

LEAD ABATEMENT

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<http://www.house.mi.gov/hfa>

House Bill 4532 (proposed substitute H-2)
Sponsor: Rep. Rachel Hood

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5368 (proposed substitute H-1)
Sponsor: Rep. Julie M. Rogers

House Bill 5369 (proposed substitute H-1)
Sponsor: Rep. Karen Whitsett

Committee: Health Policy
Revised 1-18-24

SUMMARY:

House Bills 4532, 5368, and 5369 would amend Part 54A (Lead Abatement) of the Public Health Code to revise the threshold considered an elevated blood lead level in children and to change requirements related to lead abatement and mitigation for certain buildings or activities (e.g., renovation), among other changes described below. Many of the bills' amendments appear to be a codification into state law of federal Environmental Protection Agency (EPA) requirements.¹

House Bill 4532 would amend the definition of the term *abatement* to add that it includes an interim control activity² or other measure or activity designed to temporarily reduce a lead-based paint hazard. (Currently, these measures and activities designed for temporary hazard reduction are specifically excluded from being considered abatement.)

Renovation and renovators

The bill would newly include *renovation* alongside abatement and lead-based paint activities regulated under Part 54A, with attendant safety and certification requirements. Accordingly, the term "renovation" would be added in several places where "lead-based paint activities" are now referenced. The bill would also define certain instruments and processes used in those activities, such as dry disposable cleaning cloths, wet disposable cleaning cloths, wet mopping system, and HEPA (high-efficiency particulate air) filters and vacuums.

Renovation would mean the modification of any existing structure, or portion of a structure, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. Renovation would not include minor repair and

¹ See <https://www.epa.gov/lead/lead-renovation-repair-and-painting-program> and <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-745> For more information, see: https://www.epa.gov/system/files/documents/2023-10/full_lead_fqs_october_28_2023.pdf

² The term *interim control activity* is not defined, but the act defines *interim controls* as a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

maintenance activities as defined in 40 CFR 745.83,³ but it would include all of the following:⁴

- The removal, modification, or repair of painted surfaces or painted components, including modification of painted doors, surface restoration, window repair, or surface preparation activity such as sanding, scraping, or other activities that may generate paint dust.
- The removal of building components such as walls, ceilings, plumbing, or windows.
- Weatherization projects such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics and planing [the parallel EPA provision uses “planing”] thresholds to install weather stripping.
- Interim controls that disturb painted surfaces.
- A renovation to convert a building, or part of a building, into target housing or a child occupied facility.

The bill would add renovators and dust sampling technicians to the list of disciplines for which a person may seek accreditation to offer training program courses.⁵ The renovator and dust sampling technician course would have to last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Refresher courses could be provided online.

The bill also would add renovator and dust sampling technician to the disciplines for which a qualified applicant must be certified by the Department of Health and Human Services (DHHS). An applicant pursuing certification as a certified renovator or dust sampling technician would have to complete a course in the appropriate discipline and receive a course completion certificate before applying to DHHS for certification. An individual could apply to DHHS for certification to engage in renovations by demonstrating compliance with the specified requirements, or providing a copy of the renovation certification training program, and paying the requisite fees.

Under the act, an individual cannot conduct lead-based paint activity (the bill would add “or renovation”) unless certified in the appropriate discipline. The bill would provide an exception to allow a certified renovator to train workers for renovations for a specific project.

Other certification provisions

Current law requires that an individual pass a third-party examination in the appropriate discipline to become certified as an inspector, risk assessor, abatement worker, or supervisor. The bill would instead require that the individual pass the appropriate *state examination*.

State examination would mean the examination for certification under Part 54A in the disciplines of inspector, risk assessor, worker, and supervisor offered and administered by a party other than an accredited training program.

The bill would eliminate certification of, and reference to, clearance technicians.

³ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-745/subpart-E/section-745.83>

⁴ The bill would modify the definitions of the terms *component* and *building component*, used in this definition, to list examples of the kinds of interior and exterior design or structural elements or fixtures that the terms include.

⁵ A renovator would mean a person who performs renovations or directs workers who perform renovations. The bill does not define “dust sampling technician.”

The bill would require an abatement worker course under a training program to last a minimum of 24 training hours, instead of the current 16.

Under the bill, a certified risk assessor could take samples for the presence of lead in paint, dust, and soil to identify a lead-based paint hazard (in addition to abatement clearance testing).

The bill would remove provisions that now require a person seeking certification to perform lead-based paint activities or renovations to indicate whether they have liability insurance and submit proof of Michigan workers' disability compensation insurance.

To maintain certification in a discipline, an individual must pay an annual fee and, every three years, must be recertified by taking the appropriate refresher course and state examination. DHHS would have to deny recertification to an individual with unpaid enforcement fines, if the individual is not successfully executing a payment plan established by DHHS, until the fine is paid in full or a payment plan is established.

Fees

The bill would revise fees for lead-based activities and renovations as shown in Tables 1, 2, and 3 under **Fiscal Impact**, below. In addition, DHHS could adjust the fee amounts every three years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit Consumer Price Index and rounded to the nearest dollar.

Registry

The bill would change the name of the registry established and maintained by DHHS from the Lead Safe Housing Registry to the Lead Information Housing Registry. The registry provides a public list of properties that have been abated or had interim controls to control lead-based paint hazards. The bill would add properties that have had a lead-based paint investigation. The bill would also revise the professions qualified to perform that assessment to include certified inspectors and **EBL investigators**.⁶ The bill would require the registry to include at least all of the following information:

- Name of the owner of the building.
- Address of the building.
- Date of construction.
- Property description.
- Date and description of any lead-based paint and interim control activities, including the name of the certified abatement worker or the certified risk assessor who performed the abatement or conducted the inspection, assessment, or clearance testing of the building and the results of the lead hazard control activity.

EBL investigator (as defined in HB 5368) would mean a certified risk assessor who has been endorsed by DHHS to conduct **EBL environmental investigations**.

EBL environmental investigation (as defined in HB 5368) would mean both of the following:

- A study, for case management purposes, of the living environment of one or more children younger than six years old with an elevated blood lead level performed by an EBL investigator to identify causative lead exposures.

⁶ As described below (HB 5368), "EBL" stands for "elevated blood lead level."

- The provision of a report by the EBL investigator explaining the results of the study and options for remediation of exposures.

Currently, the owner of **target housing** that is offered for rent or lease or the owner of a **child occupied facility** must register that property with DHHS if it has been abated or had interim controls performed. The bill would provide that the owner *may* register with DHHS if it has had a lead-based paint inspection or been abated or had interim controls performed.

Target housing means housing constructed before 1978, except any of the following:

- **Housing for the elderly** or persons with disabilities, unless a child six years old or younger resides in that housing (or is expected to).
- A no-bedroom dwelling.
- An unoccupied dwelling unit pending demolition, as long as the dwelling unit remains unoccupied until demolition.

Housing for the elderly would mean retirement communities or similar types of housing reserved for households composed of one or more persons who are 62 years old or older at the time of initial occupancy.

Child occupied facility means a building or portion of a building constructed before 1978 that is visited regularly by the same child who is six years old or younger on at least two different days within any calendar week, if each visit lasts at least three hours, the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child occupied facility includes a day-care center, a preschool, and a kindergarten classroom. The bill would add that a child occupied facility may be located in target housing or a public or commercial building. If located in a public or commercial building, all of the following would apply:

- If the building contains common areas:
 - The child occupied facility encompasses only those common areas that are routinely used by children six years old or younger, such as restrooms and cafeterias.
 - The child occupied facility does not encompass common areas that children six years old or younger only pass through, such as hallways, stairways, and garages.
- The child occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child occupied facility or a common area encompassed by the child occupied facility, such as restrooms and cafeterias.

The bill also would allow properties built after 1978 to be listed on the registry if proof of the year built is submitted (instead of any lead-based paint or **lead hazard control activity** reports).

Lead hazard control activity would mean a measure or set of measures designed or performed specifically to reduce or eliminate lead-based paint hazards in target housing and child occupied facilities, such as abatement, interim controls, and clearance examinations.

Administration, enforcement, sanctions, and penalties

Rules promulgated by DHHS to administer and enforce lead-related activities under the code would have to adopt by reference the provisions of the regulations issued by the EPA for renovation work practice activities and would have to allow *vertical containment* to be used in any renovation or lead-based paint activity.

Vertical containment would mean a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area.

At its own discretion or upon written complaint, DHHS could investigate the acts of accredited training programs, certified parties, or persons allegedly engaged in activities or renovations, and could deny, suspend, or revoke certification or accreditation if noncompliance or other violations were found. The bill would provide that information identifying a complainant or person who submits a tip or complaint to DHHS regarding lead-related violations is exempt from disclosure under the Freedom of Information Act (FOIA).

The address where a lead-based paint investigation occurred (as required to be reported to DHHS) would not be exempt from disclosure under FOIA.

The bill would provide that DHHS could conduct unannounced site inspections on renovation projects, as those projects do not require notification.

The bill would increase the maximum administrative fines for violations under Part 54A from \$2,000 to \$5,000 for a first violation, \$5,000 to \$8,000 for a second violation, and \$10,000 to \$13,000 for a third or subsequent violation (as shown in Table 4 under **Fiscal Impact**, below). The bill also would revise the statute of limitations for DHHS to issue a citation for a violation of Part 54A from 180 days after discovery of the alleged violation to five years after discovery.

Finally, the bill would increase the maximum fine for a person who engages in a lead-based paint activity under Part 54A and who willfully or repeatedly violates the relevant rules or who fails to correct the violation from DHHS from \$5,000 to \$15,000 for a first offense and from \$10,000 to \$25,000 for a second or subsequent offense (as shown in Table 5 under **Fiscal Impact**, below).

Repealer

The code has two identical sections numbered 5474b. The bill would repeal one of them.

MCL 333.5453 et seq.

House Bill 5368 would add a new section 5456a, prescribing definitions for terms used in Part 54A. Some of these terms and definitions are already in section 5456 of current law, which includes definitions for terms beginning with the letters D and E. (Section 5457 includes terms beginning with G, H, and I.) House Bill 4532 would remove terms beginning with E from section 5456, and House Bill 5368 would incorporate them in the new section 5456a, which would slot between sections 5456 and 5457 and address terms beginning with the letters E and F. In creating the new section 5456a, the bill would also add some new definitions, and amend a current one, as described below.⁷

⁷ The new defined terms *EBL investigator* and *EBL environmental investigation* are described above (HB 4532).

Elevated blood lead level

The bill would change the definition of *elevated blood lead level (EBL)*,⁸ which now references specific blood lead concentrations, to instead mean a concentration of lead in whole blood that equals or exceeds whichever of the following threshold values is the lowest:

- 3.5 micrograms per deciliter.
- The blood lead reference value for children as determined by the CDC.
- The blood lead reference value for children as determined by DHHS.

Emergency renovation operations

The bill would provide a definition for the term *emergency renovation operations*. While the term is not used in the bills or the act, the definition appears to include a substantive provision implicitly exempting the activities described from the application of laws and rules that would otherwise pertain to them:

Emergency renovation operations would mean renovation activities that were not planned but result from a sudden, unexpected event, such as a nonroutine failure of equipment, that if not immediately attended to presents a safety or public health hazard or threatens equipment or property with significant damage. Once the emergency is controlled, applicable laws and rules apply.

Firm

Finally, the bill would add a definition for the term *firm*, which would be used in the schedule of fees in HB 4532, as shown in Table 3, below.⁹ Under the bill, *firm* would mean any of the following:

- A company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.
- A federal, state, tribal, or local governmental agency.
- A nonprofit organization.

Proposed MCL 333.5456a

House Bill 5369 would change certain requirements concerning elevated blood lead levels in children. Currently, as part of DHHS's lead poisoning prevention program, blood lead level tests conducted for children in Michigan must be reported to DHHS, and when DHHS receives notice of blood lead levels above 10 micrograms per deciliter, it must initiate contact with the child's physician or local public health department. The bill would change the current threshold in this provision (*above* 10 micrograms per deciliter) to a level *equal to or greater than* the elevated blood level threshold as defined in HB 5368. The bill also would require a local health department or physician that receives a notification described above to refer the child to the Early On program administered by the Michigan Department of Education.¹⁰

The bill also would make the same threshold change (from above 10 micrograms to equal to or greater than the elevated blood level) in provisions that require DHHS to annually report to the legislature the number of children six or younger who received a test showing a blood lead

⁸ The current defined term is *elevated blood level*.

⁹ In addition, the act currently defines the term *certified firm* as a person that performs a lead-based paint activity or which DHHS has issued a certificate of approval under Part 54A.

¹⁰ <https://www.1800earlyon.org/>

level above the applicable threshold. The report is now made on a fiscal year basis, which the bill would change to calendar year.

MCL 333.5474

Tie-bars

House Bills 4532 and 5368 each cannot take effect unless the other is also enacted. House Bill 5369 cannot take effect unless HB 5368 is also enacted.

FISCAL IMPACT:

House Bill 4532 would have an indeterminate fiscal impact on state expenditures to the Department of Health and Human Services and local units of government. The fiscal impact of the bill is dependent on fee changes, increased requirements of the state programs of lead poisoning prevention, lead abatement, certification of individuals to perform lead abatement and renovation, lead hazard remediation training, and remediation compliance assistance, enforcement, rule promulgation, and updates to the Lead Information Housing Registry. Added costs would likely be minimal, but appear to be offset with additional fee revenue.

The tables below provide the current and proposed fees for individuals seeking accreditation for training programs and lead-based activities and renovations, as well as the fines associated with violating requirements for completing lead-based activities and renovations. An increase in revenue is dependent on the number of individuals who apply for accreditation, training, and lead-based activities and renovations, as well as the number of fines that are issued to individuals that violate the promulgated rules. While certain fees in Table 1 and Table 2 are proposed to be decreased, the bill has added new fees in Table 3, such as the Initial renovation firm processing fee, and increases the fines in Tables 4 and 5. House Bill 4532 also proposes an increase in the time frame in which DHHS may fine an individual after initial discovery of violation from 180 days to 5 years. This may increase the number of administrative fines issued and revenue collected. Any increase in penal fine revenue under the bill would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

Table 1

| Seeking Accreditation for Training Program | | |
|---|--------------------|---------------------|
| Fee type | Current fee | Proposed fee |
| Initial application processing fee | \$100 | No change |
| Initial accreditation fee per discipline | \$475 | \$450 |
| Reaccreditation fee (annual) per discipline | \$265 | \$250 |

Table 2

| Seeking Certification for Lead-Based Paint Activities and Renovations | | |
|--|--------------------|---------------------|
| Fee type | Current fee | Proposed fee |
| Initial application processing fee | \$25 | No change |
| Inspector (annual) | \$150 | \$125 |
| Risk assessor (annual) | \$150 | \$125 |
| Supervisor (annual) | \$50 | \$75 |
| Project designer (annual) | \$150 | \$125 |
| Abatement worker/laborer (annual) | \$25 | \$50 |
| Dust sampling technician (every three years) | No current fee | \$50 |

Table 3

| Lead-Based Activities and Renovations Fees | | |
|--|--------------------|---------------------|
| Fee type | Current fee | Proposed fee |
| Initial abatement application processing fee | \$100 | No change |
| Abatement firm certification fee (annual) [previously certification fee] | \$220 | No change |
| Initial renovation firm application processing fee | No current fee | \$100 |
| Renovation firm certification fee (annual) | No current fee | \$60 |

Table 4

| Administrative Fines | | |
|-------------------------------|---------------------|----------------------|
| Violation | Current fine | Proposed fine |
| First violation | \$2,000 | \$5,000 |
| Second violation | \$5,000 | \$8,000 |
| Third or subsequent violation | \$10,000 | \$13,000 |

Note: citations may be issued up to five years (previously 180 days) after discovery of violation

Table 5

| Misdemeanor Penal Fines | | |
|--------------------------------|---------------------|----------------------|
| Violation | Current fine | Proposed fine |
| Upon conviction | \$5,000 | \$15,000 |
| Second or subsequent offense | \$10,000 | \$25,000 |

House Bills 5368 and 5369 would have an indeterminate fiscal impact on state expenditures to the Department of Health and Human Services and local units of government. House Bill 5368 would lower the elevated blood lead level (EBL) threshold from 10 micrograms per deciliter to 3.5 micrograms to align with the CDC designation of an elevated blood lead level. This would likely increase the number of children reported to the department with EBL, thereby increasing the number of children that are medically eligible for services. This would increase costs for both the department and local health departments, as these services are funded through a cost-sharing model. The bill also may create minimal costs for the Department of Education that would likely be absorbed using existing staff time.

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