

1999 DRAFTING REQUEST**Bill**Received: **03/01/1999**Received By: **kenneda**Wanted: **As time permits**

Identical to LRB:

For: **Tom Sykora (608) 266-1194**By/Representing: **Sara (aide)**

This file may be shown to any legislator: NO

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - public health**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Bonding or insuring of certified lead paint removers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kenneda 05/07/1999	chanaman 05/07/1999	jfrantze 05/07/1999	_____	lrb-docadmin 05/07/1999		S&L
/2	kenneda 06/02/1999	chanaman 06/04/1999	mclark 06/07/1999	_____	lrb-docadmin 06/07/1999		S&L
/3	kenneda 10/08/1999	wjackson 10/11/1999	mclark 10/11/1999	_____	lrb-docadmin 10/11/1999		S&L
J4	kenneda 12/02/1999	wjackson 12/03/1999	mclark 12/03/1999	_____	lrb-docadmin 12/03/1999	lrb_docadmin	S&L 01/19/2000

FE Sent For: **01/19/2000.**

↳ "14"

<END>

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/4	kenneda 12/02/1999	wjackson 12/03/1999	mclark 12/03/1999	_____	lrb_docadmin 12/03/1999		S&L

For Assm Requested By Sara in Sykora's office

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/3	kenneda 10/08/1999	wjackson 10/1 1/1999	mclark 10/11/1999	_____	lrb-docadmin 10/11/1999		S&L

FE Sent For:

1/4 12/3 WLJ
1/2/3 MRC/JF
MRC 12/3
<END>



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Wanted: **As time permits**

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For: **Tom Sykora (608) 266-1194**

By/Representing: **Sara (aide)**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - public health**

Extra Copies:

Pre Topic:

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Topic:

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Instructions:

See Attached

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/1	kenneda 05/7/99	chanaman 05/7/99	jfrantze 05/7/99	_____	lrb-docadmin 05/7/99		S&L
/2	kenneda 06/2/99	chanaman 06/4/99	mclark 06/7/99	_____	lrb-docadmin 06/7/99		S&L
		/3 wLj 10/11	10/11 mrc	mre JF 10/11			

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/1	kenneda 05/7/99	chanaman 05/7/99	jfrantze 05/7/99	_____	lrb_docadmin 05/7/99		S&L

FE Sent For:

cmw
u/n
12

6/4
MRC

mrc/km
6/4
<END>



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1/?	kenneda	cmh 1 5/7	Jb 5/7	Jb/Ky 5/7			

FE Sent For:

<END>



LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

DAK?

Legal Section, 5th Floor, 100 N. Hamilton St.
(608) 266-3561

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
Use this form only for BILL drafts. Attach more pages if necessary.

Date of request: 2/26/99	Legislator or agency requesting this draft: Rep. Tom Sykora
Name/phone number of person submitting request: Tom Sykora 266-1194	
Persons to contact for questions about this draft (names and phone numbers please): Sara Jermstad 266-1195	
Describe the problem, including any helpful examples. How do you want to solve the problem? people who perform lead abatement/removal of lead (paint) should be certified/licensed as well as bonded or insured currently certified people do not are not required to be bonded or insured which leaves the owner liable for any mishap/damage	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy. S. 254.176(3)(b)	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

5/2/99: Sara Jermstad gave DAK permission to speak to DHFS w/o revealing Rep. Sykora's name.

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

YES NO If yes, please sign your name here:

Sara Jermstad

Handwritten marks and scribbles at the top right corner.





WISCONSIN APARTMENT ASSOCIATION

702 N. High Point Rd., Ste. 202 ♦ Madison, WI 53717 ♦ Phone: 608/824-0024
FAX: 608/824-0002 ♦ waa.execpc.com

February 1, 1999

Representative Thomas Sykora
Chair, Assembly Housing Committee
P.O. Box 8953
Madison, WI 53708-8953

Dear Representative Sykora,

I am writing to you today to present to you a concern that I have recently discovered with Emergency Clearinghouse Rule 97-091 the HSS Chapter 163 relating to certification to perform lead abatement that is front of your Administrative Rules Committee. I understand the need to certify inspectors, risk assessors and those involved in the procedure of lead paint removal are needed. However, the concern I have is and correct if I am wrong is that nowhere in the rule is mentioned the words "bonded or insured" in the verbiage.

Not having people mandated to be bonded or insured exposes the property owner to a huge liability not to mention the public at large. It has also come to my attention that people and businesses that are already certified to perform lead paint removal cannot be insured or when it is made available to them the cost of insurance is prohibitive to perform this work. This will create non-certified people and companies performing this work in the state.

I would like to inquire at this time if the Department of Family Services is aware of this existing problem and what remedy may be available to this industry.

Thank you for your interest in this matter.

Sincerely,

Robert R. Dennik
Director of Government Affairs

Tommy G. Thompson
Governor

Joe Leean
Secretary



State of Wisconsin
Department of Health and Family Services

DIVISION OF PUBLIC HEALTH
BUREAU OF OCCUPATIONAL HEALTH
1414 E WASHINGTON AVE RM 117
MADISON WI 53703-3043

(606) 261-6676
Fax (606) 266-9711

February 24, 1999

The Honorable Tom Sykora
Chair of Assembly Committee on Housing
Wisconsin State Assembly
PO Box 8953
Madison, WI 53708-8953

Dear Representative Sykora:

Your letter regarding lead liability insurance was forwarded to this Bureau by Bill Otto because we are responsible for lead certification. You inquired about two lead insurance issues raised by Mr. Robert Dennik: (1) ch. HFS 163, Wis. Adm. Code, does not require a certified person be "bonded or insured" and (2) certified persons have difficulty in obtaining insurance at a reasonable cost. We are aware of both issues, but we are limited in our authority to address them.

Although the Department of Health and Family Services (DHFS) is authorized to promulgate rules requiring lead certification, s. 254.176 (3) (b), Wis. Stats., limits what may be included in the rules. Specifically, lead certification rules must "meet, but not exceed, any requirements under regulations promulgated by the administrator of the federal environmental protection agency" (EPA)." Since EPA does not require a person to be "bonded or insured", we cannot require it. However, we do provide the enclosed brochure as guidance on selecting a qualified lead professional.

The question of availability of reasonable lead liability coverage for certified persons was raised at public hearings on the proposed revision of ch. HFS 163, Wis. Adm. Code. The Department of Commerce Small Business Ombudsman agreed to work with DHFS to present the insurance issues to the Insurance Commissioner. We are currently researching the facts of the issues presented. If Mr. Dennik has current facts that may assist us, we would appreciate receiving them for consideration.

Although availability of reasonably priced lead liability insurance for certified persons has certainly been a problem in the past, the difficulty today may be based more on previous experience than current reality. Previously, lead liability was available only from unregulated surplus lines sources, which resulted in high premiums. However, a recent article in a lead abatement trade publication states that relatively more affordable liability insurance is now available from standard, regulated insurance companies. Premiums are based on gross revenues and may be split between lead and **nonlead** work. A minimum annual premium was quoted at \$5,000 on a standard \$1 million/\$1 million liability policy.

Please feel free to contact Gail Boushon, Regulatory Specialist with the Asbestos and Lead Section, at (608) 267-2289 if you have additional questions. Thank you for your interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry Manor".

Perry Manor, Section Chief
Asbestos and Lead Section

cc: Robert R. Dennik, Director of Government Affairs, Wisconsin Apartment Association



254.176 Certification requirements.

254.176(1)

(1) Except as provided in sub. (2) and s. 250.041, and subject to s. 254.115, the department may establish by rule certification requirements for any person who performs lead hazard reduction or a lead management activity or who supervises the performance of any lead hazard reduction or lead management activity.

254.176(2)

(2) No certification is required under this section for lead hazard reduction conducted by any of the following persons, unless the lead hazard reduction is being done to comply with an order by the department or another state or local agency that requires the use of persons certified under this section:

254.176(2)(a)

(a) A person whose activities are limited to interim control activities, unless the activities are directly funded by a grant from the federal department of housing and urban development.

254.176(2)(b)

(b) A person whose activities do not involve lead-bearing paint or lead-contaminated soil or dust.

254.176(2)(c)

(c) A homeowner who engages in lead hazard reduction only in or on his or her own nonrental residential dwelling or real property.

254.176(2)(d)

(d) A person licensed, certified or registered under ch. 145 who engages in activities that constitute lead hazard reduction, only to the extent that these activities are within the scope of his or her license, certification or registration.

254.176(2)(e)

(e) A person who engages in the business of installing or servicing heating, ventilating or air conditioning equipment if the person is registered with the department of commerce and if the person engages in activities that constitute lead hazard reduction, only to the extent that the activities are within the scope of his or her registration.

254.176(3)

(3) Except as provided in s. 250.041 and subject to s. 254.115, the department may promulgate rules establishing certification requirements for persons required to be certified under this section. Any rules promulgated under this section:

254.176(3)(a)

(a) Shall include requirements and procedures for issuing, renewing, revoking and suspending under this section certifications issued under this section.

254.176(3)(b)

(b) Shall meet, but not exceed, any requirements under regulations promulgated by the administrator of the federal environmental protection agency under section 402 of the federal toxic substances control act, as

created under section 1021 of P.L. 102-550.

254.176(3)(c)

(c) Shall require completion of an appropriate training course accredited under s. 254.178 or of a training course determined by the department to be comparable to the appropriate training course under s. 254.178.

254.176(3)(d)

(d) May provide for requirements other than training as a condition for full certification.

254.176(3)(e)

(e) Shall specify fees for certifying persons under this section, except that no fee may be imposed on any person employed by the state or by any political subdivision of the state for a certification required to perform duties within the scope of the employment.

254.176(3)(f)

(f) Shall require the issuance of a photo identification card to each person certified under this section.

254.176(4)

(4) The department shall maintain lists of all persons who are certified under this section and shall make the lists available to the public. The department may charge a fee for lists provided under this subsection to cover the department's costs in providing the lists.

254.176(5)

(5) After notice and opportunity for hearing, the department may revoke, suspend, deny or refuse to renew any certification issued under this section in accordance with the procedures set forth in ch. 227, except that the only hearing rights available for a denial, revocation or nonrenewal of any certification issued under this section based on tax delinquency are those set forth in s. 73.0301 (5).

254.176 - ANNOT.

History: 1993 a. 450; 1995 a. 27 ss. 6330, 9116 (5); 1997 a. 191, 237.



5/3/99: From Gail Boushon, DNFS

The EPA does not prohibit requiring bonding or insurance; many states exceed the EPA regulations



1999 BILL

1 **AN ACT** ^{refer cert} ...; **relating to:** requiring bonding or insurance for persons who are
2 certified to perform lead hazard reduction or a lead management activity or to
3 supervise the reduction or activity and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) may promulgate rules establishing requirements for the certification of person who conduct lead hazard reduction (such as removing lead-bearing paint), perform a lead management activity or supervise the performance of the reduction or activity. The requirements must meet but may not exceed requirements established in regulations promulgated by the administrator of the federal environmental protection agency.

This bill makes an exception to the DHFS' restriction from promulgating rules that exceed requirements of federal environmental protection agency regulations, to authorize DHFS, by rule, to require proof of bonding or insurance for persons who are required to be certified to perform lead hazard reduction or a lead management activity or the supervision of the performance of any such reduction or activity.

For further information **see the state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7
12

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2365/1dn

DAK.....

cm4

✓
To Representative Sykora:

✓
I have used as a prototype for this bill the language in current law at s. 101.654 (2) (a) 1. and 2., stats. (contractor financial responsibility certification). The rationale for the large difference between the bond amount and the insurance required was apparently a policy choice when the legislation was enacted; you may prefer to have different amounts.

I have drafted this as an exception to the DHFS' restriction from promulgating rules that exceed the federal E.P.A. requirements. You may, instead, wish to have the bill drafted as a *requirement* that DHFS promulgate rules that require bonding or insurance for certified persons.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2365/1dn
DAK:cmh:jf

May 7, 1999

To Representative Sykora:

I have used as a prototype for this bill the language in current law at s. 101.654 (2) (a) 1. and 2., stats. (contractor financial responsibility certification). The rationale for the large difference between the bond amount and the insurance required was apparently a policy choice when the legislation was enacted; you may prefer to have different amounts.

I have drafted this as an exception to the DHFS' restriction from promulgating rules that exceed the federal EPA. requirements. You may, instead, wish to have the bill drafted as a **requirement** that DHFS promulgate rules that require bonding or insurance for certified persons.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

From Sarah (Sykora's office) 6/2/99: Redraft-2365/1:

① Apply bill's requirements to asbestos abatement

② Change bond to \$25000

③ Change insurance to \$2,000,000

SOON - In edit 6/2

1999 BILL

refer to cat

asbestos abatement or management activity

management or abatement

1 **AN ACT to renumber and amend** 254.176 (3) (b); and **to create** 254.176 (3) (b)
 2 1. and 254.176 (3) (b) 2. of the statutes; **relating to:** requiring bonding or
 3 insurance for persons who are certified to perform lead hazard reduction ~~or~~ a
 4 lead management activity or to supervise the reduction ~~or activity~~ and granting
 5 rule-making authority.

in the amount of \$25,000

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) may promulgate rules establishing requirements for the certification of person who conduct lead hazard reduction (such as removing lead-bearing paint), perform a lead management activity or supervise the performance of the reduction or activity. The requirements must meet but may not exceed requirements established in regulations promulgated by the administrator of the federal environmental protection agency.

INSERT A1

This bill makes an exception to the DHFS' restriction from promulgating rules that exceed requirements of federal environmental protection agency regulations, to authorize DHFS, by rule, to require proof of bonding or insurance for persons who are required to be certified to perform lead hazard reduction or a lead management activity or the supervision of the performance of any such reduction or activity.

general liability

no # INSERT A2

in the amount of \$2,000,000

BILL

For further information see the state **and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 254.176 (3) (b) of the statutes is renumbered 254.176 (3) (b) (intro.)
2 and amended to read:

3 254.176 (3) (b) (intro.) Shall meet, but not exceed, any requirements under
4 regulations promulgated by the administrator of the federal environmental
5 protection agency under ~~section 402 of the federal toxic substances control act, as~~
6 3 1 5 U S C 2 6 8 2 , e . x c e p t t h a t t h e d e p a r t m e n t
7 m a y b y r u l e r e a u i r e t h a t a n e r s o n r e a u i r e d t o b e c e r t i f i e d u n d e r t h i s s e c t i o n p r o v i d e
8 t o t h e s a t i s f a c t i o n o f t h e d e p a r t m e n t p r o o f t h a t t h e n e r s o n h a s i n f o r c e o n e o f t h e
9 f o l l o w i n g :

10 **SECTION 2.** 254.176 (3) (b) 1. of the statutes is created to read:

11 **(1)** 254.176 (3) (b) 1. A bond of not less than ~~\$5,000~~ ^{\$25,000} endorsed by a surety company
12 authorized to do business in this state, conditioned upon the applicant complying
13 with all applicable provisions of this section. ^{\$2,000,000}

14 **SECTION 3.** 254.176 (3) (b) 2. of the statutes is created to read:

15 254.176 **(3)** (b) 2. A policy of general liability insurance issued by an insurer
16 authorized to do business in this state insuring the applicant in the amount of at least
17 ~~\$250,000~~ ^{\$250,000} per occurrence because of bodily injury to or death of others or because of
18 ~~dam~~ ^{dam} to the property of others.

INSERT 2-18
19

✓
(END)

✓ **INSERT A 1**

9

Also under current law, DHFS may establish by rule certification requirements for persons performing or supervising asbestos abatement activity or performing asbestos management activities in connection with schools, as a part of public employment or in general.

INSERT A 2

no #

The bill also authorizes DHFS, by rule, to require proof of bonding in the amount of \$25,000 or general liability insurance in the amount of \$2,000,000 for persons who are required to be certified to perform asbestos abatement activity or asbestos management activity or the supervision of the performance of any such abatement or management activity.

INSERT 2-18

1 **SECTION 1.** 254.20%) (d) of the statutes is renumbered 254.20 (2) (d) (intro.) ✓
2 and amended to read:

3 254.20 (2) (d) (i&o.) Except as provided in s. 250.041 and subject to s. 254.115,
4 the department may establish by rule certification requirements for any person not
5 certified under pars. (a) to (c) who performs any asbestos abatement activity or
6 asbestos management activity or who supervises the performance of any asbestos
7 abatement activity or asbestos management activity, including: the requirement

8 that a person required to be certified under this paragraph provide to the satisfaction
9 of the department proof that the person has in force one of the following!

↖ strike period, eliminate scoring of period
↖ change period into a colon

History: 1987 a. 27, 1989 a. 173; 1993 a. 27 ss. 188, 193; 1997 a. 191, 237.

10 **SECTION 2.** 254.20 (2) (d) 1. of the statutes is created to read:
11 254.20 (2) (d) 1. A bond of not less than \$25,000 endorsed by a surety company
12 authorized to do business in this state, conditioned upon the applicant complying
13 with all applicable provisions of this section. ✓

14 **SECTION 3.** 254.20 (2) (d) 2. of the statutes is created to read:
15 254.20 (2) (d) 2. A policy of general liability insurance issued by an insurer
16 authorized to do business in this state insuring the applicant in the amount of at least



1 \$2,000,000[✓] per occurrence because of bodily injury to or death of others or because
2 of damage to the property of others.

3 **SECTION 4.** 254.20 (3) (a) of the statutes is renumbered 254.20 (3) (a) (intro.)
4 and amended to read:

5 254.20 (3) (a) (intro.)[✓] Except as provided in s. 250.041, the department may
6 establish by rule eligibility requirements for persons applying for a certification card
7 required under sub. (2). ~~Any training required by the department under this~~
8 ~~paragraph may be approved by the department or provided by the department under~~
9 ~~sub. (8).~~ including the requirement that a person required to be certified under this
10 paragraph provide to the satisfaction of the department proof that the person has in
11 force one of the followine:

12 History: 1987 a. 27, 1989 a 173; 1993 a. 27 ss. 188,193; 1997 a. 191,237.

12 **SECTION 5.** 254.20 (3) (a) 1. of the statutes is created to read:

13 254.20 (3) (a) 1. A bond of not less than \$25,000 endorsed by a surety company
14 authorized to do business in this state, conditioned upon the applicant complying
15 with all applicable provisions of this section.[✓]

16 **SECTION 6.** 254.20 (3) (a) 2. of the statutes is created to read:

17 254.20 (3) (a) 2. A policy of general liability insurance issued by an insurer
18 authorized to do business in this state insuring the applicant in the amount of at least
19 \$2,000,000[✓] per occurrence because of bodily injury to or death of others or because
20 of damage to the property of others.

21 **SECTION 7.** 254.20 (3) (am)[✓] of the statutes is created to read:

22 254.20 (3) (am) Any training required by the department under par. (a)[✓] may
23 be approved by the department or provided by the department under sub. (8).

(END OF INSERT)

8/12 Sara Sykora's office

Property owner will have the option of bonding or insurance for work that is performed by themselves or their employees, including persons with whom they contract

Applies to lead + asbestos abatement

10/8 From Sara - in response to DAK's question, they want to require bonding of public employees and persons performing asbestos abatement or management activity on schools (under s. 254.20 (3)(a)), as well as everyone else (i.e., the private sector) under s. 254.20 (2)(d)

6/22 Sara (Sykora's office):
Redraft 99-2365/2

to exempt from reqts of bonding or ins. for
lead or asbestos abatement activity owners or
employees of owners.

Q: Krs of owners?

7/19 From Sara Jarvstad

Exempt owners who remove lead themselves
from bonding reqts

7/20 Clarification: since homeowners are exempt from
certification reqts under s. 254.176 (2) (c),
she wants the exemption to apply to
apartment owners and their employees
Problem: how to differentiate between
maintenance men ("supers") and
contracted-for employees - she will
call back

Pending callback
from Sara
Jarvstad
7/21

(Monday, if possible)

1999 - 2000 LEGISLATURE

LRB-2365/23

DAK:cmh:mrc

EWJ

~~XXXXXXXXXX~~

1999 BILL

Please note WPO NOTE on D-Note

regenerate

certain

1 AN ACT to renumber and amend 254.176 (3) (b), 254.20 (2) (d) and 254.20 (3)

2 (a); and to create 254.176 (3) (b) 1., 254.176 (3) (b) 2., 254.20 (2) (d) 1., 254.20

3 (2) (d) 2., 254.20 (3) (a) 1., 254.20 (3) (a) 2. and 254.20 (3) (am) of the statutes;

4 relating to: requiring bonding or insurance for persons who are certified to

5 perform lead hazard reduction, a lead management activity, asbestos

6 abatement or management activity or to supervise the reduction, management

7 or abatement and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) may promulgate rules establishing requirements for the certification of ~~person~~ ^{persons} who conduct lead hazard reduction (such as removing lead-bearing paint), perform a lead management activity or supervise the performance of the reduction or activity. The requirements must meet but may not exceed requirements established in regulations promulgated by the administrator of the federal environmental protection agency.

Also under current law, DHFS may establish by rule certification requirements for persons performing or supervising asbestos abatement activity or performing asbestos management activities in connection with schools, as a part of public employment or in general.

BILL

Not including public employees and persons performing asbestos abatement or management in schools,

This bill makes an exception to the DHFS' restriction from promulgating rules that exceed requirements of federal environmental protection agency regulations, to authorize DHFS, by rule, to require proof of bonding in the amount of \$25,000 or general liability insurance in the amount of \$2,000,000 for persons who are required to be certified to perform lead hazard reduction or a lead management activity or the supervision of the performance of any such reduction or activity. The bill also authorizes DHFS, by rule, to require proof of bonding in the amount of \$25,000 or general liability insurance in the amount of \$2,000,000 for persons who are required to be certified to perform asbestos abatement activity or asbestos management activity or the supervision of the performance of any such abatement or management activity. **INSERT A 2**

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

other than a person specified under sub. (3m), who is

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 254.176 (3) (b) of the statutes is renumbered 254.176 (3) (b) (intro.)
2 and amended to read:

3 254.176 (3) (b) (intro.) Shall meet, but not exceed, any requirements under
4 regulations promulgated by the administrator of the federal environmental
5 protection agency under ~~section 402 of the federal toxic substances control act, as~~
6 ~~created under section 1021 of P.L. 102-550.~~ 15 USC 2682. except that the department
7 may by rule require that a person required to be certified under this section provide
8 to the satisfaction of the department proof that the person has in force one of the
9 following:

10 **SECTION 2.** 254.176 (3) (b) 1. of the statutes is created to read:
11 254.176 (3) (b) 1. A bond of not less than \$25,000 endorsed by a surety company
12 authorized to do business in this state, conditioned upon the applicant complying
13 with all applicable provisions of this section.

14 **SECTION 3.** 254.176 (3) (b) 2. of the statutes is created to read:

BILL

1 254.176 (3) (b) 2. A policy of general liability insurance issued by an insurer
2 authorized to do business in this state insuring the applicant in the amount of at least
3 \$2,000,000 per occurrence because of bodily injury to or death of others or because
4 of damage to the property of others.

INSERT 3-4

5 **SECTION 4.** 254.20 (2) (d) of the statutes is renumbered 254.20 (2) (d) (intro.)
6 and amended to read:

7 254.20 (2) (d) (intro.) Except as provided in s. 250.041 and subject to s. 254.115,
8 the department may establish by rule certification requirements for any person not
9 certified under pars. (a) to (c) who performs any asbestos abatement activity or
10 asbestos management activity or who supervises the performance of any asbestos
11 abatement activity or asbestos management activity; including the requirement
12 that a person required to be certified under this paragraph provide to the satisfaction
13 of the department proof that the person has in force one of the following:

14 **SECTION 5.** 254.20 (2) (d) 1. of the statutes is created to read:

15 254.20 (2) (d) 1. A bond of not less than \$25,000 endorsed by a surety company
16 authorized to do business in this state, conditioned upon the applicant complying
17 with all applicable provisions of this section.

other than a person specified under sub. (3m)

18 **SECTION 6.** 254.20 (2) (d) 2. of the statutes is created to read:

19 254.20 (2) (d) 2. A policy of general liability insurance issued by an insurer
20 authorized to do business in this state insuring the applicant in the amount of at least
21 \$2,000,000 per occurrence because of bodily injury to or death of others or because
22 of damage to the property of others.

23 **SECTION 7.** 254.20 (3) (a) of the statutes is renumbered 254.20 (3) (a) (intro.)
24 and amended to read:



BILL

SECTION 7

1 **254.20 (3)** (a) (intro.) Except as provided in s. 250.041, the department may
 2 establish by rule eligibility requirements for persons applying for a certification card
 3 required under sub. (2). ~~Any training required by the department under this~~
 4 ~~paragraph may be approved by the department or provided by the department under~~
 5 ~~sub. (8).~~ including the requirement that a person required to be certified under this
 6 paragraph provide to the satisfaction of the department proof that the person has in
 7 force one of the following:

*other than a person specified
under sub. (3m), ✓*

8 **SECTION 8. 254.20 (3)** (a) 1. of the statutes is created to read:

9 254.20 (3) (a) 1. A bond of not less than \$25,000 endorsed by a surety company
 10 authorized to do business in this state, conditioned upon the applicant complying
 11 with all applicable provisions of this section.

12 **SECTION 9. 254.20 (3)** (a) 2. of the statutes is created to read:

13 254.20 (3) (a) 2. A policy of general liability insurance issued by an insurer
 14 authorized to do business in this state insuring the applicant in the amount of at least
 15 \$2,000,000 per occurrence because of bodily injury to or death of others or because
 16 of damage to the property of others.

17 **SECTION 10. 254.20 (3)** (am) of the statutes is created to read:

18 254.20 (3) (am) Any training required by the department under par. (a) may
 19 be approved by the department or provided by the department under sub. (8).

INSERT 4-19 ✓



ff

INSERT A 2

However, the bill excepts from this requirement an owner of rental property who performs or supervises the performance of lead hazard reduction or a lead management activity or asbestos abatement or management activity or a person with whom the owner contracts for the performance or supervision; the bill authorizes, but does not require, these persons to provide to DHFS proof of bonding or general liability insurance.

INSERT 3-4

SECTION ~~254.176~~ [#] 254.176 (3m) of the statutes is created to read:

254.176 (3m) An owner of rental property who performs or supervises the performance of lead hazard reduction or a lead management activity or a person with whom the owner contracts for the performance or supervision may, but is not required to, provide to the satisfaction of the department proof of having in force a bond, as described in ^{6. 254.20} sub. (2) (d) 1., or a policy, as described in ^{9. 254.20} sub. (2) (d) 2.

INSERT 4-19

SECTION ~~254.20~~ [#] 254.20 (3m) of the statutes is created to read:

254.20 (3m) An owner of rental property who performs or supervises the performance of asbestos abatement activity or asbestos management activity or a person with whom the owner contracts for the performance or supervision may, but is not required to, provide to the satisfaction of the department proof of having in force a bond, as described in sub. (2) (d) 1., or a policy, as described in sub. (2) (d) 2.



1

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2365/3dn
DAK:cmh:mrc

WPO NOTE: This document
should be DELETED
and removed
from the file

~~Handwritten signature~~

To Representative Sykora:

em dash

Supervisor

In the previous draft (LRB-2365/2), I had included treatment of both ss. 254.20 (2) (d) and (3) (a), stats., two different provisions that are somewhat redundant in dealing with requirements for certification for the performance or supervision of asbestos abatement or management activity. These provisions differ from one another in that s. 254.20 (2) (d), stats., is concerned only with persons *other than* persons performing asbestos abatement or management activity on schools and public employes who perform or ~~supervise~~ asbestos abatement; s. 254.20 (3) (a), stats., on the other hand, covers persons performing asbestos abatement or management activity on schools, public employes and all other persons who perform or supervise asbestos abatement or management activity. According to Jeff Kuesel, who has dealt with matters of state finance for many years, it is unusual to require bonding of public employes for matters other than the transaction of financial business. Therefore, in this draft I omitted treatment of s. 254.20 (3) (a), because it was my understanding that your intent in requiring bonding was primarily in dealing with the private sector. If this change is contrary to your intent, please let me know and I will redraft accordingly.

and covers

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137



MEMORANDUM

TO: Joe Murray
FROM: Rick Staff, General Counsel
Wisconsin REALTORS® Association, Inc.
DATE: November 15, 1999
RE: LRB-2365/3

241-2047

This draft contains exception language at sections 4 and 12 which except an owner or a person with whom the owner contracts for the performance or supervision of certain lead or asbestos activity. **One problem** with this language is that owners may contract **with** essentially every **type** of person who **could** work on their property, **including maintenance personnel as well as outside contractors.** The second problem is that many owners have their property managed by agents. **The bill doesn't create any exception for persons employed by agents of the owner.** Finally, there are circumstances in which an owner of an owner-occupied single family residence is required to obtain a certification (a child has tested positive for lead poisoning). I assume that there is no intent to require bonding or insurance for a homeowner under this circumstance. ? —

Language doesn't do this →

Assuming that the ~~intent~~ is to except the owner and employees of the owner of real property, and further assuming that there is no intent to exclude maintenance staff retained by property managers, I would recommend that Sections 4 and 12 be revised to read something like:

Owner Maintenance Committee



“An owner of a real property who performs or supervises the performance of . . . activity or employes of the **owner** or the owner's agent who are engaged in the specific performance of their duties as such employes”

I have no reason to believe that this is ideal language. Hopefully the intent will be clear enough so that the drafters can craft language which will except existing maintenance workers retained by the owner or the property manager while still requiring the bonding or insurance for persons specifically contracted with to perform lead or asbestos activities.

Joe, I have one last philosophical question. Given recent court decisions, has anyone priced the insurance or bond, and if so, has anyone projected the proposal's effect on the availability of certified personnel who might perform this work for a property owner? At least in the LBP area, one of the big problems that already exists is a lack of certified persons to perform the work This proposal would apparently exacerbate this problem.

RJS

Soon

D-NOTE

1999 BILL

Reger

1 **AN ACT** *to renumber and amend* 254.176 (3) (b), 254.20 (2) (d) and 254.20 (3)
 2 (a); and to **create** 254.176 (3) (b) 1., 254.176 (3) (b) 2., 254.20 (2) (d) 1., 254.20
 3 (2) (d) 2., **254.20 (3) (a) 1.**, 254.20 (3) (a) 2. and 254.20 (3) (am) of the statutes;
 4 **relating to:** requiring bonding or insurance for certain persons who are
 5 certified to perform lead hazard reduction, a lead management activity,
 6 asbestos abatement or management activity or to supervise the reduction,
 7 management or abatement and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) may promulgate rules establishing requirements for the certification of persons who conduct lead hazard reduction (such as removing lead-bearing paint), perform a lead management activity or supervise the performance of the reduction or activity. The requirements must meet but may not exceed requirements established in regulations promulgated by the administrator of the federal environmental protection agency.

Also under current law, DHFS may establish by rule certification requirements for persons performing or supervising asbestos abatement activity or performing asbestos management activities in connection with schools, as a part of public employment or in general.

BILL

This bill makes an exception to the DHFS' restriction from promulgating rules that exceed requirements of federal environmental protection agency regulations, to authorize DHFS, by rule, to require proof of bonding in the amount of \$25,000 or general liability insurance in the amount of \$2,000,000 for persons who are required to be certified to perform lead hazard reduction or a lead management activity or the supervision of the performance of any such reduction or activity The bill also authorizes DHFS, by rule, to require proof of bonding in the amount of \$25,000 or general liability insurance in the amount of \$2,000,000 for persons, including public employes and persons performing asbestos abatement or management in schools, who are required to be certified to perform asbestos abatement activity or asbestos management activity or the supervision of the performance of any such abatement or management activity

However, the bill excepts from this requirement an owner of ~~rental~~ ^{real} property who performs or supervises the performance of lead hazard reduction or a lead management activity or asbestos abatement or management activity ~~or a person with whom the owner contracts for the performance or supervision~~ the bill authorizes, but does not require, these persons to provide to DHFS proof of bonding or general liability insurance.

INSERT
A

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 254.176 (3) (b) of the statutes is renumbered 254.176 (3) (b) (intro.)
2 and amended to read:

3 254.176 (3) (b) (intro.) Shall meet, but not exceed, any requirements under
4 regulations promulgated by the administrator of the federal environmental
5 protection agency under ~~section 402 of the federal environmental agencies control act, as~~
6 ~~created under section 1021 of P.L. 102-51~~ 15 USC 2682, except that the department
7 may by rule require that a person, other than a person specified under sub. (3m), who
8 is required to be certified under this section provide to the satisfaction of the
9 department proof that the person has in force one of the following:

(a) to (d)

10 **SECTION 2.** 254.176 (3) (b) 1. of the statutes is created to read:

BILL

1 254.176 (3) (b) 1. A bond of not less than \$25,000 endorsed by a surety company
2 authorized to do business in this state, conditioned upon the applicant complying
3 with all applicable provisions of this section.

4 SECTION 3. 254.176 (3) (b) 2. of the statutes is created to read:

5 254.176 (3) (b) 2. A policy of general liability insurance issued by an insurer
6 authorized to do business in this state insuring the applicant in the amount of at least
7 \$2,000,000 per occurrence because of bodily injury to or death of others or because
8 of damage to the property of others.

9 SECTION 4. 254.176 (3m) of the statutes is created to read:

Any of the following.

10 254.176 (3m) ~~An owner of real property who performs or supervises the~~
11 ~~performance of lead hazard reduction or a lead management activity or a person with~~
12 ~~whom the owner contracts for the performance or supervision~~, but is not
13 required to, provide to the satisfaction of the department proof of having in force a
14 bond, as described in s. 254.20 (2) (d) I., or a policy, as described in s. 254.20 (2) (d)

15 2.0
INSERT 3-151

16 ~~Section 52.25~~ 254.20 (2) (d) of the **statutes is renumbered 254.20 (2) (d) (intro.)**

17 and amended to read:

18 254.20 (2) (d) (intro.) Except as provided ins. 250.041 and subject to s. 254.115,
19 the department may establish by rule certification requirements for any person not
20 certified under pars. (a) to (c) who performs any asbestos abatement activity or
21 asbestos management activity or who supervises the performance of any asbestos
22 abatement activity or asbestos management activity, including the requirement
23 that a person required to be certified under this paragraph, other than a person
24 specified under sub. (3m), provide to the satisfaction of the department proof that the
25 person has in force one of the following:

(a) to (d)

BILL

1 SECTION 6. 254.20 (2) (d) 1. of the statutes is created to read:

2 254.20 (2) (d) 1. A bond of not less than \$25,000 endorsed by a surety company
3 authorized to do business in this state, conditioned upon the applicant complying
4 with all applicable provisions of this section.

5 SECTION 7. 254.20 (2) (d) 2. of the statutes is created to read:

6 254.20 (2) (d) 2. A policy of general liability insurance issued by an insurer
7 authorized to do business in this state insuring the applicant in the amount of at least
8 \$2,000,000 per occurrence because of bodily injury to or death of others or because
9 of damage to the property of others.

10 SECTION 8. 254.20 (3) (a) of the statutes is renumbered 254.20 (3) (a) (intro.)
11 and amended to read:

12 254.20 (3) (a) (intro.) Except as provided in s. 250.041, the department may
13 establish by rule eligibility requirements for persons applying for a certification card
14 required under sub. (2). ~~Any training required by the department under this~~
15 ~~paragraph may be approved by the department or provided by the department under~~
16 sub. (8), including the requirement that a person required to be certified under this
17 paragraph, other than a person specified under sub. (3m), provide to the satisfaction
18 of the department proof that the person has in force one of the following:

19 SECTION 9. 254.20 (3) (a) 1. of the statutes is created to read:

20 254.20 (3) (a) 1. A bond of not less than \$25,000 endorsed by a surety company
21 authorized to do business in this state, conditioned upon the applicant complying
22 with all applicable provisions of this section.

23 SECTION 10. 254.20 (3) (a) 2. of the statutes is created to read:

24 254.20 (3) (a) 2. A policy of general liability insurance issued by an insurer
25 authorized to do business in this state insuring the applicant in the amount of at least

BILL

1 \$2,000,000 per occurrence because of bodily injury to or death of others or because
2 of damage to the property of others.

3 **SECTION 11.** 254.20 (3) (am) of the statutes is created to read:

4 254.20 (3) (am) Any training required by the department under par. (a) may
5 be approved by the department or provided by the department under sub. (8).

6 **SECTION 12.** 254.20 (3m) of the statutes is created to read:

7 254.20 (3m) ~~An owner of rental property who performs or supervises the~~
8 ~~performance of asbestos abatement activity or asbestos management activity or a~~
9 ~~person with whom the owner contracts for the performance or supervision~~ may, but
10 is not required to, provide to the satisfaction of the department proof of having in
11 force a bond, as described in sub. (2) (d) 1., or a policy, as described in sub. (2) (d) 2.f

11
INSERT
5-11 12

(END)

Any of the following

D-NOTE

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2365/4ins
DAK:cmh&wlj:mrc

wo #

INSERT A

for his or her property; the full-time employe of an owner of real property or the full-time employe of an owner's agent, if the employe performs lead hazard reduction, a lead management activity or asbestos abatement or management activity with respect to the owner's property in the course of his or her duty as an employe; and the full-time agent of an owner of real property, if the agent performs or supervises the performance of lead hazard reduction, a lead management activity or asbestos abatement or management activity with respect to the owner's property in the course of his or her duty as agent.

INSERT 3-15

1 (a) An owner of real property who performs or supervises the performance of
2 lead hazard reduction or a lead management activity for his or her property.

3 (b) The full-time employe of an owner of real property, if the employe performs
4 lead hazard reduction or a lead management activity with respect to the owner's
5 property in the course of his or her duty as an employe.

6 (c) The full-time agent of an owner of real property, if the agent performs or
7 supervises the performance of lead hazard reduction or a lead management activity
8 with respect to the owner's property in the course of his or her duty as an agent.

9 (d) The full-time employe of an agent of an owner of real property, if the
10 employe performs lead hazard reduction or a lead management activity with respect
11 to the owner's property in the course of his or her duty as an employe.

INSERT 5-11

12 (a) An owner of real property who performs or supervises the performance of
13 asbestos abatement activity or asbestos management activity for his or her property.

14 (b) The full-time employe of an owner of real property, if the employe performs
15 asbestos abatement activity or asbestos management activity with respect to the
16 owner's property in the course of his or her duty as an employe.

1 (c) The full-time agent of an owner of real property, if the agent performs or
2 supervises the performance of asbestos abatement activity or asbestos management
3 activity with respect to the owner's property in the course of his or her duty as an
4 agent.

5 (d) The full-time employe of an agent of an owner of real property, if the
6 employe performs asbestos abatement activity or asbestos management activity
7 with respect to the owner's property in the course of his or her duty as an employe.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2365/4dn
DAK:cmh&wlj:mrc

To Representative Sykora:

I have redrafted this bill after having spoken with Rick Staff and in accordance with his memorandum of November 15 to Joe Murray. Please let me know if I may provide you further assistance.

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2365/4dn
DAK:cmh&wlj:mrc

December 3, 1999

To Representative Sykora:

I have redrafted this bill after having spoken with Rick Staff and in accordance with his memorandum of November 15 to Joe Murray. Please let me know if I may provide you further assistance.

Debora A. Kennedy
Managing Attorney
Phone: (608) 2664137