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BILL ANALYSIS



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Senate Bill 753 (Substitute S-1 as reported)
Senate Bill 755 (Substitute S-1 as reported)
Senate Bill 756 (Substitute S-1 as reported)
Senate Bill 757 (Substitute S-1 as reported)
Sponsor: Senator Martha G. Scott (S.B. 753)
Senator Bev Hammerstrom (S.B. 755)
Senator Bill Hardiman (S.B. 756)
Senator Hansen Clarke (S.B. 757)
Committee: Families and Human Services

Date Completed: 1-6-04

RATIONALE

In the 1970s, in response to a growing body of evidence that lead was linked to serious health and developmental problems, the Federal government began requiring the removal of lead additives from paint, gasoline, and other household products. In 1978, lead-based paint was banned. Although the number of children with lead poisoning has dropped from a high of 15 million nationwide in 1979 to under 500,000 today (*The Detroit News*, 8-23-03), lead poisoning remains a significant public health risk, particularly for children in low-income, urban families who live in older homes.

According to a July 2003 State of Michigan report entitled *Childhood Lead Poisoning Prevention: A Call to Action*, lead poisoning affects an estimated 20,000 children under age six in Michigan. It has been suggested that this public health problem should be addressed through a comprehensive approach focusing on prevention, public awareness, increased screening, improved rental housing, and law enforcement.

CONTENT

The bills would amend various acts to do the following:

- Require the Governor to establish the Childhood Lead Poisoning Prevention and Control Commission, which would have to study the public health hazard of lead and make recommendations.**

- Require clinical laboratories that perform lead screening tests to report the results to the Department of Community Health (DCH) electronically.**
- Require the DCH, in cooperation with the Family Independence Agency (FIA) and the Michigan State Housing Development Authority (MSHDA), to establish and maintain a public Lead Safe Housing Registry.**
- Prohibit knowingly renting or leasing to another person a unit with lead-based paint hazards; and prescribe a misdemeanor penalty for violating the prohibition.**

The bills are described in further detail below.

Senate Bill 753 (S-1)

The bill would amend the Lead Abatement Act (Part 54A of the Public Health Code) to require the Governor, within 30 days of the bill's effective date, to establish a Childhood Lead Poisoning Prevention and Control Council within the DCH. The proposed section establishing the Commission would be repealed 18 months after the bill's effective date.

The Commission would have to study the environmental threats of lead poisoning to children's health; review the State's lead poisoning prevention program; evaluate the program's effectiveness, including its ability to

satisfy Federal law requirements that 100% of all young children enrolled in Medicaid be screened with a blood lead test; and make recommendations for the program's improvement.

The Commission would have to consist of the following nine voting members appointed by the Governor with the advice and consent of the Senate:

- One member representing the DCH, who would serve as chairperson.
- One member representing the FIA.
- One member representing the Department of Environmental Quality (DEQ).
- One member representing MSHDA.
- One member representing "Get the Lead Out!" from a county with a population over 500,000 but not more than 700,000 (i.e., Kent County).
- One member representing certified lead-abatement contractors.
- Two members representing the general public, one from a city with a population of at least 750,000 (Detroit) who was a parent of child who had experienced lead poisoning or a child advocate who had experience with lead poisoning in children, and the other representing property owners and developers in Michigan.

The Commission could establish an advisory committee to advise it on any matters pertaining to lead poisoning prevention and control. Membership would have to include, but would not be limited to, at least one representative of each of the following, or its successor organization:

- The Michigan Association of Osteopathic Family Practitioners.
- The Michigan Nurses Association.
- The Michigan Association of Nurse Practitioners.
- The Michigan Association of Health Plans.
- The Michigan Association of Local Public Health.
- Blue Cross and Blue Shield of Michigan.
- The Michigan Health and Hospital Association.
- The Rental Property Owners Association.
- The Michigan Association of General Contractors.
- The Michigan Association of Realtors.
- The Michigan Adult Blood Lead Epidemiology and Surveillance Program.
- The Michigan Lead Safe Partnership.

- The Detroit Mayor's Lead Task Force.
- United Parents Against Lead, whose representative would have to be a parent or patient advocate of a child who had experienced lead poisoning.
- The Department of Education.
- The DCH Medical Services Administration.
- The Michigan Occupational Safety and Health Administration.
- The DCH Bureau of Laboratories.
- An occupational and environmental medicine specialist.
- A local housing authority, whose representative would have to be from a county with a population over 170,000 but not more than 200,000 (i.e., Muskegon County).
- A community reinvestment officer.
- A Michigan child advocacy organization.
- The Michigan State Medical Society, whose representative would have to be a physician.
- A Michigan university currently researching lead poisoning and prevention in children.

The Commission would be subject to the Open Meetings Act and the Freedom of Information Act. Commission members would serve without compensation but, subject to appropriations, could be reimbursed for their actual and necessary expenses while attending meetings or performing other authorized official Commission business. If a vacancy occurred, it would have to be filled in the same manner as the original appointment.

The Commission would have to conduct at least two public hearings to seek input from the general public and from any other groups or individuals not represented on the Commission. The first hearing would have to be held within 60 days after the Commission's appointment or designation.

The Commission would have to consider all information received from its hearings, review information from other sources, and study the experiences of other states. The Commission would have to develop short- and long-range strategic recommendations for childhood lead poisoning prevention and control in Michigan. The recommendations would have to include, at least, strategies to:

- Enhance public and professional awareness of lead poisoning as a child health emergency.

- Significantly increase blood lead testing rates for young children.
- Eliminate or manage the sources of lead poisoning, especially focusing on lead-based paint in aged housing.
- Assure State interagency as well as public and private cooperation and communication regarding "resolution of this complex environmental and public health problem".

The Commission would have to submit a written report of its findings, including its recommendations, to the Governor and the Legislature by March 31, 2004. A DCH representative would have to provide testimony summarizing the Commission's findings and recommendations to the standing committees of the Senate and House of Representatives with jurisdiction over issues pertaining to public health and children.

Senate Bill 755 (S-1)

The bill would amend the Public Health Code to require a clinical laboratory that analyzed a blood sample for lead to report the results to the DCH in a DCH-prescribed electronic format within five days after the analysis was completed. The DCH would have to mail notice of the bill's reporting requirements to each licensed clinical laboratory by January 1, 2004, and the reporting requirements would apply beginning October 1, 2005.

Senate Bill 756 (S-1)

The bill would amend the Lead Abatement Act to require the DCH, in cooperation with the FIA and MSHDA, to establish and maintain a public listing, called the Lead Safe Housing Registry, of residential and multifamily dwellings and child-occupied facilities that had been determined to be free of lead-based paint hazards through a lead-based paint investigation performed by a certified risk assessor.

The owner of target housing that was offered for rent or lease as a residence would have to register that property with the DCH, free of charge, in a form prescribed by the DCH. The form would have to include, at a minimum, all of the following information:

- The name of the building's owner.
- The building's address.
- The date of construction.

- The date and description of any lead-based paint activity, including the name of the certified abatement worker or clearance professional who performed the abatement or conducted the inspection, lead-hazard screen, assessment, or clearance testing and the results of the activity.

An owner of target housing that was required to register his or her property would have to give the DCH a copy of each report, document, or other information that must be filed with the Federal government under Federal law and regulations related to lead-based paint.

The owner of any other residential or multifamily dwelling that was offered for rent or lease as a residence, or the owner of a child-occupied facility could register that property with the DCH, which would have to include that property on the registry. A person who wished to register would have to execute and return the application with payment of the registration fee in an amount to be prescribed by the DCH.

The DCH would have to publish the registry on its website and provide a copy to a person upon request. The Department could charge a reasonable fee for providing a copy.

(The Act defines "abatement" as a measure or set of measures designed to eliminate lead-based paint hazards permanently; the Act describes activities that abatement includes and others that it does not include. "Child occupied facility" means as a building or portion of a building constructed before 1978 that is visited regularly by a child who is six years old or younger, on at least two different days within a given week, if each day's visit is at least three hours and the combined weekly visit is at least six hours long, and the combined annual visits are at least 60 hours in length. The term includes, but is not limited to, a day-care center, a preschool, and a kindergarten classroom.

"Target housing" means housing constructed before 1978, except a) housing for the elderly or persons with disabilities, unless one or more children age six or younger reside or are expected to reside in the housing; b) a zero-bedroom dwelling; or c) an unoccupied dwelling unit pending demolition, provided the unit remains unoccupied until demolition.)

Senate Bill 757 (S-1)

The bill would amend the Lead Abatement Act to prohibit a rental agent, landlord, or owner from renting or leasing a rental unit to another person for residential purposes if either of the following applied:

- The rental agent, landlord, or owner had prior actual knowledge that the unit contained a lead-based paint hazard.
- The rental agent, landlord, or owner discovered or was notified of the existence of a lead-based paint hazard during the rental period and 30 days had expired after the date of discovery or notification and he or she had not acted in good faith to abate the hazard.

A person convicted of violating the prohibition would be guilty of a misdemeanor punishable by a maximum fine of \$5,000. For a subsequent conviction of violating the bill or a substantially corresponding local ordinance, the person would be guilty of a misdemeanor punishable by up to 90 days' imprisonment or a maximum fine of \$10,000, or both. Additionally, the person would have to be ordered to return all rental payments made for the exposure period. The bill specifies that it would be an affirmative defense in a prosecution for violating the prohibition that the rental agent, landlord, or owner notified a person having responsibility for maintaining the unit of the hazard and reasonably expected that the hazard would be abated.

Under the bill, "lead-based paint hazard" would mean the existence of lead-based paint in sufficient quantity that, if consumed by a child six years old or younger, would cause a level of 10 micrograms of lead per deciliter of venous blood or more.

The bill would take effect 90 days after it was enacted.

Proposed MCL 333.5474a (S.B. 753)
Proposed MCL 333.20531 (S.B. 755)
Proposed MCL 333.5474b (S.B. 756)
Proposed MCL 333.5475a (S.B. 757)

BACKGROUND

Lead Poisoning

Lead is a toxin that builds up in the body as it

is ingested, and collects in bone tissue and blood. Although lead-based paint itself is not dangerous, it can crack and peel in deteriorating buildings. Small children and pets can ingest the paint chips or dust. Industrial pollution can contribute to the problem when lead in the emissions from factories and incinerators gets into the air and soil surrounding homes where children play. The dust can saturate carpets and build up in ventilation ducts. Drinking water in older structures also can be contaminated by lead, which is often present in the pipes and solder used in the plumbing. A lead-based paint hazard is abated either by removal, which makes the building lead-free, or, more commonly, by encapsulation, which makes it lead-safe. Encapsulation entails activities short of removal, such as painting over lead-based paint with lead-free paint. The procedure, however, does not necessarily mean that the new paint will not deteriorate, exposing the lead-based paint in the future.

While people of any age can be adversely affected by lead poisoning, young children are particularly susceptible to it because their brains are still developing. Prolonged exposure to lead can interfere with the development of the central nervous system and has been linked to brain damage, mental retardation, developmental delays, learning difficulties, anemia, liver and kidney damage, hearing loss, seizures, hyperactivity, attention deficit disorder, and, in extreme cases, coma and death. Recent studies also have suggested a link between lead poisoning and juvenile delinquency and violent behavior. Lead poisoning can be treated through a potentially painful and expensive process called "chelation therapy", in which the lead is cleared from the blood and excreted in urine.

In Michigan, the highest incidence of lead poisoning is in the Counties of Wayne, Kent, Muskegon, Berrien, Calhoun, Kalamazoo, Genesee, Ingham, Saginaw, and Oakland. Childhood lead poisoning is of particular concern in the Cities of Detroit, where 63% of the homes were constructed before 1950, and Grand Rapids, which has the highest concentration of lead poisoning in the State. Based on data from 1998 blood screenings, in some Detroit zip codes, children had blood lead levels up to 10 times the national average (*The Detroit News*, 5-17-01).

Lead Abatement Act

The Federal Toxic Substances Control Act contains requirements for the certification of individuals engaged in lead-based paint activities and for the accreditation of lead-based paint activity training programs. In 1996, the U.S. Environmental Protection Agency (EPA) promulgated final regulations for the accreditation of training programs, the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing these activities. The regulations required states to have an authorized program in place as of August 1998; in a state without an authorized program, no individual or firm could perform lead-based paint activity without certification from the EPA.

Before the EPA regulations were promulgated, Michigan had administratively established a certification program. In response to the regulations, Public Acts 119 and 220 of 1998 created the Lead Abatement Act within the Public Health Code. The Act contains training program requirements, prescribes accreditation and certification fees, and requires the DCH to conduct training programs. The Act also required the DCH to establish a lead poisoning prevention program. The program must include a comprehensive educational and community outreach program regarding lead poisoning prevention, as well as a technical assistance system to assist health care providers in managing cases of childhood lead poisoning. As part of this system, the DCH must require that results of all blood lead level tests conducted in Michigan be reported to the Department. When the DCH receives notice of blood lead levels above 10 micrograms per deciliter, it must initiate contact with the local public health department or the physician, or both, of the child whose blood lead level exceeds that level.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Despite efforts to eliminate lead from paint, gasoline, and other common substances, lead poisoning remains a major hazard for children, particularly those in urban areas. Although

symptoms of lead poisoning can include eating disorders, lethargy, changes in behavior and sleeping patterns, and headaches, most lead-poisoned children have no symptoms at all. Parents might not recognize a problem until irreversible damage to a child's physical health or cognitive abilities has occurred. Unfortunately, by the time a child is hospitalized for lead poisoning, irreversible brain damage probably has occurred already. Often, the child is treated on an outpatient basis and returned to the home before lead hazards have been cleared.

For these reasons, it is vital that the State focus attention and resources on public education and prevention. According to committee testimony, however, only 25% of children who should be tested actually are. An estimated 15,000 to 16,000 children are lead-poisoned but not tested. For the protection of children's health, it is necessary to employ an expansive approach to lead poisoning, as the bills propose. Reportedly, occurrences of elevated blood lead levels are down by 80% since Maryland's comprehensive lead program was put in place in 1996.

In addition, lead disproportionately affects the African-American, Hispanic, and Arab-American communities, as well as children enrolled in Medicaid. Lead poisoning prevention is a matter of social and economic justice for those who have no choice but to live in high-risk housing.

Supporting Argument

It often is difficult for families to know where it is safe to rent. According to *The Detroit News* (8-21-02), an estimated 50% to 80% of families affected by lead poisoning are renters. A registry, as proposed by Senate Bill 756 (S-1), would allow families to make an informed choice about housing. It also would encourage landlords to be proactive in having a lead assessment done and completing abatement activities. Being included in the registry would make their property more attractive to prospective renters and the landlords' rental opportunities would increase. In addition, the registry could be used as an indicator of the overall success of the State's lead poisoning prevention efforts over time. Such a registry already exists for housing built with grants from the U.S. Department of Housing and Urban Development.

Response: The proposed registry should

be mandatory for all homes built before 1970. In Wisconsin, which has a voluntary registry, only a few dozen homes are listed. In Maryland, registration is mandatory for all rental property built before 1950, and voluntary for property built between 1950 and 1978. It is funded by a \$5 per-unit annual fee, as well as \$1,000,000 per year from the state's General Fund.

Opposing Argument

Senate Bill 757 (S-1) would duplicate Federal law. Under Title X of the Federal Lead-based Paint Residential Reduction Act, an owner must give tenants a pamphlet about lead poisoning, and tenants must sign a statement acknowledging that a rental unit built before 1978 might contain lead-based paint hazards. The Act also prescribes penalties for landlords who knowingly rent lead-contaminated units to others. There are differences between Federal law and the provisions proposed by the bill, however, and it is unclear which would apply.

Under the bill, a rental agent, landlord, or owner could be held responsible for renting a contaminated unit. According to Federal law, however, a landlord or rental agent is an agent of an owner and, ultimately, responsibility for the maintenance and safety of the unit lies with the owner. Rental agents are often young people to whom an owner delegates the duty of managing rental property. Because of the way the term "rental agent" is used in the bill, a person who might have worked for the owner for only a short period of time could be sent to jail, although it is the owner's responsibility to address any safety hazard, lead-based or otherwise.

Finally, the bill would use a punitive system when an incentive system would be more appropriate. Inclusion in the proposed registry or financial incentives, for example, would encourage abatement more than fines or the threat of jail time would deter violations.

Response: Anyone who knowingly rents a lead-contaminated unit to another person should be subject to the penalties. Sometimes, an owner lives in a different state than the one in which the property is located, and must give a rental agent or landlord responsibility for the property. If a rental agent does not notify an owner of a known lead-based paint hazard and does not have

the hazard abated, the rental agent should be held responsible.

Furthermore, enforcement of building codes requiring lead-safe rentals has been challenging in the past. While Federal law does provide for penalties, the EPA does not systematically enforce the law. Reportedly, few cases are filed with the Agency, and it conducted the first visit with respect to notification of a lead hazard only recently. According to an article in *The Detroit News* (8-23-03), City of Detroit officials know of 2,080 homes that have poisoned more than one child in the past six years. There are thousands of cases in which rental unit owners have not taken abatement action after children have been poisoned, demonstrating that a stronger approach is necessary to encourage adherence to and enforcement of various laws.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bill 753 (S-1)

The bill would have an indeterminate, but likely nominal, fiscal impact on State government. The Department of Community Health states that costs associated with implementing the bill could be covered with existing staff and resources. In addition, the bill would allow members of the Commission to receive reimbursement for their actual and necessary expenses while performing official Commission business, subject to appropriations for that purpose.

Senate Bills 755 (S-1) and 756 (S-1)

The bills would have an indeterminate, but likely nominal, fiscal impact on State government. A system for the electronic reporting of blood lead analysis by clinical labs is already in place, so Senate Bill 755 (S-1) would not result in any additional costs for implementing that system. This bill could potentially result in a small amount of savings for the Department because it would no longer have to process paper reports. (The majority of labs already report electronically; however, a small number still report on paper.) The Department states that costs anticipated for establishing, maintaining, and publishing the lead safe housing registry proposed by Senate

Bill 756 (S-1) would be covered by the fees prescribed in the bill.

Senate Bill 757 (S-1)

The bill would have no fiscal impact on the State and an indeterminate fiscal impact on local units of government.

There are no data to indicate how many offenders would be convicted of the proposed misdemeanor offense. Local units of government would incur the costs of both probation and incarceration, which vary by county. Public libraries would benefit from any additional penal fine revenue raised due to the proposed penalty.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.