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Senate Bill 1210 (as introduced 3-4-10) Sponsor: Senator Patricia L. Birkholz

Committee: Natural Resources and Environmental Affairs

Date Completed: 3-10-10

CONTENT

The bill would amend Part 54A (the Lead Abatement Act) of the Public Health Code to do the following:

- -- Require rules promulgated by the Department of Community Health (DCH) regarding lead to be at least as protective as rules promulgated by the U.S. Environmental Protection Agency (EPA).
- -- Provide for the certification of renovation firms and workers, accredited renovation work training programs, and renovation work practice standards.
- -- Require all renovation to be performed by a certified renovation firm.
- Require all renovation training to be provided by an accredited training provider.
- -- Provide for the certification of dust sampling technicians.
- Prescribe requirements for DCH endorsement of an elevated blood lead level (EBL) investigator.
- Require that records related to leadbased paint activities be maintained for at least three years.
- Authorize the DCH to apply for an inspection or investigation warrant or seek injunctive relief if an uncertified person performed an activity.
- -- Increase initial accreditation and annual reaccreditation fees.
- -- Increase the annual supervisor certification fee.

- -- Establish three-year certification fees for renovators and dust sampling technicians.
- -- Establish renovation firm application and certification fees.
- -- Require a person who conducted a lead-based paint investigation or EBL environmental investigation to notify the DCH.
- -- Revise provisions pertaining to the Lead Safe Housing Registry, and eliminate a requirement that a mandatory registration be free of charge.
- -- Allow the DCH to issue a citation or administrative fine if a certified firm, accredited training program, certified individual, or person engaged in a lead-based paint activity failed to comply with Part 544
- -- Revise provisions related to criminal penalties for landlords who knowingly offer for rent units with lead hazards.
- -- Increase administrative fines for a violation of Part 54A.
- -- Allow the DCH to issue a citation for a violation up to five years after discovery.
- -- Increase the criminal fine for engaging in a lead-based paint activity in violation of Part 54A, and apply the criminal penalties to violations involving renovation activity.
- Designate one week in October every year "Lead Poisoning Prevention Week".

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Purpose of Part 54A

The bill specifies that the purpose of Part 54A "is to regulate lead-based paint activities, lead hazard control activities, and renovation activities in target housing and child-occupied facilities". Rules promulgated by the DCH would have to be at least as protective as the EPA's lead-based paint renovation, repair, and painting rule found in 40 CFR 745, from which Part 54A was formulated.

Part 54A defines "lead-based paint" as paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight. "Target housing" means housing constructed before 1978, except any of the following:

- -- Housing for the elderly or people with disabilities, unless any children under the age of six reside in or are expected to reside in that housing.
- -- A zero-bedroom dwelling.
- -- An unoccupied dwelling unit pending demolition, provided that it remains unoccupied until demolition.

"Child-occupied facility" means 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 long. The term includes a day care center, a preschool, and a kindergarten classroom. Under the bill, the term also would include child-occupied facilities located in residential dwellings or in public or commercial buildings. With respect to common areas in public or commercial buildinas that contain child-occupied facilities, the facility would encompass only those common areas that are used routinely by children under age six, such as restrooms and cafeterias.

Currently, "lead-based paint activity" means inspection, risk assessment, and abatement in target housing and child-occupied facilities or in any part of them. Under the bill, the term would mean lead abatement or any lead-based paint investigation in target housing and child-occupied facilities or in

any part of them as further described in rules promulgated under Part 54A.

Under the bill, the conditions that currently constitute a "lead-based paint hazard" would apply to a "lead hazard".

The bill specifies that "lead hazard control activity" would include abatement, interim controls, and other measures or set of measures designed, intended, or performed specifically to reduce or eliminate lead-based paint or paint hazards.

Renovation: Certification

Part 54A prohibits a person from engaging or offering to engage in a lead-based paint activity unless certified by the DCH in the appropriate discipline. The bill also would prohibit a person from performing or offering to perform renovation without certification. In addition, the bill would prohibit a person or firm from performing, offering, or claiming to perform renovations for compensation in target housing or child-occupied facilities without certification, unless the renovation qualified for at least one exception identified in the bill.

The bill provides that Part 54A contains procedures and requirements for the certification of renovation firms and people performing renovation for compensation in target housing and child-occupied facilities, accredited training programs, and work practice standards for performing renovation. All renovation regulated by Part 54A would have to be performed by certified renovation firms employing at least one certified renovator; and all training required for certification would have to be provided by accredited training providers.

The bill would define "renovation" or "renovation activity" as the modification of any existing structure that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term would not include minor repair and maintenance activities (as defined in the bill). The term would include the following:

 Removal, modification, or repair of painted surfaces or painted components, modification of painted doors, surface restoration, window repair, and surface preparation activity, including sanding,

- scraping, or other similar activities with the potential to generate paint dust.
- -- Removal of building components, including walls, ceilings, plumbing, and windows.
- Weatherization projects, including cutting holes in painted surfaces to install insulation or to gain access to attics and planing thresholds to install weather-stripping.
- -- Interim controls that disturb painted surfaces.
- -- Conversion of a building or part of a building into target housing or a child-occupied facility.

"Certified renovator" would mean an individual who has successfully completed a renovator course provided by an accredited training program and to whom the DCH has issued a certificate and who is certified by the DCH to perform renovations or who directs or subcontracts to others under his or her supervision to perform renovations.

All renovation activities in target housing or child-occupied facilities would have to be directed by renovators certified in accordance with Part 54A and performed by certified renovators or individuals trained in accordance with Part 54A, unless the renovation qualified for one of the specified exceptions.

All renovations in target housing or childoccupied facilities also would have to be performed in accordance with the work practice standards and associated recordkeeping requirements found in the rules promulgated under Part 54A, unless the renovation qualified for one of the listed exceptions or the requirements of Part 54A were not applicable because the renovation was conducted by the owner on his or her own dwelling unit.

The bill specifies that Part 54A would not apply to renovation activities conducted solely by the owner of his or her own occupied dwelling unit.

Under Part 54A, upon receiving DCH certification in one or more of the prescribed disciplines, an individual conducting lead-based paint activities must comply with the work practice standards for performing that discipline as established under Part 54A and promulgated rules. Under the bill, this

requirement also would apply to a person conducting renovation activities.

Exceptions to Renovation Certification

The bill's renovation certification requirements would not apply to renovations in target housing or child-occupied facilities in which an inspector or risk-assessor certified pursuant to Part 54A, a specified Federal regulation, or a State or tribal certification program authorized under that regulation, made a written determination that the components affected by the renovation were free of paint or other surface coatings that contained lead equal to or in excess of 1.0 milligram per square centimeter or 0.5% by weight, where the performing the renovations had obtained a copy of the determination.

The renovation certification requirements also would not apply to renovations in target housing or child-occupied facilities in which a certified renovator, using a recognized test kit and following the manufacturer's instructions, had tested each component affected by the renovation and determined that the components were free of paint or other surface coatings that contained lead equal to or in excess of 1.0 milligram per square centimeter or 0.5% weight.

Certification Process

Part 54A requires a person seeking certification by the DCH to engage in lead-based paint activities, to pay the appropriate fees and submit 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 is sought.
- -- A copy of a valid lead-based paint activities certification or its equivalent, as determined by the DCH from an EPAauthorized training program, along with proof of the applicant's third-party examination results.

Under the bill, an application also would have to contain information considered necessary by the DCH. All applications would have to include a demonstration of compliance with applicable requirements and rules for the particular discipline, and a copy of a valid course completion certificate for

either lead-based paint activities or renovation activities, or its equivalent, from a training program authorized by the EPA or an EPA-authorized State or tribal program, along with proof of the applicant's examination results.

Currently, a person seeking certification must do 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 has liability insurance.
- -- Submit proof of Michigan worker's disability compensation insurance.
- If applicable, submit the name of each principal, partner, shareholder, member, or owner.
- Submit proof that each employee or agent involved in lead-based paint activities has received the required training and certification.

Under the bill, the last requirement would apply to a person seeking certification to perform lead-based paint activities. A person seeking certification to perform renovation activities would have to submit proof that each employee or agent involved in renovation activities had received the required training certification.

Emergency Renovations

Under the bill, the information distribution requirements in R 325.99409 of the Michigan Administrative Code would not apply to emergency renovations, which would be renovation activities that are not planned but result from a sudden, unexpected event, such as nonroutine equipment failures that, if not attended to immediately, present a safety or public health hazard or threaten equipment and/or with significant property damage. Emergency renovations other than interim controls also would be exempt from the warning sign, containment, waste handling, training, and certification requirements in the lead hazard control rules to the extent necessary to respond to the emergency.

(Under R 325.99409, within 60 days before beginning a renovation activity for

compensation in target housing or a child-occupied facility, the renovator must give the owner and, if the owner does not occupy the dwelling unit, an adult occupant an EPA pamphlet entitled "Protect Your Family From Lead in Your Home", and obtain a written acknowledgment of receipt. If the renovation is being done in common areas of multifamily housing, the renovator must give the pamphlet to the owner and obtain either a written acknowledgment of receipt or a certificate of mailing. Additionally, the renovator must notify each unit of the multifamily housing in writing and make the pamphlet available upon request.)

Emergency renovations would not be exempt from the cleaning requirements of the work practice standards found in the lead hazard control rules, which would have to be directed by certified renovators and performed by certified renovators or individuals trained in accordance with the bill; the cleaning verification requirements of the work practice standards of the lead hazard control rules, which would have to be performed by certified renovators; or the record-keeping requirements found in the lead hazard control rules.

Other Certification Requirements

Part 54A requires a person to do both of the following in order to become DCH-certified as a project designer:

- -- Successfully complete a course in the appropriate discipline and receive a course completion certificate from an accredited training program.
- -- Meet the experience and/or education requirements described in DCH rules.

Under the bill, these requirements also would apply to a person seeking DCH certification as a renovator or dust sampling technician. The bill would delete requirements for a person seeking certification as a clearance technician and would delete references to that discipline.

("Certified dust sampling technician" would mean an individual who had successfully completed an accredited training course and been certified by the DCH to conduct dust wipe clearance testing following renovation only.)

Accredited Training Programs

Part 54A prohibits a person from providing or offering to provide a training program for lead-based paint activities unless the program is accredited under the appropriate discipline.

"Accredited training program" means a training program that has been accredited by the DCH to provide training for individuals engaged in lead-based paint activities. The bill also would refer to renovation activities. The term would include programs the DCH recognizes as approved by the EPA or EPA-authorized State or tribal programs as provided for in DCH rules.

Under the bill, a training program could not provide, offer, or claim to provide training or refresher training for the certification required under Part 54A without accreditation from the DCH.

Currently, a person may 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.
- -- Abatement worker.
- -- Clearance technician.

The bill would delete the reference to a clearance technician, and add the disciplines of certified renovator and dust sampling technician. In addition, the bill would allow a person to seek accreditation for a training program to offer courses in renovation activities in the prescribed disciplines.

Part 54A requires a person seeking accreditation for a training program to give the DCH a written application containing certain information, including a list of courses and disciplines for which it is seeking accreditation. Under the bill, for this purpose, courses taught in different languages would be considered different courses. Each would have to meet the accreditation requirements independently. When applying for accreditation of a course in a language other than English, the person would have to include a signed statement from a qualified independent translator that

he or she had compared the course to the English-language version and found the translation to be accurate or had used EPA model foreign language training materials.

Part 54A requires that a training program meet all of the following requirements in order to become accredited to offer courses in lead-based paint activities:

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

Under the bill, these requirements also would apply to a training program for renovation activities.

The bill would require a renovator course or a dust sampling technician course to last at least eight training hours, with at least two devoted to hands-on hours training activities. The DCH would have to promulgate rules to determine the minimum curriculum requirements for the courses. Until rules were promulgated, the courses would have to use the curriculum for the renovator or dust sampling technician course developed by the EPA under the Code of Federal Regulations.

Under Part 54A, a training program must offer courses that teach the work practice standards for conducting lead-based paint activities and other standards developed by the EPA under the Toxic Substances Control Act and considered appropriate or necessary by the DCH. The standards must be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities. Under the bill, these provisions also would apply to standards for conducting renovation activities.

Part 54A allows the DCH, after notice and opportunity for a hearing, to suspend, revoke, or modify a training program accreditation or a refresher course program accreditation if it determines that a training

program, manager, or other person with supervisory authority over the program has engaged in certain actions, including failure to comply with a Federal, State, or local statute, rule, or regulation involving leadbased paint activities. Under the bill, this provision also would apply to failure to comply with a statute, rule, or regulation involving renovation activities.

EBL Investigator

The bill would require an individual to do all of the following in order to become endorsed by the DCH as an elevated blood level investigator:

- Successfully complete a risk assessment course and receive a course completion certificate from an accredited training program.
- -- Pass the third-party risk assessor exam.
- -- Pass the third-party EBL endorsement exam for initial endorsement and every three years after that to maintain the endorsement.

Currently, for purposes of lead abatement, "elevated blood level" means 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 two consecutive tests taken three to four months apart. For purposes of case management of children six years old and younger, EBL means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 10 ug/dl. Under the bill, the term would mean an excessive absorption of lead that is a confirmed concentration of lead in whole blood of at least 10 migrograms per deciliter.

The bill would define "EBL investigator" as a certified risk assessor who is endorsed by the DCH to conduct EBL environmental investigations. "EBL environmental investigation" would mean both of the following:

- -- A study of the living environment of at least one minor child with an elevated blood lead level, performed by an EBL investigator to identify causative lead exposures.
- -- The provision of a report by the EBL investigator explaining the results of the

study and options for remediation of exposures.

Record-Keeping

Part 54A requires a person certified to perform lead-based paint activities, to maintain all records pursuant to the requirements imposed in DCH rules. The bill would require a person certified to perform lead-based paint activities or renovation to maintain the records for at least three years. In addition, a person certified under Part 54A would have to maintain for at least three years all records required by Part 54A and/or rules promulgated under it.

Under the bill, a person or individual who prepared a report or plan required by Part 54A and/or rules promulgated under it would have to maintain the report or plan for at least three years and would have to submit copies to both of the following people within 20 business days after completing the activity for which the report or plan was prepared:

- -- The building owner.
- -- The person who contracted for the person's or individual's services, if different from the owner.

The operator of a training program would have to maintain the required records for at least 3-1/2 years at the address specified on the accreditation application.

Upon written request by the DCH, a person required to maintain records would have to provide complete written or electronic copies within 15 business days.

Certification Violations

Under the bill, if a person performed activities for which a certification was required without being certified or falling within an exception to certification, the DCH could apply for an inspection or investigation warrant or seek injunctive relief in the manner authorized under Part 22 (State Department of Public Health).

(Under Part 22, to assure compliance with laws enforced by the DCH, the Department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, premises, person, record, vehicle, or incident. The DCH may apply for an inspection or investigation warrant for these purposes. Upon receiving an affidavit establishing either of the following grounds for issuing a warrant, a magistrate must issue a warrant authorizing the DCH to conduct the inspection or investigation:

- -- Reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied.
- -- There is reason to believe that noncompliance with laws enforced by the State or local health department may exist.

In addition, the DCH may maintain injunctive action to restrain, prevent, or a correct a violation of a law, rule, or order that the Department has the duty to enforce, or restrain, prevent, or correct an activity or condition that the Department believes adversely affects the public health.)

A person whose certification was suspended, revoked, or lapsed, as determined by DCH records, who did not fall within one of the exceptions would be considered practicing in violation of Part 54A.

Fees

Accreditation. Part 54A prescribes fees for a person accredited or seeking accreditation for a training program offering courses or refresher courses in lead-based paint abatement. Under the bill, the fees also would apply to a person accredited or seeking accreditation for a renovation training program.

The current initial accreditation fee is \$475 per discipline. The bill would increase this fee to \$500. The current annual reaccreditation fee is \$265 per discipline. The bill would increase this fee to \$300.

<u>Individual Certification</u>. Part 54A prescribes fees for an individual certified or seeking certification to engage in lead-based paint abatement. Under the bill, these fees also would apply to an individual seeking certification in renovation.

The bill would increase the annual certification fee for a supervisor from \$50 to \$75, and delete a reference to a clearance technician, as well as the \$50 fee for that discipline. In addition, the bill would establish three-year certification fees of \$25

for a renovator and \$50 for a dust sampling technician.

<u>Firm Certification</u>. Part 54A establishes fees for a person certified or seeking certification to engage in lead-based paint abatement. The bill would refer to a firm, rather than a person. Also, these fees would apply to a firm seeking to engage in renovation activities.

The bill would retain the \$100 initial application processing fee for a lead abatement firm, and establish a \$25 initial application processing fee for a renovation firm. The bill would retain the \$220 annual lead abatement firm certification fee, and establish an annual renovation firm fee of \$60. The renovator firm certification fee would have to be waived for a certified lead abatement firm seeking certification to conduct renovation activities.

Provision of Info to DCH

Under the bill, a person or individual who conducted a lead-based paint investigation would have to notify the DCH, on forms provided by the Department, regarding information the Department considered necessary by the 15th day of the month following the investigation. ("Lead-based paint investigation" means an activity designed to determine the presence of lead-based paint or lead hazards in target housing or child-occupied facilities.)

Before beginning an EBL environmental investigation, the person conducting it would have to notify the DCH, on forms provided by the Department or through an approved electronic means, regarding information the Department considered necessary in order to conduct an unannounced site inspection. The person would have to send notification at least two business days before commencing the investigation.

Also, a person or firm conducting a lead-based paint activity, EBL investigation, or renovation activity would have to make available to the DCH, upon request, all information the Department considered necessary to determine compliance with Part 54A as specified by rule.

DCH Responsibilities

The DCH is required to administer Part 54A and promulgate rules as necessary for administration and enforcement. Under the bill, any rules would have to meet and could exceed EPA standards. The DCH could promulgate rules as necessary to incorporate by reference any updated EPA or other standards used under Part 54A.

The DCH must authorize, coordinate, and conduct programs to educate people, including homeowners and remodelers, of lead hazards associated with remodeling target housing and methods of lead hazard reduction activities. The bill would refer to renovation as well as remodeling, and child-occupied facilities as well as target housing.

Part 54A also requires the DCH to report annually to the Legislature the number of children under age six who were screened for lead poisoning during the preceding fiscal year and who were confirmed to have had blood lead levels above 10 micrograms per deciliter. Under the bill, the Department would have to report on the number of children who had blood lead levels at or above that amount.

Housing Registry

Under Part 54A, the DCH, in cooperation with the Department of Human Services and the Michigan State Housing Development Authority, must establish and maintain the Lead Safe Housing Registry to provide the public with a listing of residential and multifamily dwellings and child-occupied facilities that have been abated or have had interim controls performed to control lead hazards as determined through a lead-based paint investigation performed by a certified risk assessor. The bill would change the name of the registry to the "Lead Information Housing Registry", and refer to a lead-based paint investigation performed by a certified inspector, EBL investigator, clearance technician, or risk assessor.

Currently, the owner of target housing that is offered for rent or lease as a residence, or the owner of a child-occupied facility must register the property with the DCH, free of charge, if it has been abated of or has had interim controls performed to control lead hazards if determined through a lead-based paint investigation performed by a certified

risk assessor. Under the bill, the registration requirement would apply only to the owner of a child-occupied facility that had been abated of or had interim controls performed, or had a lead-based paint investigation by a certified inspector, EBL investigator, clearance technician, or risk assessor. In addition, the bill would delete the requirement that the registration be free of charge.

Under Part 54A, an owner who is required to register his or her property must give the DCH a copy of each report, document, or other information required to be filed with the Federal government under Federal law and regulations related to lead-based paint. The bill specifies that the owner would have to provide this information upon request.

Part 54A allows the owner of any other residential or multifamily dwelling that is not otherwise subject to registration that is offered for rent or lease or the owner of a child-occupied facility to register voluntarily by paying a registration fee prescribed by the DCH. Under the bill, the owner of property constructed after 1978 would need to submit only proof of year constructed in lieu of any lead-based paint inspection report.

The bill would require enforcement of these provisions to be as prescribed in Section 5476(2) (which allows the DCH to issue a citation if it has reasonable cause to believe that a person has violated Part 54A or a rule, and allows an alleged violator to request an administrative hearing).

Complaints to DCH

Part 54A allows the DCH, in its own discretion, or upon the written complaint of an aggrieved party, a State agency, or a political subdivision of the State, to investigate the acts of an accredited training program, an individual or other person certified under Part 54A, or a person allegedly engaged in lead-based paint activity. Under the bill, complaints could be verbal, and could be from a verifiable anonymous or known source. This provision also would apply to the investigation of a person allegedly engaged in renovation activity.

Currently, the DCH may deny, suspend, or revoke certification or accreditation if a

certified person, accredited training program, certified individual, or a person allegedly engaged in lead-based paint activity is found to be not in compliance with Part 54A or rules. Under the bill, this provision also would apply to a person allegedly engaged in renovation activity. The Department also could issue a citation or administrative fine.

Part 54A also allows the DCH to deny, suspend, or revoke a certification or accreditation under certain circumstances, including the following:

- -- Willful or negligent acts that cause a person to be exposed to a leadcontaining substance in violation of Part 54A, rules promulgated under it, or other State or Federal law pertaining to the public health and safety aspects of lead abatement.
- -- Falsification of records required under Part 54A.
- -- Permitting a person who has not received the proper training and certification under Part 54A or other applicable State or Federal law to come in contact with lead or be responsible for a lead abatement project.

In these provisions, the bill would refer to lead hazard control or renovation activities, rather than lead abatement. Additionally, the bill would refer to falsification of records, reports, or documents required or requested.

Criminal Penalties: Rental Units

Under Part 54A, a property manager, housing commission, or owner of a rental unit who rents or continues to rent a residential housing unit to a family with a minor child who is found to have at least 10 micrograms of lead per deciliter of venous blood is subject to criminal penalties if all of the following apply:

- -- The manager, commission, or owner of the unit has prior actual knowledge that the unit contains a lead-based paint hazard.
- -- At least 90 days have passed since the manager, commission, or owner had actual knowledge of the lead paint hazard.
- -- The manager, commission, or owner has not acted in good faith to reduce the

lead paint hazards through interim controls and/or abatement.

The bill would delete the last condition. Instead, the penalties would apply if the manager, commission, or owner had not acted in good faith to eliminate the lead hazards by abatement and renovation through the use of a certified firm and to achieve the appropriate clearance level. The bill also would add that the manager, commission, or owner had not acted in good faith if the manager, commission, or owner made available for rent property with known lead hazards to families with children, with the exception of the family residing in the property when the hazards were identified.

Currently, a property manager, housing commission, or rental unit owner is presumed to have prior actual knowledge that a unit contains a lead hazard if at least one of the following applies:

- -- The manager, commission, or owner signed an acknowledgment of the hazard as a result of a risk assessment at the time the assessment was made.
- -- As a result of a risk assessment, the manager, commission, or owner was served with notice of the lead hazard by first-class mail and a return receipt was obtained.

The bill refers to a risk assessment or an EBL environmental investigation. Additionally, a property manager, housing commission, or rental unit owner would be presumed to have prior actual knowledge if, as a result of a risk assessment or EBL environmental investigation, the manager, commission, or owner were personally served with notice of the lead hazard by an individual who was at least 18 years old.

Under Part 54A, a property manager, housing commission, or owner of a rental unit may assert at least one of the following as an affirmative defense in a prosecution, and has the burden of proving that defense by a preponderance of the evidence:

That the manager, commission, or owner requested or contracted with a person having responsibility for maintaining the unit to reduce the hazard through interim controls or abatement and reasonably expected that the hazard would be reduced. -- That the tenant would not allow entry into or upon premises where the lead hazard is located or otherwise interfered with correcting the hazard.

With regard to the first defense, the bill would refer to the reduction or elimination of the lead hazard, and would refer to renovation rather than interim controls.

(A property manager, housing commission, or owner of a rental unit convicted of a violation is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$5,000. For a second or subsequent conviction, the maximum fine is \$10,000.)

Administrative Fine for Violation

Currently, a person who violates Part 54A or a rule is subject to an administrative fine up to the following amounts for each violation or each day that a violation continues: \$2,000 for a first violation; \$5,000 for a second violation; and \$10,000 for a third or subsequent violation. The bill would increase these amounts to \$3,000, \$7,500, and \$15,000, respectively.

If the DCH has reasonable cause to believe that a person has violated Part 54A or a rule, the Department may issue a citation at that time or up to 180 days after discovery of the alleged violation. Under the bill, the Department could issue a citation up to five years after discovery.

The bill would authorize the DCH to aggregate the administrative fines regarding violations, but to waive an aggregate fine if the violator demonstrated good faith and cooperation in expeditiously arranging for cessation and remediation of the violations, including the containment of the area or location until violative conditions were corrected.

Other Criminal Penalties

A person who engages in a lead-based paint activity and willfully or repeatedly violates Part 54A or a rule, or a person who fails to correct the violation after notice from the DCH, is guilty of a misdemeanor, punishable by a fine of up to \$5,000, and upon conviction for a second or subsequent offense, \$10,000, and/or imprisonment for up to six months. The bill would increase

these amounts to \$50,000 and \$100,000, respectively, and include violations by a person who engaged in renovation activity.

Lead Poisoning Prevention Week

The bill states, "The legislature recognizes the imminent threats posed to children's health and cognitive development from improper renovation, paint work, and repair practices, ingestion of lead paint dust in residential neighborhoods, the broad dispersal of lead-laden soils from historical airborne deposition of leaded fuel emissions, and identified specific dwellings and facilities that present known or potential lead hazards. The legislature further recognizes the need to educate the citizens of this state regarding those threats."

The bill also states, "The legislature declares that annually the fourth Sunday of October through the following Saturday shall be known as 'Lead Poisoning Prevention Week'."

MCL 333.5451 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 1210 would change the Lead Abatement Act in several significant ways. These changes would increase State costs, due to greater responsibilities placed on the DCH, and would increase State revenue, due to several fee increases and potential fine The new revenue. or expanded responsibilities for the DCH would include applications for warrants, the seeking of injunctive relief, and the issuance of fines and citations. Among the revenue increases would be increases in certain fees, the creation of new fees, and potential fine revenue. It is impossible to determine the net impact of these changes prior to implementation, so the bill would have an indeterminate fiscal impact.

Fiscal Analyst: Steve Angelotti

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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.