, the applicant could reapply at any time.

An accredited training program would have to ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities, including providing training equipment that reflected current work practices and maintaining or updating the equipment and facilities of the training program, as needed.

Training Courses. An accredited training program would have to provide training courses that met the proposed training hour requirements in order to become accredited in the disciplines described below. The DCH would have to promulgate rules to determine the minimum curriculum requirements for each course.

An inspector course would have to last a minimum of 24 training hours, with at least eight hours devoted to hands-on training activities. A risk assessor course would have to last a minimum of 16 training hours, with at least four hours devoted to hands-on training activities. A supervisor course would have to last a minimum of 32 training hours, with at least eight hours devoted to hands-on activities. A project designer course would have to last a minimum of eight training hours. An abatement worker course would

have to last a minimum of 16 training hours, with at least eight hours devoted to hands-on training activities. The DCH could promulgate rules to modify any of these requirements if changes were needed to comply with federal mandates or for another reason considered appropriate by the department.

For each course offered, the training program would have to conduct a course test at the completion of the course and, if applicable, a hands-on skills' assessment. Each individual enrolled in the training program would have to complete the hands-on skills' assessment successfully, if it were conducted for that course, and receive a passing score on the course test in order to pass the course. A training program's course test would have to be developed in accordance with the test blueprint submitted with the accreditation application.

A training program would have to issue course completion certificates to each individual who passed the training course. A course completion certificate would have to include the name and address of the individual, along with a unique identification number; the name of the particular course; dates of course completion and test passage; expiration date of course certificate; and the program's name, address, and telephone number.

A training program would have to offer courses that taught work practice standards for conducting lead-based paint activities and other standards developed by the EPA pursuant to Title IV of the TSCA and considered appropriate or necessary by the DCH. The work practice standards would have to be taught in the appropriate courses to give trainees the knowledge needed to perform the lead-based paint activities.

Training Manager. A training manager would have to maintain the validity and integrity of a hands-on skills' assessment to ensure that it accurately evaluated the trainees' performance of the work practices and procedures associated with the course topics contained in rules, and the course test to ensure that it accurately reflected the trainees' knowledge and retention of the course topics.

A training manager also would have to develop and implement a quality control plan designed to maintain and improve the quality of the training program. The plan would have to contain at least both of the following elements: procedures for periodic revision of training materials and the course test to reflect

innovations in the field, and procedures for the training manager's annual review of each principal instructor's competence.

A training manager would have to ensure that the training program complied at all times with all of preceding requirements and rules promulgated under the training course provisions. The training manager also would have to allow the DCH to audit the training program in order to verify the contents of the application for accreditation.

Refresher Courses. A training program could seek accreditation to offer refresher training courses on one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, and/or abatement worker. A training program would have to meet the minimum requirements contained in rules promulgated by the DCH in order to obtain department accreditation.

A training program could apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course pursuant to DCH rules. The department would have to approve or disapprove a refresher course in the same manner as required for a training program.

Reaccreditation. Unless reaccredited, a training program's accreditation, including refresher course training accreditation, would expire one year after the date of issuance. A training program seeking reaccreditation would have to apply to the DCH at least 45 days before its accreditation expired. An application for reaccreditation would have to include any fees and information required under DCH rules. Upon request, a training program would have to allow the department to audit the program to verify the contents of the application.

Suspension, Revocation, or Modification of Accreditation. After notice and an opportunity for hearing, the DCH could suspend, revoke, or modify a training program's accreditation or a refresher course training program accreditation if the department determined that a training program, training manager, or other person with supervisory authority over the program had done one or more of the following:

--Misrepresented the contents of a training course to the DCH or the trainees enrolled in the program, or both.

--Failed to submit required information or notifications in a timely manner.

--Failed to maintain required records.

--Falsified accreditation records, student certificates, instructor qualifications, or other accreditation-related information or documentation.

--Failed to comply with the training standards and requirements of Part 54a and the rules promulgated under it.

--Failed to comply with a federal, state, or local statute, rule, or regulation involving lead-based paint activities.

--Made false or misleading statements to the DCH in its application for accreditation or reaccreditation that the department relied upon in approving the application.

In addition to an administrative or judicial finding of a violation, the execution of a consent agreement in settlement of an enforcement action would be considered, for purposes of these provisions, evidence of a failure to comply with the standards and requirements of Part 54a and the rules promulgated under it or other relevant statutes or regulations involving lead-based paint activities.

Records. An accredited training program would have to maintain, and make available to the DCH, upon request, all of the following records:

--Each document that demonstrated the qualifications of a training manager or a principal instructor.

--Current curriculum and course materials and documents reflecting changes made to those materials.

--The course test blueprint.

--Information regarding how the hands-on assessment was conducted (including specific information described in the bills).

A training program would have to retain the records for at least three and one-half years at the address specified on the accreditation application. The program would have to notify the DCH within 30 days of changing that address or transferring the records from that address.

Certification. Beginning March 1, 1999, an individual could not conduct a lead-based paint activity unless he or she was certified by the DCH in the appropriate discipline. An individual seeking certification would have to pay the appropriate application fee and submit to the DCH an application demonstrating either of the following:

--Compliance with the requirements of Part 54a and the rules promulgated under it for the particular discipline for which certification was sought.

--A copy of a valid lead-based paint activities certification or its equivalent, as determined by the DCH, from a training program that had been authorized by the EPA under federal regulations, along with proof of the results of the applicant's third party examination (an examination offered and administered by a party other than an accredited training program).

After the submission of an application demonstrating that the requirements of Part 54a and the rules had been met, the DCH would have to certify an applicant in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, and/or abatement worker. Upon receiving the certification, an individual conducting lead-based paint activities would have to comply with the work practice standards for performing that discipline as established under Part 54a and the rules.

In order to become certified as an inspector, risk assessor, abatement worker, or supervisor, an individual would have to do all of the following:

--Successfully complete a course in the appropriate discipline and receive a course completion certificate from an accredited training program.

--Pass the third party exam in the appropriate discipline.

--Meet the experience or education requirements, or both, as described in DCH rules.

After an individual passed the appropriate certification exam and submitted an application demonstrating that he or she met the appropriate training, education, and experience requirements, the DCH would have to issue a certificate to the individual in the specific discipline for which certification was sought. To maintain certification, an individual would have to be recertified pursuant to Part 54a.

An individual would have to take the third party exam within six months after receiving a course completion certificate or again would have to complete the appropriate course from an accredited training program in order to be eligible for certification. An individual would not be eligible to take the third party exam more than three times within the six months after receiving a course completion certificate.

In order to become certified as a project designer, an individual would have to do both of the following:

--Successfully complete a course in the appropriate discipline and receive a course completion certificate from an accredited training program.

--Meet the experience or education requirements, or both, as described in DCH rules.

After an individual had successfully completed the appropriate training courses, applied to the DCH, and met the requirements of Part 54a and the rules, the department would have to issue a certificate to the individual in the discipline of project designer. To maintain certification, the individual would have to be periodically recertified pursuant to Part 54a.

An individual who received training in a lead-based paint activity between October 1, 1990, and March 1, 1999, and an individual who had received lead-based paint activities training at an EPA-authorized accredited training program, would be eligible for DCH certification under rules promulgated by the department. An individual could apply for certification under this provision until August 30, 1999. Beginning on that date, an individual seeking certification to engage in lead-based paint activities would have to apply for initial certification under Part 54a.

Upon the submission of an application and the payment of the appropriate fee, the DCH would have to issue a certification to engage in lead-based paint activities to an individual registered by the DCH by August 30, 1998, under the department's voluntary registration program.

In order to maintain certification in a particular discipline, a certified individual would have to apply to and be recertified in that discipline by the DCH every three years.

Beginning August 30, 1999, a "person" could not perform or offer to perform lead-based paint activities without obtaining certification by the DCH under Part 54a. ("Person" would be defined as it is in Section 1106 of the code, i.e., an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity. The term would include the state and a political subdivision of the state.)

A person seeking certification would have to submit to the DCH a letter attesting that the person would employ only appropriately certified employees to conduct lead-based paint activities and that the person and its employees would follow the work practice standards for conducting those activities as established in DCH rules. A person seeking certification also would have to do all of the following:

--Complete the application and pay the appropriate fee accompanied by a corporate identification number, certificate of sole proprietorship, or other business entity documentation acceptable to the DCH.

--Indicate whether the applicant had liability insurance.

--Submit proof of Michigan workers' disability compensation insurance.

--Submit proof that each employee or agent involved in lead-based paint activities had received training and certification as required by Part 54a.

--If applicable, submit the name of each principal partner, shareholder, member, or owner.

Within 90 days of receiving the person's completed application, the DCH would have to approve or disapprove the request for certification. Within that time period, the DCH would have to respond with either a certificate of approval or a letter describing the reasons for disapproval.

A person certified under these provisions would have to maintain all records pursuant to the requirements imposed in DCH rules.

Fees. Fees for a person accredited or seeking accreditation for a training program offering courses or refresher courses in lead-based paint activities would be as follows:

- Application processing fee \$100
- Initial accreditation fee 475
- Reaccreditation fee, annual 265

Fees for an individual certified or seeking certification to engage in lead-based paint activities would be as follows:

- Application processing fee \$25
- Certification fee, per year:
 - Inspector \$150
 - Risk assessor 150
 - Supervisor 50
 - Project designer 150
 - Abatement worker/laborer 25

Fees for a person certified or seeking certification to engage in lead-based paint activities would be as follows:

- Initial application processing fee \$100
- Certification fee, per year 220

By August 1 of each year, the DCH would have to give to the director of the Department of Management and Budget and to the chairpersons of the Senate and House appropriations committees, a complete schedule of fees to be collected. The fees imposed under Part 54a could not exceed the actual cost of administering that part. Should the department increase a fee or fees, the increase would be effective for that fiscal year. The increase would also become the basis for fee increases for subsequent fiscal years.

Lead poisoning prevention program. DCH would have to establish a lead poisoning prevention program with the following components:

- A plan to prevent childhood lead poisoning and to control exposure of the general public to lead-based paint hazards.
- An educational and community outreach program regarding lead poisoning prevention that would include, at a minimum, the development of appropriate educational materials targeted to health care providers, child care providers, public schools, owners and tenants of residential dwellings, and parents of young children. The educational materials would have to be made available to local and state community groups, legal services organizations, and tenants' groups.

pertaining to the public health and safety aspects of lead abatement.

- Falsification of records required under Part 54a.

-- A technical assistance system for health care providers to assist those providers in managing cases of childhood lead poisoning. The results of all blood lead level tests conducted in the state would have to be reported to the department as part of the system. The department would have to initiate contact with the local public health department or the physician, or both, of a child whose blood lead level exceeded 10 micrograms per deciliter.

Beginning January 1, 1999, the DCH would have to make annual reports to the legislature on the number of children under six years of age who had been screened for lead poisoning and who had been confirmed as having blood lead levels above 10 micrograms per deciliter. Each report would have to compare the rates with those from the preceding years. The department would have to recommend methods, including any necessary legislation or appropriations, for improving the compliance with guidelines issued by the federal Centers for Disease Control and Prevention.

Within one year of the effective date of House Bill 5561 and then on an annual basis, the department would have to provide a written report regarding the expenditures under the Lead Poisoning Prevention Program to the appropriate legislative committees (and made available to the general public) that included the amounts and sources of money from the previous year along with a complete accounting of its use.

Violations. The DCH would have to receive or initiate complaints of alleged violations of Part 54a or rules promulgated under it, and take action with respect to alleged violations or complaints. In its own discretion or upon the written complaint of an aggrieved party or of a state agency or political subdivision of the state, the DCH could investigate the acts of an accredited training program or an individual or other person certified under Part 54a. The department could deny, suspend, or revoke certification or accreditation if a certified person, accredited training program, or certified individual were found to be not in compliance with Part 54a or the rules promulgated under it. The DCH also could deny, suspend, or revoke a certification or accreditation for any of the following:

- Willful or negligent acts that caused a person to be exposed to a lead-containing substance in violation of Part 54a, the rules, or other state or federal law

- Continued failure to obtain or renew certification or accreditation.

--Deliberate misrepresentation of facts or information in the application for certification or accreditation.

--Permitting a person who had not received the proper training and certification to come in contact with lead or be responsible for a lead abatement project.

A person who violated Part 54a would be subject to an administrative fine up to the following amounts for each violation or each day that a violation continued:

- A first violation \$2,000
- A second violation \$5,000
- A third or subsequent violation \$10,000

If the DCH had reasonable cause to believe that a person had violated Part 54a or a rule, the department could issue a citation at that time or within 180 days after discovering the alleged violation. The citation would have to be written and would have to state with particularity the nature of the violation. An alleged violator could request an administrative hearing under the Administrative Procedures Act.

A person who engaged in a regulated activity as provided for by Part 54a or any person who violated Part 54a or any rules promulgated under it and who failed to correct the violation after notice from the DCH, would be guilty of a misdemeanor punishable by a fine of up to \$5,000, and upon conviction for a second or subsequent offense, up to \$10,000, or imprisonment for up to six months, or both. A violation could be prosecuted by the attorney general or the prosecuting attorney of the judicial district in which the violation was committed.

The legislation specifies that the application of sanctions under Part 54a would be cumulative and would not preclude the application of other sanctions, penalties, or provisions of any other federal, state, or political subdivision.

Scope. The legislation would state that Part 54a contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures, and requirements for the certification of individuals and other persons engaged in lead-based paint activities, and work practice standards for performing lead-based paint activities as defined in the bills. The legislation also states that Part 54a would require that all lead-based paint activities be performed by certified individuals and persons, except for those circumstances and persons described in Section 5453(2). That section provides that the term "abatement" does not include any of the following:

--Renovation, remodeling, landscaping, or other activity, if the activity were not designed to eliminate permanently lead-based paint hazards, but were instead designed to repair, restore, or remodel a structure, target housing, or dwelling even through the activity could incidentally result in a reduction or elimination of a lead-based paint hazard.

--An interim control, operation, and maintenance activity, or other measure or activity designed to reduce temporarily but not permanently, a lead-based paint hazard.

--Any lead-based paint activity performed by the owner of an owner-occupied residential dwelling or an owner-occupied multifamily dwelling containing four or fewer units if the activity were performed only in that owner-occupied unit of the multifamily dwelling.

The legislation also specifies that Part 54a would not apply to individuals and persons engaged in lead-based paint activities conducted within or in certain owner-occupied residential and multifamily dwellings as further described in Section 5453(2) except in certain dwellings in which a residing child was identified as having an elevated blood lead level.

The legislation further provides that Part 54a would not require an owner or occupant to undertake any lead-based paint activities.

Other Provisions. The legislation would define "elevated blood level" or "EBL," for purposes of lead abatement, as "an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 ug/dl, micrograms of lead per deciliter of whole blood, for a single venous test or of 15-19 ug/dl in 2 consecutive tests taken 3 to 4 months apart." For purposes of case management of children under six years of age screened and tested for lead, "elevated blood level" would mean "an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 10 ug/dl."

The DCH would have to establish a program that provided an opportunity for property owners, managers, and maintenance staff to learn about lead-safe practices and the avoidance of creating lead-based paint hazards during minor painting, repair, or renovation.

Not later than January 1, 2000, the department would have to recommend appropriate maintenance practices for owners of residential property, day care facilities, and secured lenders that would be designed to prevent lead poisoning among children under six years of age and pregnant women. The department would have to

consult with affected stakeholders and consider the effects of those maintenance practices on the availability and affordability of housing and credit when making the recommendations.

The legislation would specify that Part 54a would not diminish the responsibilities of an owner or occupant, or the authority of enforcing agents under state, county, city, municipal, or other local building, housing, or health and safety codes. Further, the bill states that the requirements of Part 54a would be in addition to other pertinent provisions of those codes.

At least seven calendar days before beginning a lead-based paint activity, a person would have to notify the DCH, on forms provided by the department, regarding information the DCH considered necessary to conduct an unannounced site inspection.

The legislature would be required annually to appropriate to the DCH an amount sufficient to administer and enforce Part 54a. These funds would have to be offset by funds received from federal agencies in the form of grants or other funding provisions. All funds generated under Part 54a would have to be deposited into the general fund to be used exclusively by the DCH in carrying out the duties and responsibilities of Part 54a. Compliance activities, such as unannounced inspections of lead abatement project sites, would have to be conducted to assure the quality of training and the protection of the workers' and the public's health and safety.

The DCH would have to authorize, coordinate, and conduct programs to educate homeowners and remodelers of lead hazards associated with remodeling target housing and methods of lead-hazard reduction activities.

The bill states that the DCH would have to certify a person applying for certification under Part 54a if that person demonstrated to the department that he or she was licensed, certified, or registered in another state and the standards for obtaining that license, certification, or registration were substantially similar to those imposed under Part 54a.

The DCH would have to administer Part 54a and promulgate rules as necessary for its administration and enforcement.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

Analysis available @ <http://www.michiganlegislature.org>

For:

The dangers of lead poisoning, especially for children, have been well documented in recent years. High blood lead levels are associated with learning disabilities, hearing loss, lowered I.Q., and developmental disabilities. At higher levels, lead poisoning can result in convulsions, paralysis, coma, and death. Deteriorating lead paint in older homes has been identified as the principal source for contributing to lead poisoning. Though lead-based paint has been banned for use in residential housing since 1978, the majority of Michigan homes predate the federal ban, and so remain potential sources for lead poisoning. By some estimates, there may be as many as 39,000 undiagnosed cases of children with lead poisoning in the state.

Senate Bill 1047 and House Bill 5561 together would create a mechanism that would allow Michigan to comply with mandates in the federal Toxic Substance Control Act. The federal regulations require states to enact legislation establishing programs for lead-based paint activities, including the removal and disposal of lead paint. The bills would also establish training program requirements, provide for accreditation of training programs, certify trained workers, and provide for penalties for violations of the new Lead Abatement Act. Without this legislation, the state would no longer be eligible to receive federal money from the EPA and HUD to continue to do lead abatement in homes across the state. Currently, the EPA and HUD have provided \$4.9 million in grant

money for targeted homes. Detroit and Wayne Counties receive additional federal grant money of \$6 million and \$5 million, respectively, for lead abatement projects. If an EPA-approved plan is not in place soon, the state stands to lose future federal funds.

Against:

Some industry members feel that since those in the lead abatement industry must be reaccredited every three years, the fees should also be for every three years, rather than annually as currently provided for in Senate Bill 1047.

Response:

The enrolled version of the bill, though not providing for three-year renewals, would reduce the annual reaccreditation fee substantially.

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.