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CREATE LEAD ABATEMENT CONTRACTORS LICENSING ACT

House Bill 5561

Sponsor: Rep. Gloria Schermesser

Committee: Health Policy

Complete to 3-30-98

A SUMMARY OF HOUSE BILL 5561 AS INTRODUCED 2-10-98

The bill would create the Lead Abatement Contractors Licensing Act, which would require businesses and individuals undertaking lead abatement projects (that is, projects involving working directly with the removal or sealing, or both, of surfaces containing lead) to be licensed by the Department of Community Health (DCH). The bill would be administered by the DCH with the assistance of a lead abatement contractors licensing board. The licensing provisions would take effect three months after the bill's effective date.

Lead Abatement Contractors Licensing Board. A seven-member lead abatement contractors board would be created in the DCH. Its members would be appointed by the governor with the advice and consent of the Senate, and would consist of three lead abatement contractors, three lead abatement laborers, and one representative of the general public. No two of the three labor representatives could belong to the same labor organization (as defined in Public Act 176 of 1939, MCL 423.2). Each board member would serve for three years, with the first board members appointed serving staggered terms. Members would receive no compensation other than reimbursement for expenses. The board would meet at least four times a year.

The board would make recommendations to the DCH on the denial, suspension, or revocation of lead abatement contractors' licenses (and on other enforcement matters) and would advise the department on the promulgation of administrative rules and, upon request by the department, on the preparation and distribution of information on lead.

Licensing of Lead Abatement Contractors. A business (including a public agency) could not undertake a lead abatement project without a license from the DCH. The annual license fee would be based on the number of workers employed by the applicant: \$200 for a company with four or fewer employees (\$100 for renewal), \$400 for a company with five or more employees (\$300 for renewal). In addition to paying the license fee, an applicant would have to give the DCH proof of worker's compensation insurance and proof that lead abatement workers had received any training required by law, and would have to state whether or not the applicant had liability insurance coverage.

The bill would specify a timetable for the department to consider applications, request any additional information, and issue or deny an application. Grounds for denial, revocation, or suspension of a license would be specified, and the department would be able to impose conditions on any license it granted.

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After the effective date of the bill, the bill would specifically exempt construction contractors (unless the contract provided for lead abatement) who discovered lead in the course of doing work to improve property from responsibility for removing the lead. Further, until June 1, 1999, the license requirements of the act would not apply to contractors removing lead in projects involving less than 160 square feet or 260 linear feet of surface containing lead and that were incidental to the contracted project. Specifically, this provision would apply to a business licensed under the Electrical Administrative Act (MCL 338.881 et al.), the Forbes Mechanical Contractors Act (MCL 338.971 et al.), Public Act 266 of 1929 (MCL 338.901 et al.), or licensed as a residential builder or a residential maintenance and alteration contractor under Article 24 of the Occupational Code (MCL 339.2401 et al.).

Further, the bill would also specify that until June 1, 1999, the following would apply:

* A lead abatement contractor would have to supply certain information to the department in writing at least 10 days before beginning a project involving lead abatement exceeding 10 linear feet or 15 square feet of surfaces containing lead.

* A business exempt from the licensing requirements would also have to supply written information to the department regarding lead discovered in the course of completing a project.

* A lead abatement contractor or a primary licensed trade contractor required to provide the above written notification to the DCH would also have to include a fee equal to one percent of the price of the contract for the lead abatement or lead abatement portion of the contract along with a copy of the contract if so requested by the department. The fees would be deposited in the Lead Abatement Fund created by the bill.

* Emergency lead abatement that resulted from equipment failure or malfunctions would be exempt from the 10-day notice. A business would, however, have to notify the department by telephone within 48 hours of commencing lead abatement.

* Under certain criteria, the owner or lessee of a building or structure would have to have a postabatement lead monitoring check performed by a qualified neutral party.

Further, a lead abatement contractor and any person performing lead abatement would have to retain any records involving lead abatement for not less than 30 years. Records would have to comply with requirements under Section 78a of the Michigan Occupational Safety and Health Act (MCL 408.1078a).

Enforcement. In addition to issuing licenses and drawing up rules for implementing the bill, the DCH would be responsible for enforcing the bill. The DCH would receive, initiate, and act on complaints of violations. It could investigate a lead abatement contractor, and deny, suspend, or revoke a license of any contractor not in compliance with the bill. Other grounds for licensure action would include: willful or negligent acts that exposed people to lead as a result of lead abatement work; falsification of records; failure to get or renew a license; lying when applying for a license; or allowing improperly trained employees to do lead abatement work.

The bill would provide for civil fines and penalties for violations and would specify that each initial violation would be a misdemeanor punishable by a fine of up to \$500, with subsequent violations punishable by a maximum fine of \$1,000 or imprisonment up to six months, or both. Any sanctions or penalties imposed under the bill would not preclude other sanctions or penalties under other state, federal, or local laws or ordinances.

In addition, upon recommendation by the board and in accordance with the Administrative Procedures Act of 1969, the department would have to create rules to establish a schedule of administrative fines of up to \$10,000 for each violation for each day of a violation. The bill would specify the process that would be followed for issuing citations, holding hearings on the citations, and for appealing decisions. The bill would further specify that if an administrative hearing were held on a citation, the employees or employee representative would have to be notified of the hearing.

Lead Abatement Fund. The bill would create the Lead Abatement Fund. Until June 1, 1999, the fund would be in the state treasury and would receive revenue generated by the bill and other revenue as provided by the legislature. Interest and earnings of the fund would be retained in the fund, and money in the fund would not revert to the general fund at the end of a fiscal year. The fund could only be used by the department to support its lead-related responsibilities such as the inspection of lead abatement and the education of lead abatement contractors. DCH could not expend money from the fund for lead abatement projects on state-owned property.

Report to the Legislature. Before October 1 and until June 1, 1999, DCH would have to report to the legislative committees on appropriations and occupational issues on the amount of money generated by the one percent fee charged to lead abatement contractors and primary licensed trade contractors who remove or seal a surface containing lead. The report would have to include the number of lead abatement projects inspected and the number of citations issued for violations of the bill and other applicable laws, rules, and regulations. The department would also have to submit to the legislative committees on occupational issues an annual report on the status of the licensing of lead abatement contractors; lead hazard detection and reduction; and certification, accreditation, and enforcement activities of the department.

The bill is tie-barred to House Bill 5560, which would regulate training of lead abatement contractors.

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■ 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.