# **1999 DRAFTING REQUEST**

## Bill

Received: 03/01/1999	Received By: kenneda		
Wanted: As time permits	Identical to LRB:		
For: <b>Tom Sykora (608) 266-1194</b>	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

Vers.	<b>Drafted</b>	<u>Reviewed</u>	<u>Typed</u>	Proofed	Submitted	Jacketed	<u>Required</u>
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/2	kenneda 06/02/1 <i>999</i>	chanaman <b>06/04/1</b> <i>999</i>	mclark <b>06/07/1</b> 99	9	lrb-docadmin <b>06/07/1</b> 999		S&L
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01/19/2000 03:09:09 PM Page 2

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

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<**END**>

**12/03/1999 02:15:49** PM Page 1 LRB-2365

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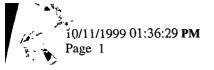
Topic: •

Bonding or insuring of certified lead paint removers

# Instructions:

See Attached

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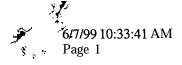
Bonding or insuring of certified lead paint removers

## **Instructions:**

See Attached

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# **1999 DRAFTING REQUEST**

# Bill

Received: 03/1/99	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

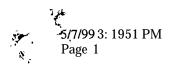
# Topic:

Bonding or insuring of certified lead paint removers

## **Instructions:**

See Attached

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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

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See Attached

Vers.	Drafted	Reviewed	Typed	Proofed	<u>Submitted</u>	Jacketed	<u>Required</u>
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May Contact: D#F3	Alt. Drafters:		
Subject: Health - public health	Extra Copies:		

# **Pre Topic:**

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# **Topic:**

Bonding or insuring of certified lead paint removers

## **Instructions:**

See Attached

# **Drafting History:**

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# LEGISLATIVE REFERENCE BUREAU

Legal Section, 5<sup>th</sup> Floor, 100 N. Hamilton St.

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BILL REQUEST FORM

BILLROUST (rev.1 1/98 wij)

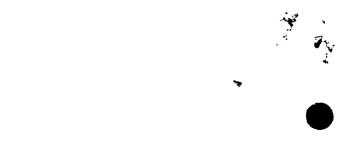
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Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill. Use this form only for BILL drafts. Attach more pages if necessary.

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Date of request: <i> ス</i> / <i>ス</i> し/ 9 9	Legislator or agency requesting this draft:
Name/phone number of person submitting request:	
Persons to contact for questions about this draft	
(names and phone numbers please):	
Sara Jernstad 266	-1195
Describe the problem, including any helpful	
examples. How do you want to solve the problem?	
people who perform l Lead (paint) should be	ead abatement/removal of certified/licensed as well
Currently certified people a bonded or insured wh	ich leaves the owner
liable for any mishap	oldamage
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	3.254.176(3)(6)
Please attach a copy of any correspondence or mater (not re-typed) copy of any LRB draft, or provide its nur	5

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? I YES INO If yes, anyone who asks? I YES I NO Any legislator? I YES X NO I ONLY the following persons: May be defined as a function to the foll
Do you consider this urgent? The YES to NO If yes, please indicate why:
Is this request of higher priority than other pending request(s) you have made? YES INO If yes, please sign your name here





# WISCONSIN APARTMENT ASSOCIATION

702 N. High **Porint** Rd., Ste. 202 ◆ Madison, **WI** 53717 ◆ Phone: 608/824-0024 FAX: 608/824-0002 ◆ waa. execpc. corn

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.

Sincetely

Robert R. Dennik Director of Government Affairs

**DIVISION OF PUBLIC HEALTH** 

Tommy G. Thompson Governor

Joe Leean Secretary

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

State of Wisconsin Department of Health and Family Services

(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, <u>but not exceed</u>, 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,

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.

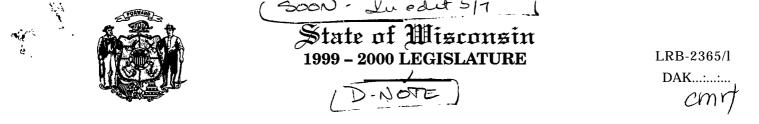
History: 1993 a. 450; 1995 a. 27 ss. 6330, 9116 (5); 1997 a. 191, 237.



STATE OF WISCONSIN-LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION (608–266–3561)

5/3/99: From Gail Bouchon, DHFS
Du EPA does not prohibit requiring bonding or mourance; many states exceed the EPA regulations
to manage i many states exceed the EPA regulations
praesidence , with a providence of the second secon
17 - 27 - 17

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**1999 BILL** 

AN ACT ...; relating to: requiring bonding or insurance for persons who are certified to perform lead hazard reduction or a lead management activity or to 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:



1999 - 2000 Legislature - **2** -BILL

	· · · · · · · · · · · · · · · · · · ·
1	<b>SECTION 1.</b> 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. ing 550 15 USC 2682, except that the denartment
7	may by rule require that a person required to be certified under this section nrovide
8	to the satisfaction of the department proof that the person has in force one of the
(9)	following: move stricken period to before scored text
10	History: 1993 a. 450; 1995 a. 27 ss. 6330, 9116 (5); 1997 a. 191,237. 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 \$5,000 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:
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 per occurrence because of bodily injury to or death of others or because of
18	damage to the property of others.
19	(END)

(D-NOTE)

## DRAFTER'S NOTE FROMTHE LEGISLATIVE REFERENCE BUREAU

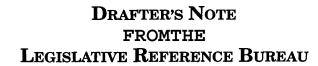
LRB-2365/1dn DAK..... CMH

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



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

ĩ STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION (608-266-3561) From Saral Sykora's Afr Redrat 6/2/99: -236 L  $\bigcirc$ requireme ashe +o5 abatement \$25000 Change 10 lund 2 \$ 2,000 ,000 to 3 68 rau ..... .... . . ...... ...... . . .. . . .**.** .... ... ....... ..... -------



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1999 - 2000 LEGISLATURE

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# **1999 BILL**

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 that (4) lead management activity or to supervise the reduction in and granting 5 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.

the amount \$ 2,000,000

1999 - 2000 Legislature

BILL

v 1.

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 ederal toxic substances control act, as 6 15 USC 2682, except that the department 3 may by rule reauire that a nerson reauired to be certified under this section nrovide 7 8 to the satisfaction of the department proof that the nerson has in force one of the \$ 25,000 9 following: 10 **SECTION** 2. 254.176 (3) (b) 1. of the statutes is created to read: 254.176 (3) (b) 1. A bond of not less than \$5,000 endorsed by a surety company (1) 12 authorized to do business in this state, conditioned upon the applicant complying \$2,000,000 with all applicable provisions of this section. 13 14 **SECTION** 3. 254.176 (3) (b) 2. of the statutes is created to read: 254.176 (3) (b) 2. A policy of general liability insurance issued by an insurer 15 authorized to do business in this state insuring the applicant in the amount of at least 16 (17) \$230,000 per occurrence because of bodily injury to or death of others or because of dam1&a√e to the property of others. 2-18 (END)

## **INSERT A 1**

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**

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

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254.20 (2) (d) (i&o.) Except as provided in s. 250.041 and subject to s. 254.115,

the department may establish by rule certification requirements for any person not 4

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 reauirement K strike period, eliminate scoring ? that a nerson required to be certified under this paragraph provide to the satisfaction 8

of the denartment nroof that the nerson has in force one of the following! T change gerid

- History: 1987 a. 27.1989 a 173; 1993 a. 27 ss. 188,193; 1997 a. 191,237. SECTION 2. 254.20 (2) (d) 1. of the statutes is created to read:
- 10
- 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
- with all applicable provisions of this section. 13
- **SECTION** 3. 254.20 (2) (d) 2. of the statutes is created to read: 14

254.20 (2) (d) 2. A policy of general liability insurance issued by an insurer 15 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	<b>SECTION</b> 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 <del>). Any training required by <u>the department under</u> this</del>
8	<del>paragraph may be approved by the department or provided by the department under</del>
9	<del>sub. (8)., including the reauirement that a nerson reauired to be certified under this</del>
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. <b>27, 1989</b> a 173; 1993 a. 27 <b>ss</b> . 188, 193; 1997 a. 191,237. <b>SECTION 5. 254.20 (3) (a) 1. of the statutes is created to read:</b>
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	<b>SECTION</b> 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	<b>SECTION</b> 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)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION (608-266-3561)

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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION (608–266–3561)

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# STATE OF WISCONSIN -LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION (608-266-3561)

7/19 From Sara Jerustad lead themselves Exempt own who remand from bondup nes 7/20 Clarification suice homeourners are exempt from regents unde certificat 254.176 (2) Ye), ion <u>ela</u> 4 emption O a pply 40 iployer) aparte Mildo and 00 3 to d between lena - ne 1 Con racted-for. el call back .... . .. . . . ...... \*\*\*\*

S	Monday, it posseble	
	1999 - 2000 LEGISLATURE	LRB–2365/2 3 DAK:cmh:mrc
	PAROVEN	ž WLj
	Please WPO NOTE Note on D-Note	
	Treemen Te	Tain
1	AN ACT to renumber and amend 254.176 (3) (b), 254.20 (2)	) (d) and 254.20 (3)
2	(a); and <i>to create 2</i> 54.176 (3) (b) 1., 254.176 (3) (b) 2., 254.2	20 (2) (d) 1., 254.20
3	(2) (d) 2., $254.20$ (3) (a) 1., $254.20$ (3) (a) 2. and $254.20$ (3) (a)	nm) of the statutes;
4	<b>relating to:</b> requiring bonding or insurance for persons w	ho are certified to
5	perform lead hazard reduction, a lead management	activity, asbestos
6	abatement or management activity or to supervise the redu	ction, management
7	or abatement and granting rule-making authority.	

### Analysis by the Legislative Reference Bureau

persons

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.

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.

1999 - 2000 Legislature -2-LRB-2365/2 DAK:cmh:mrc BILL including public employee and Jour person anagement in schools, ashestos abatement or m

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 or the supervision of the performance of any such abatement or management activity. INSERT A 2-1

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:

14

254.176 (3) (b) (intro.) 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 ereated under section 1021 of P.L. 102–550. 15 USC 2682. except that the department may by rule reauire that a person/reauired to be certified under this section nrovide to the satisfaction of the department proof that the person has in force one of the following:

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

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

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

1999 - 2000 Legislature - 3 - 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- 5	<b>SECTION</b> 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 reauirement
(12)	that a nerson reauired to be certified under this paragraph provide to the satisfaction
13	of the dewartment wroof that the werson 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.
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	<b>SECTION</b> 7. 254.20 (3) (a) of the statutes is renumbered 254.20 (3) (a) (intro.)

24 and amended to read:



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	<del>paragraph may be approved by the department or provided by the department under</del>
5	<del>sub. (8).<u>,</u> including the reauirement that a person reauired to be certified under this</del>
(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
<b>'16</b>	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	_ <u>_be</u> -approved by the department or provided by the department under sub. (8).
UNSERT 4	(END)



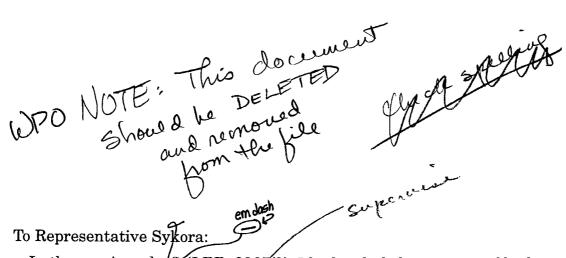
#### **INSERT A 2**

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 4 254.176 (3m) of the statutes is created to read: 1 2 254.176 (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 '4 whom the owner contracts for the performance or supervision may, but is not 5 required to, provide to the satisfaction of the department proof of having in force a 5. 254. 20 bond, as described in subv(2) (d) 1., or a policy, as described in subv(2) (d) 2. (6) **INSERT 4-19** SECTION **A** 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 9 performance of asbestos abatement activity or asbestos management activity or a 10 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 11 force a bond, as described in sub. (2) (d) 1., or a policy, as described in sub. (2) (d) 2. 12



#### DRAFTER'S NOTE FROMTHE LEGISLATIVE REFERENCE BUREAU



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 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 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

Cover 5

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



#### MEMORANDUM

241-2047

TO:	JoeMurray
FROM:	Rick <b>Staff</b> , General Counsel Wisconsin <b>REALTORS®</b> Association, Inc.
DATE:	November15, 1999
RE:	LRB-2365/3

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 wha could work on their property, including maintenance personnel as well as outside contractors. The second problem is that many certification (a child has tested positive for lead poisoning). I assume that there is no  $2^{-1}$ intent to require bonding or insurance for a homeowner under this circumstance.

> Assuming that the **intent caller** 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:

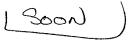
"An owner of a real property who performs or supervises the performance of... activity or employes of the owner or the owner's agent who are engaged in the specific performance of their duties as such employes"

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.

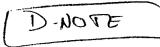
Joe, I have one last philosophical question. Given recent court decisions, has anyone priced the insurance or bond, and if so, has anyone projected the proposal's effect on the availability of certified personnel who might perform this work for a property owner? At least in the LBP area, one of the big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

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**1999 - 2000 LEGISLATURE** 



LRB-2365/**3 4** DAK:cmh&wlj:**me** 

**1999 BILL** 

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

(a) to (d

#### 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 rented property who performs or supervises the performance of lead hazard reduction or a lead management activity or asbestos abatement or management activity erre 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 INSERS or general liability insurance.

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:

- **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 states control act, as
- 6 created under section 1021 of P. J. 102–55 15 USC 2682, except that the department
- (7) may by rule reauire that a nerson. other than a nerson specified under sub. (3m), who
- 8 <u>is reauired to be certified under this section nrovide to the satisfaction of the</u>
- 9 <u>department proof that the person has in force one of the following:</u>
- 10 **SECTION** 2. 254.176 (3) (b) 1. of the statutes is created to read:

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Any of the

follow

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

- 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.

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

10 254.176 (3m) An owner of were property who performs or supervises the 11 performance of lead hazard reduction or a lead management activity or approximitely (12) whom the owner contracts for the performance or supervision may, 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) l., or a policy, as described in s. 254.20 (2) (d) 15 2.5 m

# INSERI 3-150Section 55252520 (2) (d) of the statutes is renumbered 254.20 (2) (d) (intro.)17and 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 reauirement 23 that a nerson reauired to be certified under this paragraph, other than a nerson **(**2**)** specified under sub. (3m), provide to the satisfaction of the denartment proof that the person has in force one of the following: 25

(a) to (d)

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-4-

1	SECTION 6. 254.20 (2) (d) 1. of the statutes is created to read:
2	254.20 (2) (d) <b>1</b> . 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:
б	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	<b>\$2,000,000</b> 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: $(a) + o (d)$
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 denartment proof that the nerson 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

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

-5-

3 **SECTION 11.** 254.20 (3) (am) of the statutes is created to read: 254.20 (3) (am) Any training required by the department under par. (a) may 4 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 provide performed on superises the 18 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 force a bond, as described in sub. (2) (d) l., or a policy, as described in sub. (2) (d) 2.f (END)

Any of the following

-NOTE

#### 1999-2000 Drafting Insert FROM THE **LEGISLATIVE REFERENCE** BUREAU

#### **INSERT** A

vot 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

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(b) The full-time employe of an owner of real property, if the employe performs

lead hazard reduction or a lead management activity with respect to the owner's 4 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 The full-time employe of an agent of an owner of real property, if the (d) 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.

(b) The full-time employe of an owner of real property, if the employe performs 14 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.

, <sup>s</sup>

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

To Representative Sykora:

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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) 266-0137

## DRAFTER'S NOTE FROMTHE LEGISLATIVE REFERENCE BUREAU

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