



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: March 10, 2000

TO: INTERESTED LEGISLATORS AND OTHER INTERESTED PERSONS

FROM: Pam Shannon, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 806 (Lead-Bearing Paint Hazards), As Passed by the Assembly

This memorandum describes the provisions of 1999 Assembly Bill 806, which relates to lead-bearing paint hazards, as passed by the Assembly on March 9, 2000.

Working from Assembly Substitute Amendment 2 (ASA 2), which was recommended by the Joint Committee on Finance, the Assembly adopted Assembly Amendment 1 (AA 1) to ASA 2, as well as Assembly Amendment 1 to AA 1 to ASA 2. The Assembly then passed Assembly Bill 806, as amended, on a roll call vote of Ayes, 97; Noes, 0.

Assembly Bill 806, as passed by the Assembly, is based with significant modifications on 1999 Senate Bill 232, which is the product of the Joint Legislative Council's Special Committee on Lead Poisoning Prevention and Control, chaired by Senator Robert Jauch.

A. CURRENT LAW

Under current law, the Department of Health and Family Services (DHFS) is required to develop and implement a comprehensive statewide lead poisoning prevention and treatment program. Among other things, DHFS may promulgate rules governing a number of activities relating to lead poisoning or lead exposure, prevention and treatment. Before promulgating these rules, DHFS must consult with a technical advisory committee that includes representatives from local health departments, the housing industry, health professions and persons who are certified to perform or supervise lead hazard reduction or lead management activities. Also under current law, a city, village, town or other political subdivision may enact and enforce ordinances that establish systems of lead poisoning or lead exposure control with the same or higher standards than those specified under the DHFS program.

B. ASSEMBLY BILL 806, AS PASSED BY THE ASSEMBLY

This portion of the memorandum describes Assembly Bill 806, *as passed by the Assembly*. References to "the Bill" are to the bill as passed.

1. Legislative Findings and Purpose

The Bill states that the Legislature finds that the most common cause of childhood lead poisoning is ingestion of lead-contaminated dust and chips from lead-bearing paint and that even low blood lead levels can cause significant nervous system problems for young children. The Bill further states that the Legislature encourages property owners to address the problems associated with lead-bearing paint by bringing their properties into compliance with applicable state standards. The Legislature finds that an appropriate method to so encourage property owners is to hold them not liable with respect to a person who develops lead poisoning or lead exposure in the property if they meet certain requirements. The Bill states that these standards and this restriction on liability will reduce the exposure of children and others to lead-bearing paints, improve the quality of the state's housing stock and result in greater availability of insurance coverage for lead hazards.

2. Immunity From Liability for Lead Poisoning or Lead Exposure

The Bill provides that a property owner and his or her employes and agents are immune from civil and criminal liability and may not be subject to agency administrative proceedings (other than for the enforcement of rules relating to lead poisoning promulgated by DHFS) for their acts or omissions related to lead poisoning or lead exposure, if at the time the poisoning or exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit.

There are five exceptions to this grant of immunity which apply if it is shown by clear and convincing evidence that one of the following has occurred:

- a. The owner or his or her employe or agent obtained the certificate by fraud.
- b. The owner or his or her employe or agent violated a condition of the certificate.
- c. During renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employe or agent created a lead-bearing paint hazard that was present in the dwelling or unit of the dwelling at the time that the lead poisoning or lead exposure occurred.
- d. The owner or his or her employe or agent failed to respond in a timely manner to notification by a tenant, DHFS or a local health department that a lead-bearing paint hazard might be present.
- e. The lead poisoning or lead exposure was caused by a source of lead in the dwelling or unit other than lead-bearing paint.

The standards that must be met in order to obtain a certificate will be set forth in rules promulgated by DHFS, as discussed in item 3. a., below.

The Bill provides that the grant of immunity cannot be interpreted or applied in any manner to impair the right of a municipality to enforce its ordinances. This means that while a property owner only has to meet the statewide standards set by DHFS in order to receive a certificate and obtain immunity from liability, the person may nonetheless be subject to the penalties or injunctive provisions of a municipal ordinance governing lead poisoning or lead exposure control.

Temporary immunity is provided to owners and their employes and agents for acts or omissions related to lead poisoning or lead exposure that occur during the first 30 days after the owner acquires a dwelling or unit, unless the poisoning or exposure results from a lead hazard created by the owner, employe or agent. This immunity is extended for an additional 60 days if, during that first 30-day period, the owner or his or her employe or agent has done one of the following with respect to the property: (a) completed a lead investigation report or entered into a contract for a lead investigation; (b) entered into a contract for lead hazard reduction; (c) registered for a course under s. 254.179 (1) (e); or (d) received certification to perform or supervise lead hazard reduction or a lead management activity. However, this additional 60-day immunity only applies if the owner obtains a certificate of lead-free status or a certificate of lead-safe status for the dwelling or unit and the owner shows by clear and convincing evidence that the property was in compliance with the standard to obtain a certificate of lead-free or lead-safe status by the end of the 90-day period and that the owner obtained the certificate in a reasonable amount of time following his or her acts to achieve compliance.

If an owner receives written notice from DHFS or a local health department that a child under age six residing in the dwelling or unit has an elevated blood lead level, the owner must obtain a certificate of lead-free status or a certificate of lead-safe status in a timely manner, based on the reasonable availability of lead risk assessors or other certified persons and on the time required for the issuance of a certificate of lead-free or lead-safe status. A certificate of lead-safe status issued under this provision must be for a period of 12 months or more. "Elevated blood lead level" is defined as a level of lead in the blood that is either 20 or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test or 15 or more micrograms per 100 milliliters of blood, as confirmed by two venous blood tests performed at least 90 days apart.

3. Rule Requirements

The Bill provides that after reviewing lead-related municipal ordinances and in consultation with the technical advisory committee, DHFS shall, by use of a research-based methodology, promulgate as rules all of the following:

a. The standards for issuance of a certificate of lead-free status or a certificate of lead-safe status, the procedures by which such certificates may be issued or revoked and the period of validity of the certificates, with the goal of long-term lead hazard reduction. Regarding the period of validity of certificates of lead-safe status, the Bill specifies that no more than two successive certificates of lead-safe status that are less than one year in duration may be

issued. In addition, the Bill specifies if the person again applies for a certificate of lead-safe status, the certificate must be for at least 12 months. After that, if the person applies for a certificate of lead-safe status of less than 12 months in duration, the person must provide DHFS with a reason for the necessity for issuance of a certificate of that duration. If the person again does so, the person must provide DHFS with clear and convincing evidence of the necessity for issuance of a certificate of that duration.

b. A mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead-free or lead-safe status is issued.

c. The requirements for a course of up to 16 hours that a property owner or his or her employe or agent may complete in order to receive certification of completion and the scope of lead investigation and lead hazard reduction activities that the owner, employe or agent may perform following certification, to the extent consistent with federal law, that are preliminary to activities and standards required to obtain a certificate of lead-free or lead-safe status.

The DHFS must submit the proposed rules to the Legislative Council Staff no later than the first day of the seventh month after publication of the Bill. In submitting the rules, DHFS must include a summary of the differences between the standards developed by DHFS and the standards under a similar ordinance of the City of Milwaukee. Also, DHFS must review these rules by January 1, 2003 and every two years thereafter and promulgate changes to the rules if necessary in order to maintain consistency with federal law.

The Bill requires that the membership of DHFS's technical advisory committee on rules include advocates for persons at risk of lead poisoning and a resident of the City of Milwaukee.

4. DHFS Lead Investigation

Under the Bill, if DHFS is notified that a child under age six who occupies a dwelling or premises has an elevated blood lead level, DHFS must conduct a lead investigation of the dwelling or premises or ensure that such an investigation is conducted. The Bill defines "lead investigation" as a measure or set of measures designed to identify the presence of lead or lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media. DHFS must notify the occupant or his or her representative of the results of any lead investigations conducted and any action taken to reduce or eliminate the lead hazard. A certified lead risk assessor or other person certified by DHFS who conducts an investigation must conduct the investigation and issue a report in accordance with DHFS rules and, if the report indicates that the dwelling or premises meets criteria for issuance of a certificate of lead-free or lead-safe status, issue the appropriate certificate. DHFS may promulgate rules governing lead hazard reduction that are consistent with federal law.

5. Sampling and Testing

The Bill provides that sampling and testing of dwellings, units of dwellings or premises for the presence of lead-bearing paint or a lead hazard is not required before lead hazard reduction activities are conducted, if the presence of lead-bearing paint or a lead hazard is assumed and the lead hazard reduction activities are performed in a lead-safe manner.

6. Report by Office of the Commissioner of Insurance

The Bill directs the Office of the Commissioner of Insurance (OCI) to review the cost and availability of insurance in the private market that provides residential property owners with liability coverage for lead-bearing paint hazards. On the basis of the review, OCI must prepare a report to the Legislature, by October 1, 2002, on whether insurance providing residential property owners with liability coverage for lead-bearing paint hazards is sufficiently affordable and available in the private insurance market.

If OCI determines and reports that such insurance is not either sufficiently affordable or sufficiently available, OCI must submit drafting instructions to the Legislative Reference Bureau for proposed legislation to create a state residential lead liability fund and include this proposed legislation in its 2003-05 biennial budget request.

7. Admissibility of Lead Dust Test Results

The Bill provides that the results of a test for the presence of lead in dust are not admissible in a civil or criminal action or an administrative proceeding unless the test was conducted by a person certified for this purpose by DHFS.

8. Fees; Reports to Local Agencies

The Bill authorizes DHFS to impose a fee of \$50 for issuance of a certificate of lead-free status and a fee of \$25 for issuance for a certificate of lead-safe status. However, the fees may not exceed the actual costs of issuance of certificates and of maintaining the registry. The DHFS must review the fees every two years and adjust the fees to reflect the actual costs. Also, DHFS must notify local health departments at least quarterly of properties in their jurisdiction that have received the certificates.

9. Funding

The Bill authorizes DHFS to request a supplement of general purpose revenues (GPR) from the Joint Committee on Finance (JCF) to pay initial costs of establishing a registry of properties that are issued certificates of lead-free or lead-safe status. To request this supplement, DHFS must submit a plan to JCF to expend not more than \$520,000 for fiscal year 2000-01. The Bill increases the JCF's program supplements appropriation by \$520,000 GPR for fiscal year 2000-01 for this purpose. In addition, the Bill provides for an increase in the appropriation to DHFS by \$215,000 GPR for fiscal year 2000-01 to provide 5.0 FTE positions on January 1, 2001, for activities relating to certification for the performance of lead paint hazard reduction.

The Bill requires the Secretary of Administration to transfer to the general fund an amount of funding equivalent to the GPR funding provided in the Bill (\$735,000), once the secretary determines that sufficient program revenues are available from the fees paid for certificates of lead-free and lead-safe status and lead worker certifications to fund DHFS's ongoing administrative costs for the program.

The Bill directs DHFS, in submitting its 2001-03 biennial budget request, to submit a proposal, including a request for additional funding, to conduct lead paint hazards outreach and abatement activities.

The Bill directs the Secretary of Administration to allocate all available oil overcharge funds that have not been approved for expenditure as of the effective date of the bill and all accruing interest earnings on those funds, for reduction of lead paint hazards in dwellings that is done to allow for, and in conjunction with, energy conservation activities in rental properties owned by persons who are seeking a certificate of lead-free or lead-safe status. In awarding the funds, priority must be given to projects that emphasize comprehensive lead removal plans for rental properties. As of March 7, 2000, it is estimated that there is approximately \$350,000 in unobligated, one-time available oil overcharge funds.

10. Proposal on Rehabilitation of Rental Property

The Bill requires the Wisconsin Housing and Economic Development Authority, as part of its 2001-03 biennial budget request, to submit a proposal for lead-hazard reduction activities for, and the rehabilitation of, rental property for low-income persons in Wisconsin.

11. Effective Dates and Initial Applicability

Under the Bill, a number of provisions take effect on the day after publication. Several provisions, including those relating to immunity from liability, have a 16-month delayed effective date. The Bill provides that the immunity provisions first apply to lead poisoning or lead exposure that occurs on the effective date.

If you would like any further information on this Bill, please feel free to contact me at the Legislative Council Staff offices.

PS:wu:ksm:rv:jal;wu



TOM SYKORA
STATE REPRESENTATIVE

FOR IMMEDIATE RELEASE

Contact: State Representative Tom Sykora at (608) 266-1195

March 9, 2000

Assembly Passes Lead Paint Hazard Reduction Bill

Sykora legislation aimed at protecting both children and landlords

Madison... The Wisconsin State Assembly voted 97-0 today in favor of legislation that provides legal incentives to landlords to clean up any lead-based paint hazards in their buildings.

This important piece of legislation addresses a health hazard that has been around for quite some time. However, it was the Wisconsin State Supreme Court's ruling last June that forced the issue of lead paint to be a top priority, especially for State Representative Tom Sykora (R-Chippewa Falls), chair of the Assembly Housing Committee.

The court ruled that the duty of testing for lead-based paint when there is prior knowledge of chipping, peeling or flaking paint in pre-1978 properties will now be considered a mandate for all landlords and property managers. However, the court did not address the issue of what to do when lead-based paint is confirmed by testing.

"This bill is a product of several months of meetings and discussions with legislators, health officials, realtors and landlords, said Sykora. "The main focus during these meetings was to develop bi-partisan legislation that would protect both the children and property owners."

Wisconsin's overall lead poisoning rate among children under the age of 6 is 11.1%; 2 ½ times the national average of 4.4%. And, with an estimated 73% of Wisconsin's housing stock containing lead, standards need to be created so children can live in housing without the risk of lead poisoning.

The most common cause of childhood lead poisoning is the ingestion of lead paint chips and dust. This legislation encourages property owners to address this serious child health hazard by cleaning up their properties and coming into compliance with state standards. As an additional incentive, the legislation provides immunity from liability for certain property owners if they take the necessary steps to obtain a lead-free or lead-safe status certificate.

"The main goal of any lead legislation should be to protect the health and safety of children who are at an increased risk of lead poisoning," said Sykora. "We feel that this legislation is a step towards ensuring that protection."

Assembly Bill 806 now moves to the Senate where it awaits to be scheduled on the floor. Upon concurrence, the bill will be sent to the Governor for his approval.

###

TO: All Assembly Representatives
FROM: Michael Theo
Vice President for Public Affairs
DATE: March 30, 2000
RE: AB 806 – Lead Paint Hazards

Support Concurrence in Senate Amendment

The Wisconsin Realtors Association (WRA) supports Senate Amendment 1 to AB 806 (offered by Senator Jauch). The amendment is the product of discussions held over the past week to address concerns raised by Senator George and several trial lawyers who have represented plaintiffs in lead paint litigation.

The Senate adopted this amendment on a voice vote then passed the bill by a vote of 33-0.

Changes from Assembly Passed Version

SA 1 makes the following changes to the Assembly version of AB 806:

1. Clarify that this legislation does not preclude a municipality from bringing legal action against paint manufacturers.
2. Revises the temporary immunity for new property owners as follows:
 - a. Requires owners to complete lead hazard reduction activity within 60 days of assuming ownership in order to be eligible for immunity from lawsuits;
 - b. Requires owners to complete lead hazard reduction activities (as defined by rule) on any units that become vacant during the first 60 days of ownership;
 - c. Requires owners to comply with DHFS work orders to eliminate lead hazards if the order is issued in the first 60 days of ownership;
 - d. Deletes the immunity granted for owners who simply register for an owner/agent lead paint certification course;
 - e. Sunsets the temporary immunity provision altogether after 4 years from the effective date of the legislation.
3. Sunsets the immunity provisions of the bill 7 years from the effective date.

Conclusion

We feel these changes constitute a reasonable balance between the protection of both innocent children and innocent property owners in addressing the threat of lead paint poisoning.

We strongly encourage your support for concurrence in Senate Amendment 1 to AB 806.

March 29, 2000

To: Interested Legislators

From: Senator Bob Jauch

Re: Senate Amendment ____ (LRBa2061/4) to Assembly Bill 806

The amendment makes several significant changes to the Engrossed Assembly bill:

1. The immunity provisions of the bill granting immunity to a holder of a lead-safe or lead-free certificate sunset 7 years after the bill's effective date.
2. The period of temporary immunity a new owner is entitled to upon purchase of a property is shortened from 90 to 60 days. In order to avail themselves of 60-day temporary immunity, landlords would have to actually complete by the 60th day any abatement work needed to earn a lead-safe certificate.
3. The 60-day period of temporary immunity sunsets 4 years after the bill's effective date. After that time, no new owner would get the temporary immunity. Only the immunity obtained by getting a lead-safe or lead-free certificate would be available to new owners (until the 7-year sunset of that immunity takes effect; see item 1, above.)
4. If, during the 60-day period of temporary immunity, a landlord receives notice of a child with an elevated blood level and does not comply with any abatement order issued by the department, the landlord is not eligible for the 60-day temporary immunity.
5. If a dwelling or unit is vacant during the 60 days after purchase of a property, the owner must take interim lead hazard control measures specified by the department by rule. If the owner does not take interim lead hazard control measures, the owner is not eligible for the 60-day temporary immunity.
6. The amendment requires the DHFS to file an annual report on activities under the bill, and to prepare a study by 2005 evaluating the success or failure of the act and rules promulgated under it and recommending statutory change needed to further protect children.
7. Finally, the amendment clarifies that nothing in the bill restricts the ability of a municipality, person or other entity to sue for damages or equitable relief.

BOB JAUCH

WISCONSIN STATE SENATOR

March 28, 2000

To: Interested Legislators

From: Senator Bob Jauch

Re: Senate Amendment ____ (LRBa2061/3) to Assembly Bill 806

For the last week I have had numerous discussions with Attorney Peter Earle of Milwaukee, a trial lawyer who represents plaintiffs in litigation over lead paint hazards. In response to many of Mr. Earle's concerns, I have had the attached amendment drafted. This afternoon, Mr. Earle contacted my office to inform me that, with the attached amendment, he now favors the bill. (The attached amendment is actually /2; the amendment is currently being redrafted to add the sunset provision described in item 1, below.)

The amendment makes several significant changes to the Engrossed Assembly bill:

1. In regard to the initial period of temporary immunity a new owner is entitled to upon purchase of a property, the amendment shortens that period from 90 to 60 days. Further, in order to avail themselves of 60-day temporary immunity, landlords would have to actually complete by the 60th day any abatement work needed to earn a lead-safe certificate.
2. The 60-day period of temporary immunity sunsets four years after the bill's effective date. After that time, no new owner would get the temporary immunity. Only the immunity obtained by getting a lead-safe or lead-free certificate would be available to new owners.
3. If, during the 60-day period of temporary immunity, a landlord receives notice of a child with an elevated blood level and does not comply with any abatement order issued by the department, the landlord is not eligible for the 60-day temporary immunity.
4. If a dwelling or unit is vacant during the 60 days after purchase of a property, the owner must take interim lead hazard control measures specified by the department by rule. If the owner does not take interim lead hazard control measures, the owner is not eligible for the 60-day temporary immunity.
5. Finally, the amendment clarifies that nothing in the bill restricts the ability of a municipality, person or other entity to sue for damages or equitable relief. Although redundant, Mr. Earle felt this clarification was important.

6. Sunset in ~~90~~ years (really 8 1/2 yrs of enactment until 16 months after passage)

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Ashland Daily Press March 11, 2000

Jauch says bill will get lead out

By STAN MILAM
Capitol News Service

MADISON - A northern Wisconsin legislator says he sees a light at the end of his personal three-year tunnel regarding legislation dealing with lead paint.

Sen. Bob Jauch, D-Poplar, says a bill that will deal with the lead paint issue while providing landlords reasonable liability protection appears headed for passage in the last three weeks of the legislative session.

Under current law, landlords do not have a responsibility to remove lead hazards from their property unless they have

received a court order or an order from the Department of Health and Family Services. A recent Wisconsin Supreme Court case, however, held that landlords have a common law duty to test their residential property for lead paint when peeling and chipping paint occur.

The court did not state what, if any, responsibility the landlord has if lead paint is discovered. The bill being considered by the Legislature, AB-806, would provide immunity from liability for landlords if a certificate of lead-free status or lead-safe status was in effect for the property when lead poisoning or lead exposure occurred.

"The intent is to give landlords some protection of they number one had taken steps to have the property inspected and two, if they did not know about the lead problem," Jauch said. "We're not trying to let anyone off the hook, but there had to be some reason applied for landlords who may have a lead problem in their residential dwelling, but who took steps to eliminate the problem."

The immunity provision in the bill would not apply if it is shown "by clear and convincing evidence" that the landlord obtained a certificate by fraud, the landlord violated a condition in the certificate, or during renovations or remodeling after receiving the certificate the owner either created a lead hazard or failed to respond to a notification of a lead hazard by



JAUCH
Nothing is a done deal

a tenant.

The bill accomplishes two goals, Jauch said,

"First of all, we recognize that most landlords care about their tenants and their property," Jauch said. "But, more importantly, this bill will result in more lead hazards being eliminated."

Jauch said final action and approval of the bill should occur next week.

"I'm comfortable with the way things are going so far," Jauch said. "I'm confident we have enough votes for passage, I'm confident the bill will be acted upon by both houses and the governor is expected to sign it."

"Nothing is a done deal around here until it's done," Jauch said. "With that in mind, I'm as confident as I can be that this will be passed and signed by the governor."

MAR-20-00 01:49 PM PERRY, LERNER, QUINDEL

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P. 01

PERRY, LERNER, QUINDEL & SAKS, S.C.

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OFFICE MANAGER

March 20, 2000

BY REGULAR MAIL AND BY FAX TO 608-266-3580Bob Jauch
Wisconsin State Senator
PO Box 7882
Madison, WI 53707-7882Re: **AB 806**

Dear Senator Jauch:

Thank you for your response of March 17, 2000 to my letter and telephone query regarding the immunity provisions of AB806.

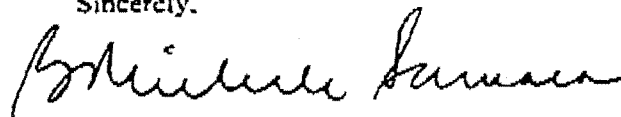
As I have previously explained, my primary concern with AB806 is that incipient lead hazards in windows will evade the proposed lead-safe certification process by which landlords will enjoy sweeping immunity from suit. In addition to the immunity from tort-based liability, I fear that the bill would also grant immunity from a tenant's claims brought under the landlord-tenant provisions of the Wisconsin Administrative Code and the implied warranty of habitability to redress injuries derived from lead poisoning.

Thank you for supplying me with the March 10, 2000 Legislative Council Staff Memorandum, which addresses my question in part and acknowledges that a certifying landlord would enjoy immunity from agency proceedings. Presumably, *any* claims under ATCP §134 -- based on the presence of a lead hazard -- would be extinguished.

My concerns remain that abrogating the common law and the remedial provisions of the landlord-tenant administrative code for holders of a temporary lead-safe certificate may continue to jeopardize the health of children -- just the opposite of the bill's intent.

Thank you for your consideration of this matter.

Sincerely,



B. Michele Sumara

cc: Senator Gary R. George 608-266-7381
Senator Chuck Chvala 608-266-5087
Rep. Spencer Coggs 608-266-7038

Senator Brian Burke 608-267-0274
Senator Gwendolynne Moore 608-267-2353
Rep. Antonio Riley 608-266-7038

WISCONSIN CITIZEN ACTION



Wisconsin's Public-Interest Watchdog

March 20, 2000

To: Wisconsin State Senate

From: Carolyn Castore, Legislative Director
Juan Carlos Ruiz, Lead Organizer

Subject: Support of AB 806

Wisconsin Citizen Action supports AB 806, a bill to encourage owners of properties with lead paint to maintain them in a lead-safe manner. Establishment of state standards for lead-safe and lead-free properties is welcome. The sponsors of this bill have taken great care to combine the needs of property owners and tenants.

Tenants will benefit by having more rental property that is lead safe. In addition, there will be increased screening for elevated blood lead levels for their children. Owners who act responsibly in addressing the condition of their property and are certified that they have a lead-safe environment will receive immunity from prosecution.

Wisconsin Citizen Action has worked diligently in the past few years, particularly in Milwaukee, to ensure that children and their parents will no longer have to deal with the devastating consequences of lead poisoning. This bill supports the efforts that the City of Milwaukee has taken to work with property owners, health providers, and parents to reduce poisoning as a consequence of lead paint.

We encourage the Senate to pass AB 806. Wisconsin Citizen Action intends to work with the State Government to ensure that all Wisconsin children are protected from lead poisoning.

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Jermstad, Sara

From: Theo, Mike - VP Public Affairs [mtheo@wra.org]
Sent: Monday, March 20, 2000 11:22 AM
To: Lead Paint Distribution List
Subject: Citizen Action

I just spoke with Carolyn Castore, lobbyist for Citizen Action, and she said they are now supportive of AB 806. She is writing a memo to that affect as we speak. This is excellent news! Please pass it along. Thanks to all that helped.

*lead
paint
bill*

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
- CORRECTED SUPPLEMENTAL

LRB # - 4539/1

INTRODUCTION # AB 806

Admin. Rule #

Subject

Changes to lead poisoning prevention statutes.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs – May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
- Counties Others _____
- School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.435 (1) (a), 20.435 (1) (gm)

Assumptions Used in Arriving at Fiscal Estimate:

See attached narrative

Long-Range Fiscal Implications:

Prepared By: / Phone # / Agency Name
Richard T. Chao / 267-0356
DHFS.OSF

Authorized Signature / Telephone No.

John Kiesow
John Kiesow, 266-9622

Date

3-13-00

SUMMARY

AB 806 proposes numerous changes in the lead poisoning prevention and control statutes. Under this program, among other things, DHFS may promulgate rules establishing procedures for conducting lead inspections of dwelling and premises, governing lead hazard reduction, certifying persons who perform or supervise performance of lead hazard reduction or lead management activities and establishing requirements for accreditation of lead training courses and approval of lead instructors.

With specified exceptions, this bill also provides immunity from liability to property owners for lead poisoning or exposure if, at the time the poisoning or exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit. Further, DHFS must promulgate rules to create a registry of all premises, dwellings and units of dwellings for which a certificate of lead-free or lead-safe status is issued.

The bill appropriates \$215,000 GPR to fund administrative start-up activities including 5.0 FTE six-month project positions. In addition, the bill authorizes DHFS to request a supplement of not more than \$520,000 general purpose revenues from the joint committee on finance to pay initial costs of establishing a registry of properties that are issued certificates.

FISCAL ESTIMATE

The Lead Training Accreditation and Certification Program will administer the lead risk assessment certificate program, including accreditation of training courses, certification of persons to perform lead-based paint activities, development, monitoring and enforcement of the lead risk assessment certificates, and development, implementation and enforcement of additional work practice requirements. Currently, there are 13 state certified lead inspectors and 66 state certified lead risk assessors available to perform lead inspections and lead risk assessments for this provision. Training for certified risk assessors includes prerequisite worker safety training (usually a 1-day course), a 3-day lead inspector course, and a 2-day lead risk assessor course. Additional education and experience prerequisites also exist. Currently, there are 3 accredited lead (Pb) inspector and lead (Pb) risk assessor course providers in Wisconsin available to prepare individuals for certification.

Program Revenues

The Department estimates that approximately 400 full-time people in the first year and 600 full-time people in the second year of program implementation will be trained and certified as risk assessors. Depending upon the level of complexity, an inspection takes approximately 4-8 hours to complete. It is projected that each risk assessor working full time (48 weeks) will complete approximately 240 risk assessments per year.

The Department of Administration report of households by tenure, income group and age of occupied unit, estimates that there are approximately 480,000 pre-1978 rental structures that could be expected to request at least one lead inspection. It is unknown at this time what percentage of these rental structures would qualify for lead-free status. Units that pass inspection will be issued a lead certificate and registered with the Department. The registration fee is expected to be \$50 for a certificate of lead-free status and \$25 for a certificate of lead-safe status. It is estimated that in the first two years of program implementation approximately 15% of the certificates issued will be lead-free and 85% will be lead-safe. Revenues for certificates cannot be accurately estimated due to the lack of information regarding the administrative rules for re-inspection and other requirements.

The annual certification (licensure) fee for risk-assessors is \$175. This results in an estimated increase in program revenues of \$70,000 and \$105,000 in years one and two of program implementation. In addition, these assessors will be employed by companies, which will be required to pay for a \$50 annual company certification fee. These company fees will generate an estimated \$12,500 and \$20,000 in program revenues for the first two years of program implementation. The Department also expects to increase the number of licenses for the lead abatement supervisors and workers. However, no reliable fiscal estimate can currently be determined.

Lead Certification Program Staff Annual Costs

The Department estimates a total of 9.5 FTE positions will be necessary to administer the program. The estimated total annual cost of these positions is \$478,300. Of the total 9.5 FTE positions, 4.5 FTE are current staff members of the Department. However, the increase in duties will also necessitate 5.0 FTE new positions. The estimated total annual cost for these new positions is \$220,700. Descriptions of the new positions are summarized below. A table summarizing the fiscal effects of all the positions can be found at the end of this fiscal estimate.

- **1 FTE Regulatory Specialist 3** – This position will be responsible for coordinating the activities of the staff who enforce certification (licensure), work-site work practices, and issuance of lead risk assessment certificates. This position will also take the lead in promulgating applicable Wisconsin Administrative Codes. Many of these duties are currently shared by other staff, who will then be freed up to take on the additional enforcement and staff activities that are needed to support the proposed requirements.
- **1 FTE Environmental Health Specialist, Senior** – This position will be responsible for providing statewide verification of the accurate issuance of certificates, work practice compliance activities, complaint investigations and technical assistance.
- **1 FTE Regulatory Specialist 2** – This position will be responsible for monitoring the lead risk assessment certificate database, comparing it against the property database for compliance, and issuing notices of noncompliance when a required certificate is not on file. It is assumed in this estimate that residential property owners will choose not to undergo an assessment. It is assumed position will also provide support to other enforcement activities.
- **2 FTEs Program Assistant 2** – These positions will be responsible for processing certification (licensure) applications of new industry professionals, e.g., additional inspectors and risk assessors. In addition, they will be responsible for entering certificate information into a certificate database, to be developed, and for resolution of errors in the data.

Other Annual Costs

The Department estimates other annual costs to be approximately \$200,000. This includes maintenance and modification of the database registry (\$50,000), staff travel expenses (\$50,000), laboratory testing expenses (\$50,000), and postage, technical equipment and other program necessities (\$50,000).

One-time Costs

The Department anticipates two major one-time costs necessary to implement the program. Because these start-up costs will occur before collection of revenues, it is assumed that these expenses will be funded from general purpose revenues (GPR).

The first major one-time cost is modification and migration of the existing database system to accommodate increased data analysis and comply with state database software standards. The

estimated cost of these activities is \$520,000. A detailed summary can be found at the end of this fiscal estimate.

In addition, the Department estimates that 7.75 FTE will need to be hired one year before implementation of the program. This will be necessary to comply with directives relating to development and writing of administrative rules, start-up of the database, training of new employees and other necessary start-up functions. Because this activity will occur before the collection of new program revenues, this expense must be paid with start-up funds. The estimated total cost of program staff for these activities is \$403,900. A detailed summary can be found at the end of this fiscal estimate.

Annual Cost of Program Staff - AB 806

Annual Cost of Existing staff to be Transferred

Classification	FTE	\$/hr	Salary	Fringe	S & S	Rent	Int		Total	One-time
							Services			
Section Chief	0.50	\$ 21.99	\$ 22,869	\$ 8,141	\$ 600	\$ 1,000	\$ 1,550	\$ 1,550	\$ 34,160	\$ -
Public Health Educator	0.50	\$ 20.73	\$ 21,556	\$ 7,674	\$ 600	\$ 1,000	\$ 1,550	\$ 1,550	\$ 32,380	\$ -
Training Officer 3	0.50	\$ 20.33	\$ 21,145	\$ 7,528	\$ 600	\$ 1,000	\$ 1,550	\$ 1,550	\$ 31,823	\$ -
Regulatory Specialist 3	0.50	\$ 18.78	\$ 19,528	\$ 6,952	\$ 600	\$ 1,000	\$ 1,550	\$ 1,550	\$ 29,630	\$ -
Program Assistant 3	0.50	\$ 11.37	\$ 11,829	\$ 4,211	\$ 600	\$ 1,000	\$ 1,550	\$ 1,550	\$ 19,190	\$ -
Environmental Health Specialist-Sr	1.00	\$ 17.74	\$ 36,905	\$ 13,138	\$ 1,200	\$ 2,000	\$ 3,100	\$ 3,100	\$ 56,344	\$ -
Environmental Health Specialist-Sr	1.00	\$ 16.92	\$ 35,194	\$ 12,529	\$ 1,200	\$ 2,000	\$ 3,100	\$ 3,100	\$ 54,023	\$ -
Total	4.50		\$ 169,026	\$ 60,173	\$ 5,400	\$ 9,000	\$ 13,950	\$ 13,950	\$ 257,549	\$ -

Annual Costs for New Staff

Classification	Approp	FTE	\$/hr	Salary	Fringe	S & S	Rent	Int		Total	One-time
								Services			
Reg Spec- 3		1.00	\$ 16.05	\$ 33,388	\$ 11,886	\$ 1,200	\$ 2,000	\$ 3,100	\$ 3,100	\$ 51,574	\$ 4,800
Reg Spec- 2		1.00	\$ 13.71	\$ 28,515	\$ 10,151	\$ 1,200	\$ 2,000	\$ 3,100	\$ 3,100	\$ 44,966	\$ 4,800
Environmental Health Specialist-Senior		1.00	\$ 16.92	\$ 35,200	\$ 12,531	\$ 1,200	\$ 2,000	\$ 3,100	\$ 3,100	\$ 54,031	\$ 4,800
Prog Assist -2		2.00	\$ 10.21	\$ 42,461	\$ 15,116	\$ 2,400	\$ 4,000	\$ 6,200	\$ 6,200	\$ 70,177	\$ 9,600
Total		5.00		\$ 139,564	\$ 49,685	\$ 6,000	\$ 10,000	\$ 15,500	\$ 15,500	\$ 220,749	\$ 24,000

One-time Costs of Database Development :

Development of database program:	1,500 function points x \$300 =	\$450,000
Additional hardware:	1 high production laser printer x \$3,500 =	\$ 3,500
	1 flatbed scanner x \$1,000	\$ 1,000
	1 color inkjet printer x \$500	\$ 500
	7 replacement work stations x \$4,000 =	\$ 28,000
	5 new work stations x \$4,000 =	\$ <u>20,000</u>
	Hardware total	\$ 53,000
Additional software:	10 licenses on special software x \$500	\$ 5,000
Training:	20 certificate entry training sessions x \$600	\$ 12,000
Total database-related costs:		<u>\$520,000</u>

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # - 4539/1

Admin. Rule #

INTRODUCTION # AB 806

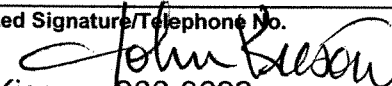
Subject
 Changes to lead poisoning prevention statutes.

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 See Narrative**

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ <u>SEE NARRATIVE</u>	\$ _____
NET CHANGE IN REVENUES	\$ <u>SEE NARRATIVE</u>	\$ _____

Prepared By: / Phone # / Agency Name Richard T. Chao / 267-0356 DHFS/OSF	Authorized Signature/Telephone No.  John Kiesow, 266-9622	Date 3-13-00
--	---	-----------------

PERRY, LERNER, QUINDEL & SAKS, S.C.

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BARBARA ZACK QUINDEL
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FAX 414/272.7450JOANNE JACOBSON BURNS
PARALEGALWENDY S. BAAKE
OFFICE MANAGER

March 13, 2000

Senator Gary R. George
Room 118 South, State Capitol
Madison, WI 53702-7882
By Fax to 608-266-7381

Senator Robert Jauch
Room 313 South, State Capitol
Madison, WI 53702-7882
By Fax to 608-266-3580

Senator Chuck Chvala
Room 211 South, State Capitol
Madison, WI 53702-7882
By Fax to 608-266-5087

Re: *AB 806 and SB 232 -- lead paint hazards*

Dear Senators George, Jauch and Chvala,

I am writing to advise you of my concerns about the companion legislation, Assembly Bill 806 and Senate Bill 232, which would repeal and amend provisions in chapter 254, Stats., regarding the reduction of residential lead paint hazards and a grant of immunity to landlords holding certificates of lead-free or lead-safe housing. I have reviewed the bill and substitute amendments, as well as the Legislative Fiscal Bureau's report on the bill, dated March 7, 2000. I represented the plaintiff in *Peace v. Northwestern Nat'l Ins. Co.*, and have some familiarity with the issues addressed by this proposed legislation.

I am writing to urge the Senate to delay consideration of AB 806/SB 232 until the next legislative term so that its effects may be studied further to ensure the greatest protection is extended to Wisconsin's many children victims of residential lead poisoning. Because this bill provides an unusually broad grant of immunity to landlords, while making major changes in residential lead poisoning prevention efforts without clear and stringent standards, it would benefit from more extensive study of its implications and greater public awareness and debate.

Specifically, the provision of a six-month lead-safe certification, without the requirement of window unit abatement, poses a potentially dangerous situation to children. There is no real debate in the medical and scientific literature that windows -- including especially the frames, jambs, and sills -- with lead paint on their surfaces or subsurfaces provide the site of greatest lead exposure to young children. When windows are raised and lowered, the friction of the surfaces

Senator Gary George
Senator Robert Jauch
Senator Chuck Chvala
Re: AB 806
March 13, 2000
Page 2

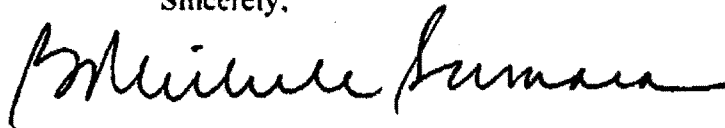
causes paint chips and dust to form and be distributed into the residential atmosphere. The literature reveals that even solid, unchipped paint -- which could meet the requirements for lead-safe certification -- releases particulate matter from the friction of the window surfaces being raised and lowered, in the course of normal, daily activity.

It would be very unfortunate if the State of Wisconsin were to sanction a broad grant of immunity from suit to landlords with "lead-safe" premises, which nevertheless have unabated windows. During the six-month duration of a lead-safe certificate, in which, pursuant to this legislation, a landlord would enjoy statutory immunity, lead hazards could develop in the course of normal, daily activity, by the friction of windows simply being raised and lowered.

Further, the grant of immunity to landlords provided by this bill is strikingly without legal safeguards for potential lead poisoned plaintiffs, such as a rebuttable presumption. Such a presumption of immunity would maintain and promote the intent of this legislation, while providing a safeguard for the rights and interests of the children potentially affected by the negligence of their landlords and the state of their housing.

Thank you for your consideration of this request for additional study of the potential effects of a sweeping grant of immunity to residential landlords contained in AB 806 and SB 232.

Sincerely,



B. Michele Sumara

cc: Senator Brian Burke	Fax 608-267-0274
Senator Alberta Darling	Fax 608-267-0588
Senator Richard Grobschmidt	Fax 608-266-7483
Senator Gwendolynne S. Moore	Fax 608-267-2353
Senator Peggy A. Rosenzweig	Fax 608-267-0367
Representative Spencer Coggs	Fax 608-266-7038
Representative Antonio Riley	Fax 608-266-7038



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: March 9, 2000

TO: INTERESTED LEGISLATORS AND OTHER INTERESTED PERSONS

FROM: Pam Shannon, Senior Staff Attorney

SUBJECT: Assembly Substitute Amendment 2 to Assembly Bill 806, Relating to Lead-Bearing Paint Hazards

This memorandum describes the provisions of Assembly Substitute Amendment 2 to 1999 Assembly Bill 806, which relates generally to lead-bearing paint hazards.

On March 7, 2000, the Joint Committee on Finance introduced Assembly Substitute Amendment 2, by unanimous consent, adopted the Substitute Amendment on a vote of Ayes, 16; Noes, 0, and recommended passage of Assembly Bill 806, as amended, also on a vote of Ayes, 16; Noes, 0.

Assembly Substitute Amendment 2, with significant modifications, is based on 1999 Senate Bill 232, which is the product of the Joint Legislative Council's Special Committee on Lead Poisoning Prevention and Control, chaired by Senator Robert Jauch.

A. CURRENT LAW

Under current law, the Department of Health and Family Services (DHFS) is required to develop and implement a comprehensive statewide lead poisoning prevention and treatment program. Among other things, DHFS may promulgate rules governing a number of activities relating to lead poisoning or lead exposure, prevention and treatment. Before promulgating these rules, DHFS must consult with a technical advisory committee that includes representatives from local health departments, the housing industry, health professions and persons who are certified to perform or supervise lead hazard reduction or lead management activities. Also under current law, a city, village, town or other political subdivision may enact and enforce ordinances that establish systems of lead poisoning or lead exposure control with the same or higher standards than those specified under the DHFS program.

B. ASSEMBLY SUBSTITUTE AMENDMENT 2

1. Legislative Findings and Purpose

~~Assembly Substitute Amendment 2~~ ^{The bill} states that the Legislature finds that the most common cause of childhood lead poisoning is ingestion of lead-contaminated dust and chips from lead-bearing paint and that even low blood lead levels can cause significant nervous system problems for young children. The Substitute Amendment further states that the Legislature encourages property owners to address the problems associated with lead-bearing paint by bringing their properties into compliance with applicable state standards. The Legislature finds that an appropriate method to so encourage property owners is to hold them not liable with respect to a person who develops lead poisoning or lead exposure in the property if they meet certain requirements. The Substitute Amendment states that these standards and this restriction on liability will reduce the exposure of children and others to lead-bearing paints, improve the quality of the state's housing stock and result in greater availability of insurance coverage for lead hazards.

2. Immunity From Liability for Lead Poisoning or Lead Exposure

Assembly Substitute Amendment 2 provides that a property owner and his or her employes and agents are immune from civil and criminal liability and may not be subject to agency administrative proceedings (other than for the enforcement of rules relating to lead poisoning promulgated by DHFS) for their acts or omissions related to lead poisoning or lead exposure, if at the time the poisoning or exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit. There are five exceptions to this grant of immunity including, for example, where the owner or his or her employe or agent obtained the certificate by fraud. The standards that must be met in order to obtain a certificate are discussed in item 3. a., below.

The Substitute Amendment provides that the grant of immunity cannot be interpreted or applied in any manner to impair the right of a municipality to enforce its ordinances. This means that while a property owner only has to meet a single statewide set of standards in order to receive a certificate and obtain immunity from liability, the person may nonetheless be subject to the penalties or injunctive provisions of a municipal ordinance governing lead poisoning or lead exposure control.

Temporary immunity is provided to owners and their employes and agents for acts or omissions related to lead poisoning or lead exposure that occur during the first 30 days after the owner acquires a dwelling or unit, unless the poisoning or exposure results from a lead hazard created by the owner, employe or agent. However, this immunity only applies if the owner obtains a certificate of lead-free status or lead-safe status for the dwelling or unit and the person issuing the certificate certifies that the property was in compliance with the standards to obtain the certificate before that 30-day period ended.

This immunity is extended for an additional 60 days if, during the initial 30-day period, the owner or his or her employe or agent has done one of the following with respect to the

property: (a) completed a lead investigation report or entered into a contract for a lead investigation; (b) entered into a contract for lead hazard reduction; (c) registered for a course under s. 254.179 (1) (e); or (d) received certification to perform or supervise lead hazard reduction or a lead management activity. However, this immunity only applies if the owner obtains a certificate of lead-free status or lead-safe status for the dwelling or unit and the person issuing the certificate certifies that the property was in compliance with the standard to obtain the certificate before that 60-day period ended.

If an owner receives written notice from DHFS or a local health department that a child under age six residing in the dwelling or unit has an elevated blood lead level, the owner must obtain a certificate of lead-free or lead-safe status in a timely manner, based on the reasonable availability of lead risk assessors or other certified persons and on the time required for the issuance of a certificate of lead-free or lead-safe status. "Elevated blood lead level" is defined as a level of lead in the blood that is either 20 or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test or 15 or more micrograms per 100 milliliters of blood, as confirmed by two venous blood tests performed at least 90 days apart.

3. Rule Requirements

Assembly Substitute Amendment 2 provides that after reviewing lead-related municipal ordinances and in consultation with the technical advisory committee, DHFS shall, by use of a research-based methodology, promulgate as rules all of the following:

- a. The standards for issuance of a certificate of lead-free status or a certificate of lead-safe status, the procedures by which such certificates may be issued or revoked and the period of validity of the certificates.
- b. A mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead-free or lead-safe status is issued.
- c. The requirements for a course of up to 16 hours that a property owner or his or her employe or agent may complete in order to receive certification of completion and the scope of lead investigation and lead hazard reduction activities that the owner, employe or agent may perform following certification, to the extent consistent with federal law, that are preliminary to activities and standards required to obtain a certificate of lead-free or lead-safe status.

The DHFS must submit the proposed rules to the Legislative Council Staff no later than the first day of the seventh month after publication of this act. In submitting the rules, DHFS must include a summary of the differences between the standards developed by DHFS and the standards under a similar ordinance of the City of Milwaukee. Also, DHFS must review these rules by January 1, 2003 and every two years thereafter and promulgate changes to the rules if necessary in order to maintain consistency with federal law.

The Substitute Amendment requires that the membership of the DHFS rules technical advisory committee include advocates for persons at risk of lead poisoning.

4. DHFS Lead Investigation

Under Assembly Substitute Amendment 2, if DHFS is notified that a child under age six who occupies a dwelling or premises has an elevated blood lead level, DHFS must conduct a lead investigation of the dwelling or premises or ensure that such an investigation is conducted. The Substitute Amendment defines "lead investigation" as a measure or set of measures designed to identify the presence of lead or lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media. DHFS must notify the occupant or his or her representative of the results of any lead investigations conducted and any action taken to reduce or eliminate the lead hazard. A certified lead risk assessor or other person certified by DHFS who conducts an investigation must conduct the investigation and issue a report in accordance with DHFS rules and, if the report indicates that the dwelling or premises meets criteria for issuance of a certificate of lead-free or lead-safe status, issue the appropriate certificate. DHFS may promulgate rules governing lead hazard reduction that are consistent with federal law.

5. Sampling and Testing

Assembly Substitute Amendment 2 provides that sampling and testing of dwellings, units of dwellings or premises for the presence of lead-bearing paint or a lead hazard is not required before lead hazard reduction activities are conducted if the presence of lead-bearing paint or a lead hazard is assumed and the lead hazard reduction activities are performed in a lead-safe manner.

6. Report by Office of the Commissioner of Insurance

Assembly Substitute Amendment 2 directs the Office of the Commissioner of Insurance (OCI) to review the cost and availability of insurance in the private market that provides residential property owners with liability coverage for lead-bearing paint hazards. On the basis of the review, OCI must prepare a report to the Legislature, by October 1, 2002, on whether insurance providing residential property owners with liability coverage for lead-bearing paint hazards is sufficiently affordable and available in the private insurance market.

If OCI determines and reports that such insurance is not either sufficiently affordable or sufficiently available, OCI must submit drafting instructions to the Legislative Reference Bureau for proposed legislation to create a state residential lead liability fund and include this proposed legislation in its 2003-05 biennial budget request.

7. Admissibility of Lead Dust Test Results

Assembly Substitute Amendment 2 provides that the results of a test for the presence of lead in dust are not admissible in a civil or criminal action or an administrative proceeding unless the test was conducted by a person certified for this purpose by DHFS.

8. Fees

Assembly Substitute Amendment 2 authorizes DHFS to impose a fee of \$50 for issuance of a certificate of lead-free status and a fee of \$25 for issuance for a certificate of lead-safe status. However, the fees may not exceed the actual costs of issuance of certificates and of maintaining the registry. The department must review the fees every two years and adjust the fees to reflect the actual costs.

9. Funding

Assembly Substitute Amendment 2 authorizes DHFS to request a supplement of general purpose revenues (GPR) from the Joint Committee on Finance (JCF) to pay initial costs of establishing a registry of properties that are issued certificates of lead-free or lead-safe status. To request this supplement, DHFS must submit a plan to JCF to expend not more than \$520,000 for fiscal year 2000-01. The Substitute Amendment increases the JCF's program supplements appropriation by \$520,000 GPR for fiscal year 2000-01 for this purpose. In addition, the Substitute Amendment provides for an increase in the appropriation to DHFS by \$215,000 GPR for fiscal year 2000-01 to provide 5.0 FTE positions on January 1, 2001, for activities relating to certification for the performance of lead paint hazard reduction.

The Substitute Amendment requires the Secretary of Administration to transfer to the general fund an amount of funding equivalent to the GPR funding provided in the Substitute Amendment (\$735,000), once the secretary determines that sufficient program revenues are available from the fees paid for certificates of lead-free and lead-safe status and lead worker certifications to fund DHFS's ongoing administrative costs for the program.

The Substitute Amendment directs DHFS, in submitting its 2001-03 biennial budget request, to submit a proposal, including a request for additional funding, to conduct lead paint hazards outreach and abatement activities.

The Substitute Amendment directs the Secretary of Administration to allocate all available oil overcharge funds that have not been approved for expenditure as of the effective date of the bill and all accruing interest earnings on those funds for energy efficient window replacements in rental properties owned by persons who are seeking a certificate of lead-free or lead-safe status. As of March 7, 2000, it is estimated that there is approximately \$300,000 in unobligated, one-time available oil overcharge funds.

10. Proposal on Rehabilitation of Rental Property

Assembly Substitute Amendment 2 requires the Wisconsin Housing and Economic Development Authority, as part of its 2001-03 biennial budget request, to submit a proposal to rehabilitate rental property for low-income persons in Wisconsin.

II. Effective Dates and Initial Applicability

Under Assembly Substitute Amendment 2, a number of provisions take effect on the day after publication. Several provisions, including those relating to immunity from liability, have a 16-month delayed effective date. The Substitute Amendment provides that the immunity provisions first apply to lead poisoning or lead exposure that occurs on the effective date.

If you would like any further information on this Substitute Amendment, please feel free to contact me at the Legislative Council Staff offices.

PS:wu:ksm:rv;wu

March 1, 2000

Rep. John Gard
Co-Chairman, Joint Committee on Finance
P.O. Box 8952
Madison, WI 53708

Re: Lead Paint Hazard (AB 806)

Dear Chairman Gard:

The Assembly Housing Committee recently recommended passage of AB 806, a very important piece of legislation regarding lead paint hazards in residential dwellings. AB 806 is now pending before the Joint Finance Committee. I am writing to ask for your help in scheduling this bill for consideration by the committee as soon as possible.

Wisconsin's housing and real estate industry simply cannot wait until January 2001 for this legislation. Due to a recent Wisconsin Supreme Court ruling, property owners in Wisconsin now face substantial risk of litigation regarding lead paint poisoning. AB 806 is the product of many hours of work between Realtors, apartment owners, public health officials, city of Milwaukee officials and the Department of Health and Family Services. All of who support the bill as amended. AB 806 provides incentives for property owners to remove or control lead paint hazards in their property by providing limited immunity for those who act to remediate lead paint problems.

It is late in the legislative session and we understand you and your committee are under substantial pressure to act on many, many bills. However, this legislation is a significant agreement between significant groups over a very significant public policy issue. AB 806 protects innocent children as well as innocent property owners. Both need your help!

AB 806 can become a national model for addressing the issue of lead paint poisoning of children. Our association considers passage of AB 806 as it's top legislative priority for the remainder of this session and we ask for your help in passing this important bill. Please don't hesitate to call me with any questions, comments or suggestions. As always, we look forward to working with you.

Sincerely:

Michael Theo, CAE
Vice President for Public Affairs

DRAFT

March 3, 2000

Secretary Joseph Leean
Department of Health and Family Services
P.O. Box 7850
Madison, WI 53707

Re: Lead Based Paint Hazards

Dear Secretary Leean:

As you know, over the past several months our association has been engaged in discussions with diverse parties regarding state legislation to address the problem of lead based paint (LBP) in residential dwellings. These discussions were successfully concluded with the development and adoption of substitute amendments to AB 806 and SB 232.

I have been asked by one of the participants in these discussions, the City of Milwaukee, to communicate to you our support for a particular provision of the amended bill. Section 26 of the substitute amendment requires your department to review lead paint ordinances of cities, towns and villages before promulgating administrative rules defining the "lead free" and "lead safe" standards. (s. 254.179 (1), page 11, line 14 of the substitute amendment.)

This provision is intended to ensure DHFS consider the experiences of municipal ordinances, like Milwaukee's lead paint ordinances, when the department develops the statewide standards. Reviewing existing ordinances throughout Wisconsin will provide DHFS and its lead paint task force with data necessary to create standards that balance cost with effectiveness. We believe this balance is necessary and achievable.

On behalf of the housing industry in Wisconsin, we look forward to working with you and your department, as well as the local public health departments like Milwaukee's, in developing and implementing standards that protect Wisconsin's innocent children and innocent property owners from the lead paint related problems.

Sincerely:

Wisconsin Realtors Association

Michael Theo, CAE
Vice President for Public Affairs



**702 N. High Point Road
Suite #202
Madison, WI 53717
608.824.0024 Fax 608.824.0002
Email: WiAptAssoc@aol.com**

March 8, 2000

Members of the Wisconsin Assembly
State Capitol
Madison, WI 53708

Re: Lead Paint Hazard (AB 806)

Dear Members:

The Assembly Housing Committee and the Joint Finance Committee recently sent AB 806, a very important piece of legislation regarding lead paint hazards in residential dwellings to the Assembly Floor for consideration on Thursday March 9th. I am writing to ask for your support in approving this lifeline of the rental housing industry.

Wisconsin's housing and real estate industry simply cannot wait until January 2001 for this legislation. Due to a recent Wisconsin Supreme Court ruling, property owners in Wisconsin now face substantial risk of litigation and liability exposure regarding lead paint poisoning. AB 806 is the product of many hours of work between Realtors, apartment owners, public health officials, city of Milwaukee officials and the Department of Health and Family Services. All of who have supported this bill. AB 806 provides incentives for property owners to remove or control lead paint hazards in their property by providing limited immunity for those who act to remediate lead paint problems.

It is late in the legislative session and you have been asked to act on many, many bills. However, this legislation is a significant agreement between several groups over a very significant public policy as well as a public health issue. AB 806 protects innocent children as well as innocent property owners. Both need your help!

AB 806 can become a national model for addressing the issue of lead paint poisoning of children. Our association considers passage of AB 806 as it's top legislative priority for the remainder of this session and we ask for your help in passing this important bill. Please don't hesitate to call me with any questions, comments or suggestions. As always, we look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Dennik".

Robert R. Dennik
Executive Director/Director of Governmental Affairs
Wisconsin Apartment Association



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

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Email: leg.council@legis.state.wi.us

DATE: March 9, 2000

TO: INTERESTED LEGISLATORS

FROM: Richard Sweet, Senior Staff Attorney

SUBJECT: LRBa1712/1, An Amendment to Assembly Substitute Amendment 2 to 1999 Assembly Bill 806 (Lead-Bearing Paint)

This memorandum summarizes the provisions of LRBa1712/1 (referred to in this memorandum as "the amendment"), an amendment to Assembly Substitute Amendment 2 to 1999 Assembly Bill 806. The bill relates to lead-bearing paint hazards. The following are the provisions of the amendment:

1. Assembly Substitute Amendment 2 states that if an owner of a dwelling or unit receives written notice from the Department of Health and Family Services (DHFS) or a local health department that a child under six years of age, who resides in the dwelling or unit, has an elevated blood lead level, the owner is required to obtain a certificate of lead-free status or a certificate of lead-safe status. The amendment provides that a certificate of lead-safe status obtained under that provision may not be for less than 12 months in duration.

2. Assembly Substitute Amendment 2 provides that an owner of a dwelling or unit and his or her employees and agents are immune from liability for their acts or omissions related to lead poisoning or lead exposure that occurred during the first 30 days after the owner acquires the unit or dwelling; an additional 60 days of immunity is provided if the owner undertakes one of four activities specified in the substitute amendment.

Under Assembly Substitute Amendment 2, the immunity only applies during the first 30 days if the owner obtains a certificate and the person issuing the certificate certifies that the property was in compliance with state standards before that 30-day period ended. Also, immunity applies for an additional 60 days only if the owner obtains a certificate and the person issuing the certificate certifies that the property was in compliance with the standards before that 60-day period ended.

The amendment modifies the above language to delete the provision requiring that the owner be in compliance with the standards within the 30-day period. In addition, in order to have the immunity apply during the additional 60 days, the owner must obtain a certificate and

the owner must show by clear and convincing evidence that the property was in compliance with the standards by the end of the 90-day period and that the owner obtained the certificate in a reasonable amount of time following the owner's acts to achieve compliance.

3. Assembly Substitute Amendment 2 modifies the composition of the current technical advisory committee that advises DHFS on proposed rules relating to lead-bearing paint hazards. Under the substitute amendment, an advocate for persons at risk of lead poisoning is included on the technical advisory committee. Under the amendment, a resident of a first class city must be included on the technical advisory committee.

4. Assembly Substitute Amendment 2 requires DHFS to promulgate standards that a premises, dwelling or unit must meet for issuance of a certificate of lead-free status or a certificate of lead-safe status. The amendment adds language stating that the goal of these standards is long-term lead hazard reduction.

5. Assembly Substitute Amendment 2 requires DHFS to promulgate rules that specify the period of validity of certificates. The amendment specifies that no more than two successive certificates of lead-safe status that are less than one year in duration may be issued. In addition, the amendment specifies if the person again applies for a certificate of lead-safe status, the certificate must be for at least 12 months. After that, if the person applies for a certificate of lead-safe status of less than 12 months in duration, the person must provide DHFS with a reason for the necessity for issuance of a certificate of that duration. If the person again does so, the person must provide DHFS with clear and convincing evidence of the necessity for issuance of a certificate of that duration.

6. Assembly Substitute Amendment 2 provides for the issuance of certificates of lead-free status and certificates of lead-safe status. The amendment requires that DHFS notify local health agencies at least quarterly of properties in their jurisdiction that have received the certificates.

7. Assembly Substitute Amendment 2 provides that the Wisconsin Housing and Economic Development Authority in submitting its 2001-03 biennial budget bill request, must submit a proposal to rehabilitate rental property for low-income persons in Wisconsin. The amendment deletes the words "to rehabilitate" and substitutes "for lead-hazard reduction activities for and rehabilitation of."

8. Assembly Substitute Amendment 2 requires the Secretary of Administration to allocate all oil overcharge restitution funds and interest on those funds for energy programs to provide energy efficient window replacements in rental properties owned by persons who seek a certificate of lead-free status or a certificate of lead-safe status. The amendment provides that the oil overcharge restitution funds and interest must be used for the reduction of lead paint hazards in dwellings that is done to allow for, and in conjunction with, energy conservation activities. The amendment also provides that in awarding the funds, priority must be given to projects that emphasize comprehensive lead removal plans for rental properties.

Feel free to contact me if I can be of further assistance.



Legislative Fiscal Bureau

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March 7, 2000

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Substitute Amendment 1 to Assembly Bill 806: Lead-based Paint Hazard Reduction

Assembly Bill 806 was introduced on February 25, 2000 and referred to the Committee on Housing. On February 28, 2000, that Committee recommended Assembly Substitute Amendment 1 to AB 806 for passage. The substitute amendment was then referred to the Joint Committee on Finance.

BACKGROUND

Recent Court Decisions. Under current state law, rental property owners do not have a responsibility to eliminate lead hazards from their properties unless they receive a court order or an order from the Department of Health and Family Services (DHFS) or a local public health department that states that an occupant in the dwelling has lead poisoning or lead exposure and requires that the lead hazard be reduced or eliminated. A recent Wisconsin Supreme Court case has held that rental property owners have a responsibility to test for lead hazards in some cases, which could expose owners to civil liability if the owners become aware of the presence of a lead hazard through the test and do nothing or do not do enough to reduce or eliminate that hazard.

Antwaun A. v. Heritage Mutual Insurance Co., et al. In July, 1999, the Wisconsin Supreme Court, in its ruling in *Antwaun A. v. Heritage Mutual Insurance Co., et al.*, held that landlords have a common law duty to test their residential property for lead paint when peeling and chipping paint occur. The Court stated that "this test is nothing more than a specific application of the general duty a landlord has to use ordinary care under the circumstances to avoid exposing persons lawfully on the property from an unreasonable risk of harm." The *Antwaun A.* decision did not address what

responsibility these property owners have if, upon testing their property, they identify levels of lead which are considered harmful to residents.

According to the National Center for Lead-Safe Housing, the *Antwaun A.* decision is unique among the states because it held that landlords should foresee the danger that peeling and chipping paint can pose. In other states where similar issues have been raised, the courts have found that landlords may be liable if the landlord knows of the presence of lead. The *Antwaun A.* decision suggests that rental property owners can be liable even if they are unaware of the presence of lead, since they should know of the potential dangers and test for its presence.

While rental property owners are often exposed to liability for a variety of potential dangers on their property, for many of these potential dangers, this liability would be covered by the owner's homeowner's insurance policy. However, in a separate case, the Supreme Court has held that these policies do not have to include lead-based paint hazards in their coverage if they include a pollution exemption clause.

Kevin Peace v. Northwestern National Insurance Co., et al. The issue in *Kevin Peace* was whether personal injury claims arising from the ingestion of lead in flaked or chipped paint or dust from paint are covered by a property owner's homeowner's insurance policy or whether flaked or chipped paint or dust from paint is considered a pollutant and therefore covered under a policy's pollution exclusion clause.

In its findings, the Supreme Court concluded that "lead present in paint in a residence is a pollutant...[and]...that when lead-based paint either chips, flakes or deteriorates into dust or fumes, that action is a discharge, dispersal, release, or escape within the meaning of terms in the insurance policy." Therefore, the court held that "the pollution exclusion clause in...[the *Peace*]...case bars the property owner's claim against its insurer for defense against a suit for bodily injuries arising from lead-based paint that chips, flakes or deteriorates to dust on his property." As a result, most homeowner's insurance policies are not required to provide coverage to a rental property owner for personal injury claims on the basis of lead poisoning or exposure due to chipping, peeling or flaking paint.

DHFS Responsibilities. Under Chapter 254 of the statutes, DHFS is responsible, and may promulgate administrative rules for, a number of lead-based paint related purposes.

Comprehensive Statewide Lead Poisoning and Lead Exposure Program. Under current law, DHFS is required to develop and implement a comprehensive statewide lead poisoning and lead exposure prevention and treatment program. In its program, DHFS is required to include: (a) lead poisoning or lead exposure prevention grants; (b) a childhood lead poisoning screening requirement; (c) requirements for care coordination and follow-up for children with lead poisoning or lead exposure; (d) DHFS response to reports of lead poisoning or lead exposure; (e) lead inspection requirements; and (f) certification, accreditation and approval requirements for training programs and professionals involved in lead hazard reduction activities. For a number of these requirements, DHFS may promulgate administrative rules after consulting with a technical advisory committee. This committee must include representatives from local health departments, the

housing industry, the medical or public health professions and individuals certified to perform or supervise lead hazard reduction or lead management activities.

Lead Poisoning or Exposure Screening. DHFS may promulgate rules requiring the following institutions and programs to obtain written evidence that each child under six years of age participating in the institution or program has obtained a lead screening, or is exempt from obtaining one: (a) birth-to-three; (b) Head Start; (c) daycare providers; (d) school-based early childhood programs; (e) state-funded healthcare programs that provide services to children under six years of age; and (f) other institutions or programs that provide services to children under six years of age. Although there are no administrative rules in effect relating to this provision, under federal law, children enrolled in Medicaid or the women, infant and children (WIC) supplemental food program are required to be screened for lead poisoning or lead exposure annually up to age two or older if it is their first screening.

Lead Hazard Reduction Activities. DHFS may promulgate rules governing lead hazard reduction conducted after June 30, 1997, if the Department determines that the rules are not preempted by federal law. The rules may include: (a) a definition of the levels of lead from various sources and media which constitute an imminent lead hazard or a lead hazard; (b) a requirement that the owner or operator of a dwelling or premises provide lead hazard reduction to eliminate any imminent lead hazard; (c) a priority-based schedule of classes of dwellings and premises containing a lead hazard and of the dates by which owners or operators of these classes of dwellings and premises must undertake lead hazard reduction; (d) acceptable lead hazard reduction methods for lead in various media; (e) requirements for containment and cleanup during the conduct of lead hazard reduction, reinspection of dwellings or premises having had lead hazard reduction; (f) requirements that lead hazard reduction be carried out to protect the health and safety of occupants, neighbors and the public, including requirements, where necessary, that occupants be restricted to areas of the dwelling that do not contain a lead hazard or be relocated during hazard reduction activities; and (g) requirements for the safe disposal of lead-contaminated waste. Currently, there are no administrative rules in effect relating to the above provisions.

Response to Notice of Lead Poisoning or Exposure. If DHFS receives notice that an occupant of a dwelling who is under six years of age has blood lead poisoning or lead exposure, DHFS may request permission to enter the dwelling and conduct a lead inspection. If the owner of the dwelling refuses admission, DHFS may seek a warrant to inspect the dwelling or premises. If a lead hazard is present, DHFS may do any of the following: (a) post a notice that a lead hazard is present on the property; (b) inform the local health officer of the results of the inspection and provide recommendations to reduce or eliminate the lead hazard; (c) notify the occupant that a lead hazard is present and may constitute a health hazard; or (d) notify the owner of the presence of a lead hazard. DHFS may order the reduction or elimination of an imminent lead hazard within five days of the order's issuance and reduction or elimination of other lead hazards within 30 days of the order's issuance, with some exceptions. DHFS is required to give priority to eliminating lead hazards from dwellings in which children under six years of age diagnosed with lead poisoning or lead exposure reside. DHFS may delegate this authority to local public health departments.

Definitions. Under current law, lead poisoning or lead exposure means a level of lead in the blood of 10 or more micrograms per 100 milliliters of blood. A lead hazard means any substance, surface or object that contains lead and that, due to its condition, location or nature, may contribute to the lead poisoning or lead exposure of a child under six years of age. A lead inspection means the inspection of a dwelling or premises for the presence of lead, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

Funding for Lead Poisoning Prevention and Lead Abatement Activities. DHFS is budgeted \$1,004,100 GPR annually to fund lead poisoning or lead exposure prevention grants. Of this amount, \$879,100 is provided to local health departments to support the costs of childhood lead screening, care coordination and follow-up services to children under six years of age, including lead inspections, and costs of local health departments to enforce regulations relating to lead poisoning and lead exposure. The remaining funds, \$125,000, are provided to the Sixteenth Street Health Clinic in Milwaukee to fund lead screening and outreach activities.

DHFS also distributes approximately \$876,900 FED annually from a grant from the Centers for Disease Control and Prevention for childhood lead poisoning prevention. These funds are distributed to the City of Milwaukee, the City of Racine, the State Laboratory of Hygiene and the University of Wisconsin-Madison.

Additionally, the Department of Administration's Division of Housing (DOH) received a three-year, \$4.0 million grant from the U.S. Department of Housing and Urban Development (HUD) to conduct lead-based paint abatement activities in low and moderate income housing where a child is lead poisoned and/or areas known as high-risk.

The City of Milwaukee also received a three-year \$3.0 million grant from HUD to improve 1,000 rental units in order to be certified as lead-safe under the standards developed by the City of Milwaukee and to maintain those units over the course of the grant.

DHFS Lead Training Accreditation and Professional Certification Program. Under Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Environmental Protection Agency (EPA) was required to promulgate regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained. These regulations are required to ensure that training programs are accredited and that contractors engaged in lead-based paint activities are certified. A state may apply to the EPA to administer and enforce the standards, regulations and other requirements established by the EPA. DHFS applied to the EPA for such authorization and its Bureau of Occupational Health administers the lead training accreditation and professional certification program under this authorization.

DHFS is budgeted \$368,400 PR and an estimated \$440,700 FED in 1999-00 and \$491,800 PR and an estimated \$440,700 FED in 2000-01 and 3.0 PR and 5.0 FED positions for the lead accreditation and certification program. The program revenue funding is provided from fees paid by individuals seeking professional certifications as a lead inspector, risk assessor, supervisor,

worker, etc. The EPA provides a portion of the federal funding; the remainder is grant funding from the HUD.

Under administrative rule, individuals that meet the educational and training requirements, may be certified as a lead inspector, risk assessor, project designer, supervisor, worker or worker-homeowner. The fees for such certification range from \$25 for three years for the worker-homeowner to \$175 per year for the risk assessor or project designer. Revenues from these fees are used to support 3.0 PR positions and supporting administrative costs. As of February 21, 2000, there were 12 certified lead inspectors and 66 lead risk assessors employed in the private sector across the state. In addition, DHFS certifies 125 lead inspectors and risk assessors employed by government agencies across the state. There are currently three training programs accredited to provide training necessary for state certification.

SUMMARY OF ASA 1 TO AB 806

Immunity from Liability, Certificates of Lead-Free and Lead-Safe Status and Lead Investigations.

The substitute amendment would provide immunity from liability for certain property owners for their acts or omissions related to lead poisoning or lead exposure if, at the time that the lead poisoning or lead exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit. The substitute amendment establishes new procedures under which property owners can obtain certificates of lead-free status or lead-safe status. These provisions are described below.

Immunity from Civil and Criminal Liability. The substitute amendment would provide immunity from civil and criminal liability for an owner of a dwelling or unit of a dwelling, his or her employes and agents and exempts them from agency proceedings under Chapter 227 (other than the enforcement of DHFS rules relating to lead poisoning prevention) for their acts or omissions related to lead poisoning or lead exposure of a person who resides in, or has visited the dwelling or unit if, at the time that the lead poisoning or lead exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or the unit.

This immunity would not apply if it is shown by clear and convincing evidence that: (a) the owner or his or her employe or agent obtained the certificate by fraud; (b) the owner or his or her employe or agent violated a condition of the certificate; (c) during renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employe or agent created a lead-bearing paint hazard that was present in the dwelling or unit of the dwelling at the time that the lead poisoning or lead exposure occurred; (d) the owner or his or her employe or agent failed to respond in a timely manner to notification by a tenant, by DHFS or by a local public health department that a lead-bearing paint hazard (as defined by DHFS rule) might be present; or (e) the lead poisoning or lead exposure was caused by a source of lead in the dwelling or unit of the dwelling other than lead-bearing paint.

Temporary Immunity and Exception. The substitute amendment would provide temporary immunity for an owner of a dwelling or unit of a dwelling and his or her employes and agents for their acts or omissions related to lead poisoning or lead exposure that occur during the first 30 days after the owner acquires the dwelling or unit, except that this immunity would not apply to lead poisoning or lead exposure that results from a lead-bearing paint hazard created by the owner, his or her employe or agent.

Such immunity would be extended for an additional 60 days if the owner of the dwelling or unit of a dwelling or his or her employe or agent has done one of the following during that first 30-day period: (a) completed a lead investigation report or entered into a contract for a lead investigation with respect to the dwelling or unit; (b) entered into a contract for lead hazard reduction with respect to the dwelling or unit; (c) registered for a course that would permit the property owner to become certified to conduct certain lead investigations and hazard reduction activities; or (d) became certified to perform lead hazard reduction or lead management activities.

Certificates of Lead-Free and Lead-Safe Status. The substitute amendment would require an owner of a dwelling or unit of a dwelling who receives written notice from DHFS or a local public health department that a child under six years of age who resides in the owner's owner-occupied dwelling or unit or who resides in the owner's dwelling or unit under the terms of a rental agreement has an elevated blood lead level to obtain a certificate of lead-free status or certificate of lead-safe status for the affected dwelling or unit in a timely manner, based on the reasonable availability of lead risk assessors or other persons certified persons to conduct any necessary lead investigation or lead hazard reduction activities and based on the time required for issuance of a certificate of lead-free or lead-safe status. This requirement would not preclude DHFS or its agent from conducting a lead investigation or issuing an order that requires a reduction or elimination of an imminent lead hazard.

The substitute amendment would specify that, if a certified lead risk assessor (as defined by DHFS rule) or other certified lead worker conducts a lead investigation of a dwelling or premises, he or she must conduct the lead investigation and issue a report in accordance with rules promulgated by DHFS. If the report indicated that the dwelling met DHFS standards established by rule, the lead risk assessor would issue the appropriate certificate. The substitute amendment would repeal the Department's current authority to promulgate rules governing lead hazard reduction conducted after June 30, 1997, including all of the specified items that could be included in these rules. Instead, DHFS would be authorized to promulgate rules governing lead hazard reduction for dwellings and premises that DHFS determines are consistent with federal law.

DHFS would be authorized to impose fees for the issuance of a certificate of lead-free status and a certificate of lead-safe status of \$50 and \$25, respectively. These fees could not exceed the actual costs of issuance and of maintaining a registry of all premises, dwellings or units of dwellings for which certificates of lead-free and lead-safe status are issued. Revenue from these fees would be credited to a current PR appropriation to the Division of Public Health and could be expended for maintaining the registry. DHFS would be required to review these fees every two years and adjust the fees to reflect the costs of maintaining a registry.

A "certificate of lead-free status" is defined as a certificate issued by a certified lead risk assessor or other person certified to perform lead hazard reduction or lead management activities (including supervisors of such activities) that documents a finding by the assessor that a premises, dwelling or unit of a dwelling is free of lead-bearing paint as of the date specified on the certificate. A "certificate of lead-safe status" is defined as a certificate issued by a certified lead risk assessor or other person certified to perform lead hazard reduction or lead management activities (including supervisors of such activities) that documents that the assessor detected no lead-bearing paint hazards affecting the premises, dwelling or unit of the dwelling on the date specified on the certificate.

The substitute amendment defines an "elevated blood lead level" as a level of lead in blood that is either: (a) 20 or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test; or (b) 15 or more micrograms per 100 milliliters of blood, as confirmed by two venous blood tests that are performed at least 90 days apart.

DHFS Rules Relating to Issuance of Certificates of Lead-Free and Lead-Safe Status. The substitute amendment would require DHFS to promulgate rules, using a research-based methodology, after consulting with the technical advisory committee and reviewing lead-related municipal ordinances in the state.

These rules would include all of the following: (a) the standards for a premises, dwelling or unit of a dwelling that must be met for the issuance of a certificate of lead-free status or lead-safe status; (b) the procedures by which a certificate of lead-free status or lead-safe status may be issued or revoked; (c) a mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead-free or lead-safe status is issued; (d) the requirements for a course of up to 16 hours that a property owner or his or her employe or agent may complete in order to receive certification of completion and the scope of activities that these persons may perform following certification, to the extent consistent with federal law.

In addition, DHFS would issue rules that specify the period of validity of a certificate of lead-free or lead-safe status, including all of the following: (a) authorization for the certificate of lead-free status to remain in effect unless revoked because of erroneous issuance or because the premises, dwelling or unit of the dwelling is not free of lead-bearing paint, with the requirement that the rules specify that the face of the certificate would indicate that the certificate is valid unless revoked; and (b) the standards limiting the length of validity of a certificate of lead-safe status, including the condition of a premises, dwelling or unit of a dwelling, the type of lead hazard reduction activity that was performed and any other requirements that must be met to maintain certification, unless the certificate is earlier revoked because of erroneous issuance or because the premises, dwelling or unit of the dwelling is not safe from lead-bearing paint hazards, with the requirement that the rules specify that the face of the certificate would indicate the certificate's length of validity.

DHFS would be required to submit these proposed rules to the Legislative Council Staff no later than the first day of the seventh month after the bill's enactment.

By January 1, 2003 and every two years thereafter, DHFS would be required to review these rules and promulgate changes to the rules if necessary in order to maintain consistency with federal law.

DHFS Rules Relating to Safe Work Practices. The substitute amendment would authorize, but not require, DHFS to promulgate rules that set forth safe work practices that must be followed in the demolition of a building constructed before January 1, 1978, to avoid exposure by persons to lead hazards in the area of demolition.

Supersession of Municipal Ordinances. The substitute amendment would specify that nothing in the subchapter in Chapter 254 of the statutes relating to toxic substances may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for, or restrain the violation of, an ordinance relating to lead poisoning or lead exposure control.

Lead Investigations. The substitute amendment replaces current references to "lead inspection" with "lead investigation," which is defined as a measures or set of measures designed to identify the presence of lead or lead hazards, including the examination of painted or varnished surfaces, paint, dust, water and other environmental media.

The substitute amendment would require DHFS to conduct a lead investigation of a dwelling or premises or ensure that a lead investigation of the dwelling or premises is conducted, if DHFS is notified that an occupant of a dwelling or premises who is a child under six years of age has an elevated blood lead level. DHFS would be required to notify the occupant of the dwelling or premises or his or her representative of the results of any lead investigations conducted on or in the dwelling or premises and any actions taken to reduce or eliminate the lead hazard. However, DHFS could waive the requirement for cases in the City of Milwaukee.

Further, if DHFS issues an order that requires reduction or elimination of an imminent lead hazard, it would be required to conduct, or require a certified lead risk assessor or other person certified to conduct lead hazard reduction or lead management activities (including supervisors) to conduct an investigation, a check of work completed and dust tests for the presence of hazardous levels of lead to ensure compliance with the order.

Finally, the substitute amendment would delete requirements that any rules DHFS promulgates that establish procedures for conducting investigations meet, but not exceed, any requirements under regulations promulgated by the federal Environmental Protection Agency under s. 402 of the federal Toxic Substances Control Act.

Repeal Current DHFS Authority to Issue Rules Requiring Lead Inspections of Rental Property. The substitute amendment would repeal the Department's authority to promulgate rules requiring that, after June 30, 1997, owners or operators of rental or leased dwellings or premises have a lead inspection of the dwellings or premises if any part of the dwellings or premises was constructed before January 1, 1978, and if DHFS determines that the dwellings or premises in the class are likely to contain lead hazards. These rules could specify classes of dwellings or premises

based on the age, condition and location of the dwellings and premises, the age of any of the occupants of the dwelling and any other appropriate factors.

Certification and Accreditation Standards. The substitute amendment would repeal the requirement that rules promulgated by DHFS that would establish certification requirements for persons who perform lead hazard reduction activities and supervisors and requirements for accreditation of lead training courses and approval of lead instructors meet, but not exceed, EPA requirements promulgated under s. 402 of the federal Toxic Substances Control Act.

Membership on Technical Advisory Committee. The substitute amendment would require that advocates for persons at risk of lead poisoning be included on the technical advisory committee. DHFS is required to consult with this committee on proposed rules for the program. The committee currently includes representatives of: (a) local health departments that administer local lead programs; (b) the housing industry; (c) certified lead hazard workers; and (d) the medical or public health profession.

Sampling and Testing. The substitute amendment would specify that sampling or testing of dwellings, units of dwellings or premises for the presence of lead-bearing paint or a lead hazard is not required before lead hazard reduction activities are conducted if the presence of lead-bearing paint or a lead hazard is assumed and the lead hazard reduction activities are performed in a lead safe-manner.

Admissibility of Test Results. The substitute amendment would specify that the results of a test for the presence of lead in dust are not admissible during the course of a civil proceeding or an administrative proceeding unless the test was conducted by a person certified for this purpose by DHFS.

Legislative Findings and Purpose. The substitute amendment would express the following legislative findings.

First, a national task force on lead-based paint hazard reduction and financing appointed by the U.S. Department of Housing and Urban Development found that 1,700,000 children under six years of age have blood lead levels at or above the federally established level of concern. The task force also found that the most common cause of childhood lead poisoning is ingestion of lead-contaminated dust and chips from lead-bearing paint, and that the other significant cause is dust from bare lead-contaminated soil.

Second, high levels of lead in a child's blood can cause permanent nervous system damage and even relatively low blood lead levels can cause significant nervous system effects. Of 58,797 children who were screened in the state in fiscal year 1995-96, 11,170, or 19 percent, were newly identified as having blood lead levels that constitute lead poisoning or lead exposure.

Third, the Legislature encourages property owners to address the problems associated with lead-bearing paint by bringing their property into compliance with the applicable state standards and finds that an appropriate method to so encourage property owners is to hold them not liable

with respect to a person who develops lead poisoning or lead exposure in the property. The purpose of these standards and this restriction on liability is to reduce the exposure of children and others to lead-bearing paints, thereby substantially reducing the number of persons who develop lead poisoning or lead exposure. In addition, these standards and this restriction on liability will improve the quality of this state's housing stock and result in greater availability of insurance coverage for lead hazards.

State Residential Lead Liability Fund

Creation and Termination of the Fund. The substitute amendment would authorize the Office of the Commissioner of Insurance (OCI) to create a state residential lead liability fund ("the fund"). The fund would offer policies that insure residential property in Wisconsin against liability resulting from lead-bearing paint hazards if OCI makes a determination, as specified by rule, that insurance providing residential property owners with liability coverage for lead-bearing hazards is not either sufficiently affordable or sufficiently available in the private insurance market. Prior to making such a determination, OCI would be required to work with insurers to encourage the offering of this coverage in the private market. If OCI did not make the determination by a date that is eight years after the effective date of the provision, it would be required to publish a notice in the Wisconsin Administrative Register stating that the fund terminates on that date.

OCI could issue a policy from the fund only for property for which a certificate of lead-free status or a certificate of lead-safe status is in effect. A policy could not cover periods during which a certificate is not in effect.

Rules and Reports. The substitute amendment would require OCI to promulgate rules specifying premiums, coverage limits and covered expenses for policies issued under the fund and allow OCI to promulgate other rules necessary to administer the fund. OCI would specify premiums at a level that OCI determines would be sufficient to pay all the costs of the fund. The fund could not pay damages to a claimant if a court finds, by clear and convincing evidence, that one or more of the following conditions exist: (a) the property owner or his or her employe or agent obtained the certificate by fraud; (b) the owner or his or her employe or agent violated a condition of the certificate; (c) during renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employe or agent created a lead-bearing paint hazard that was present in the dwelling or unit of the dwelling at the time that the lead poisoning or lead exposure occurred; (d) the owner or his or her employe or agent failed to respond in a timely manner to notification by a tenant, by the department or by a local health department that a lead-bearing paint hazard might be present; or (e) the lead poisoning or lead exposure was caused by a source of lead in the dwelling or unit of the dwelling other than lead-bearing paint.

On an ongoing basis, OCI would be required to review the cost and availability of insurance in the private insurance market that provides residential property owners with liability coverage for lead-bearing paint hazards. No later than 12 months after the effective date of the rules promulgated by DHFS, and every two years after the first report is submitted, OCI would be

required to submit a report to the chief clerk of each house of the Legislature on the cost and availability of this insurance in the private market.

The bill would repeal the statutory language relating to the fund if OCI has not determined that insurance providing residential property owners with liability coverage for lead-bearing hazards is not either sufficiently affordable or sufficiently available in the private insurance market by a date that is eight years after the general effective date of the bill (which is equal to nine years and four months from the date of the bill's enactment).

Funding for Registry and DHFS Positions and 2001-03 Budget Requests

Registry. The substitute amendment would provide \$520,000 GPR in 2000-01 in the Joint Finance Committee's program supplements appropriation to fund the initial costs of establishing a registry of properties that are issued certificates of lead-free or lead-safe status. DHFS could request the transfer of these funds, under a 14-day passive review process, to the Division of Public Health's general program operations appropriation to support these costs. If such funds are transferred, this funding would not be included in the agency's base budget for the 2001-03 biennium.

DHFS Positions for Certification Activities. The substitute amendment would provide \$215,000 GPR to fund 5.0 GPR positions, beginning January 1, 2001, to perform certification for performance of lead paint hazard reduction. However, the substitute amendment would specify that this funding and position authority would not be included in the agency's base budget for the 2001-03 biennium.

DHFS and WHEDA 2001-03 Requests. The substitute amendment would require DHFS to submit a proposal, including a request for additional funding, to conduct lead paint hazards outreach and abatement activities as part of its 2001-03 biennial budget request. The Wisconsin Housing and Economic Development Authority (WHEDA) would be required to submit a proposal to rehabilitate rental property for low-income persons in Wisconsin as part of its 2001-03 budget submission.

Initial Applicability and Effective Date

Initial Applicability. The provisions in the substitute amendment relating to immunity from liability for lead poisoning or lead exposure would first apply to lead poisoning or lead exposure that occurs on the first day of the 16th month beginning after the bill's publication.

General Effective Date. All of the provisions would take effect on the day after the bill's publication, except that the following provisions would take effect on the first day of the 16th month beginning after the bill's publication: (a) the new definition of "lead-bearing paint hazard;" (b) changes to DHFS responsibilities in responding to reports of lead poisoning or lead exposure; (c) DHFS authority to promulgate rules governing lead hazard reduction; (d) immunity from liability

for lead poisoning or lead exposure, including Legislative findings; and (e) the creation of a state residential lead liability fund.

FISCAL EFFECT

DHFS. The substitute amendment would provide \$215,000 GPR in 2000-01 on a one-time basis and create 5.0 GPR positions beginning January, 2001, to expand the capacity of the lead training accreditation and certification program. In addition, the substitute amendment would provide \$520,000 GPR in the Joint Committee on Finance program supplements appropriation for the initial costs to develop a registry of property that has been certified as lead-free or lead-safe. These funds would be available for release to DHFS if DHFS submits a plan for use of the funds to the Committee for approval under the 14-day passive review process.

Positions. The \$215,000 GPR provided in 2000-01 in the substitute amendment would support six months of costs for 5.0 new positions beginning January 1, 2001 and three months of costs for 4.5 positions that would be transferred from other funding sources. While the positions are permanent positions, the funding would be provided on a one-time basis only. It is expected that in the next biennium, these positions would be converted to program revenue positions and the costs would be funded from program revenue received from fees paid by property owners for the lead-free or lead-safe certification and an increase in revenues from certification and exam fees paid by professionals seeking certification as inspectors or risk assessors.

These positions would be responsible for accrediting training programs and certifying industry professionals who would certify properties as lead-free or lead-safe and enforcement of the standards that would be included in the rules promulgated by DHFS under the amendment. DHFS has these responsibilities under current law and under its agreement with the EPA. However, it is expected that this legislation would create a large demand for professionals that would be authorized to certify properties as lead-free and lead-safe and to conduct lead paint hazard reduction activities. It is expected that over a two-year period, an additional 500 to 600 professionals could seek certification as a lead risk assessor.

Registry. The \$520,000 GPR provided in 2000-01 would be available for release to DHFS once it submits a plan to the Committee for the expenditure of the funds. The amount of funding is based on an estimated \$450,000 for development of the database and \$70,000 for hardware, software licenses and training. The estimate provided for the database is based on a review of other registries currently used by the Division of Public Health for the regulation of certain industries. Once DHFS has additional information on the specific costs of the database and associated costs, it could submit its plan to the Committee for the release of the funds.

Fees for Certificate of Lead-Free and Lead-Safe Housing. The substitute amendment authorizes DHFS to impose a fee of \$50 for the issuance of a lead-free certificate and \$25 for the issuance of a lead-safe certificate, but specifies that the actual fee may not exceed the actual costs of issuance and of maintaining the registry of lead-safe and lead-free housing. DHFS must review the fees every two years and adjust the fees to reflect actual costs.

Under the substitute amendment, the provisions relating to immunity from civil and criminal liability would not be effective until the sixteenth month after the effective date of the substitute amendment. As a result, it is not expected that property owners would begin seeking certification as lead-free or lead-safe until the next biennium. The revenue from the fee, therefore, would not be generated until the next biennium. However, it is possible that some industry professionals may become certified as lead inspectors, risk assessors, etc, in this biennium, in anticipation of the demand that would be expected once immunity would be available. Therefore, increased revenue from the fees paid by the professionals may begin increasing in this biennium. However, sufficient information is not available to estimate that increased revenue at this time.

Costs for Lead Hazard Reduction Activities. The amendment provides no funding to support property owners' costs to improve their properties in order to attain the standards for lead-free or lead-safe status. However, the amendment does require that DHFS submit a proposal to request additional funding to conduct lead paint hazards outreach and abatement activities as part of its submission for the 2001-03 biennial budget. Additionally, WHEDA would be required to submit a proposal to rehabilitate rental property for low-income persons in Wisconsin as part of its submission for the 2001-03 biennial budget. If such proposals are enacted by the next Legislature, additional funding could be available to partially offset the cost to property owners for improving their property.

OCI Costs. OCI has not yet submitted a fiscal estimate for the substitute amendment. Under the substitute amendment, OCI could not create the fund before the first day of the 16th month after the bill's publication. Consequently, it is unlikely that OCI would incur additional costs in this biennium if the substitute amendment were enacted. In addition, the substitute amendment would prohibit OCI from offering policies under the fund until OCI determines that there are an insufficient number or affordable policies in the private market. Prior to making this determination, the substitute amendment would require OCI to work with insurers to encourage the offering of this coverage in the private market. OCI officials have indicated that the private market is likely to offer policies to property owners that cover lead-bearing paint hazards. Consequently, the resource requirements for OCI under the substitute amendment would be minimal in this biennium and could be absorbed within the agency's current budget. The Legislature could address any additional staffing or administrative needs for OCI to implement this legislation as part of its 2001-03 biennial budget deliberations.

Prepared by: Rachel Carabell, Charles Morgan and Barbara Zabawa



WISCONSIN LEGISLATURE

P.O. BOX 8952 · MADISON, WI 53708

FOR IMMEDIATE RELEASE

February 21, 2000

Contact: Senator Robert Jauch, (608) 266-3510
Representative Tom Sykora, (608) 266-1194

Solution to Lead Paint Problem Is On the Way

Madison... After several months of meetings and discussions, the Wisconsin State Legislature is close to finding a solution to the lead-based paint problem, according to State Senator Bob Jauch (D-Poplar) and State Representative Tom Sykora (R-Chippewa Falls).

The Assembly Housing Committee will meet in Madison on Wednesday, February 23, 2000, to consider legislation that provides legal incentives to landlords to clean up any lead-based paint hazards in their buildings.

“Lead poisoning is a significant public health hazard, especially for children under the age of seven,” said Sen. Jauch, who chaired a special legislative committee that examined the problem of lead poisoning and its prevention. “It can cause permanent nervous system damage, reduced intelligence and attention span, learning disabilities and behavior problems.”

The issue of lead and its health risks, especially for children, has been around for a fairly long time. However, it was the Wisconsin State Supreme Court’s ruling last June that forced the issue of lead paint to be a top priority for both Jauch and Rep. Sykora, who chairs the Assembly Housing Committee.

The court ruled that the duty of testing for lead-based paint when there is prior knowledge of chipping, peeling or flaking paint in pre-1978 properties will now be considered a mandate for all landlords and property managers. However, the court did not address the issue of what to do when lead-based paint is confirmed by testing.

The bill at issue this Wednesday is designed to provide liability protection for property owners who have taken the necessary steps to ensure their property is at the very least lead-safe.

“The main goal of any lead legislation should be to protect the health and safety of children who are at an increased risk of lead poisoning,” said Sykora. “We feel that this legislation is a step towards ensuring that protection.”

Sen. Jauch and Rep. Sykora will be holding a Lead Paint Informational Meeting in Wausau on Friday, February 25, 2000, to discuss the legislation.

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WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Email: leg.council@legis.state.wi.us

DATE: March 8, 2000

TO: SENATOR ROBERT JAUCH AND REPRESENTATIVE TOM SYKORA

FROM: Richard Sweet, Senior Staff Attorney

SUBJECT: Joint Committee on Finance Motion #21 on 1999 Assembly Bill 806 (Lead-Bearing Paint)

This memorandum was prepared pursuant to your request for a description of Motion #21 that was considered by the Joint Committee on Finance at its executive session on 1999 Assembly Bill 806, which generally relates to lead-bearing paint hazards. Under the motion, on page 7, line 20, of Assembly Substitute Amendment 1 to Assembly Bill 806, the following sentence would be inserted after the period: "A certificate of lead-safe status obtained under this section may not be for less than 12 months in duration."

Assembly Substitute Amendment 1 to Assembly Bill 806 creates s. 254.171, Stats. Under that provision, if an owner of a dwelling or unit receives written notice from the Department of Health and Family Services (DHFS) or a local health department that a child under six years of age, who resides in the owner's owner-occupied dwelling or unit or who resides in the owner's dwelling or unit under the terms of a rental agreement, has an elevated blood lead level, the owner is required to obtain a certificate of lead-free status or a certificate of lead-safe status for the affected dwelling or unit. The term "elevated blood lead level" is defined in s. 254.11 (5m), Stats., as created by the substitute amendment. Under this provision, if, for example, an owner of a rental unit receives a notice from DHFS or a local health department that such a child resides in the unit, the owner's duty is to obtain one of the two certificates. Once obtained, the section does not include a requirement that the certificate be renewed upon expiration. Rather, if at the time of its expiration, the owner receives another notice from DHFS or a local health department that such a child is present in the unit, the owner is required to obtain another certificate. If, however, there is no such child present in the unit at the time of expiration of the first certificate, DHFS or a local health department may not issue another such notice and the owner is not required to obtain another certificate.

Motion #21 specifies that a certificate of lead-safe status under the provision described above may not be for less than 12 months in duration. This durational requirement applies only

to certificates of lead-safe status issued under s. 254.171, Stats., in response to a notice from DHFS or a local health department that a child under six years of age resides in a unit and has an elevated blood lead level. The duration of other certificates of lead-safe status (i.e., those not issued under s. 254.171, Stats.) is to be established by DHFS by rule under s. 254.179 (1) (c) 2., Stats., as created by the substitute amendment to Assembly Bill 806.

Feel free to contact me if I can be of further assistance.

RNS:wu;ksm



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: February 28, 2000

TO: INTERESTED LEGISLATORS AND OTHER INTERESTED PERSONS

FROM: Pam Shannon, Senior Staff Attorney

SUBJECT: Assembly Substitute Amendment __ (LRBs0336/1) to Assembly Bill 806,
Relating to Lead Poisoning

This memorandum describes the provisions of Assembly Substitute Amendment __ (LRBs0336/1) ("the Substitute Amendment") to 1999 Assembly Bill 806, relating to conducting lead investigations, lead-bearing paint hazard control, requirements for certification of lead-free or lead-safe status for dwellings and premises, immunity from liability for lead poisoning or lead exposure, a state residential lead liability fund, granting rule-making authority, requiring the exercise of rule-making authority and making appropriations. Assembly Bill 806 is currently in the Assembly Committee on Housing.

The Substitute Amendment, with significant modifications, is based on 1999 Senate Bill 232, which is the product of the Joint Legislative Council's Special Committee on Lead Poisoning Prevention and Control, chaired by Senator Robert Jauch. Senate Bill 232 is currently in the Senate Committee on Economic Development, Housing and Government Operations.

A. CURRENT LAW

Under current law, the Department of Health and Family Services (DHFS) is required to develop and implement a comprehensive statewide lead poisoning prevention and treatment program. Among other things, DHFS may promulgate rules governing a number of activities relating to lead poisoning or lead exposure, prevention and treatment. Before promulgating these rules, DHFS must consult with a technical advisory committee that includes representatives from local health departments, the housing industry, health professions and persons who are certified to perform or supervise lead hazard reduction or lead management activities. Also under current law, a city, village, town or other political subdivision may enact and enforce ordinances that establish systems of lead poisoning or lead exposure control with the same or higher standards than those specified under the DHFS program.

B. THE SUBSTITUTE AMENDMENT

1. Legislative Findings and Purpose

The Substitute Amendment states that the Legislature finds that the most common cause of childhood lead poisoning is ingestion of lead-contaminated surface dust from lead-bearing paint and that even low blood lead levels can cause significant nervous system problems for young children. The Substitute Amendment further states that the Legislature encourages property owners to address the problems associated with lead-bearing paint by bringing their properties into compliance with applicable state standards. The Legislature finds that an appropriate method to so encourage property owners is to hold them not liable with respect to a person who develops lead poisoning or lead exposure in the property if they meet certain requirements. The Substitute Amendment states that these standards and this restriction on liability will reduce the exposure of children and others to lead-bearing paints, improve the quality of the state's housing stock and result in greater availability of insurance coverage for lead hazards.

2. Immunity From Liability for Lead Poisoning or Lead Exposure

The Substitute Amendment provides that a property owner and his or her employes and agents are immune from civil and criminal liability and may not be subject to agency administrative proceedings (other than for the enforcement of rules relating to lead poisoning promulgated by DHFS) for their acts or omissions related to lead poisoning or lead exposure, if at the time the poisoning or exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit. There are five exceptions to this grant of immunity including, for example, where the owner or his or her employe or agent obtained the certificate by fraud.

The Substitute Amendment provides that the grant of immunity cannot be interpreted or applied in any manner to impair the right of a municipality to enforce its ordinances.

This immunity is also provided to owners and their employes and agents for acts or omissions related to lead poisoning or lead exposure that occur during the first 30 days after the owner acquires a dwelling or unit, unless the poisoning or exposure results from a lead hazard created by the owner, employe or agent. This immunity is extended for an additional 60 days if, during the initial 30-day period, the owner or his or her employe or agent has done one of the following with respect to the property: (a) completed a lead investigation report or entered into a contract for a lead investigation; (b) entered into a contract for lead hazard reduction; (c) registered for a course under s. 254.179 (1) (e); or (d) received certification to perform or supervise lead hazard reduction or a lead management activity.

If an owner receives written notice from DHFS or a local health department that a child under age six residing in the dwelling or unit has an elevated blood lead level (as defined in the Substitute Amendment), the owner must obtain a certificate of lead-free or lead-safe status in a timely manner, based on the reasonable availability of lead risk assessors or other certified persons and on the time required for the issuance of a certificate of lead-free or lead-safe status.

3. Rule Requirements

The Substitute Amendment provides that after reviewing municipal ordinances and in consultation with the technical advisory committee, DHFS shall, by use of a research-based methodology, promulgate as rules all of the following:

a. The standards for issuance of a certificate of lead-free status or a certificate of lead-safe status, the procedures by which such certificates may be issued or revoked and the period of validity of the certificates.

b. A mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead-free or lead-safe status is issued.

c. The requirements for a course of up to 16 hours that a property owner or his or her employe or agent may complete in order to receive certification of completion and the scope of lead investigation and lead hazard reduction activities that the owner, employe or agent may perform following certification, to the extent consistent with federal law, that are preliminary to activities and standards required to obtain a certificate of lead-free or lead-safe status.

The DHFS must submit the proposed rules to the Legislative Council Staff no later than the first day of the seventh month after publication of this act. Also, DHFS must review these rules by January 1, 2003 and every two years thereafter and promulgate changes to the rules if necessary in order to maintain consistency with federal law.

The Substitute Amendment adds as members of the technical advisory committee advocates for persons at risk of lead poisoning.

4. DHFS Lead Investigation

Under the Substitute Amendment, if DHFS is notified that a child under age six who occupies a dwelling or premises has an elevated blood lead level (as defined in the Substitute Amendment), DHFS must conduct a lead investigation of the dwelling or premises or ensure that such an investigation is conducted. The DHFS may waive this requirement for the City of Milwaukee. The Substitute Amendment defines "lead investigation" as a measure or set of measures designed to identify the presence of lead or lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media. DHFS must notify the occupant or his or her representative of the results of any lead investigations conducted and any action taken to reduce or eliminate the lead hazard. A certified lead risk assessor or other person certified by DHFS who conducts an investigation must do so and issue a report in accordance with DHFS rules and, if the report indicates that the dwelling or premises meets criteria for issuance of a certificate of lead-free or lead-safe status, issue the appropriate certificate. DHFS may promulgate rules governing lead hazard reduction that are consistent with federal law.

5. Sampling and Testing

The Substitute Amendment provides that sampling and testing of dwellings, units of dwellings or premises for the presence of lead-bearing paint or a lead hazard is not required before lead hazard reduction activities are conducted if the presence of lead-bearing paint or a lead hazard is assumed and the lead hazard reduction activities are performed in a lead-safe manner.

6. Insurance

The Substitute Amendment creates a State Residential Lead Liability Fund in the Office of the Commissioner of Insurance, to issue policies that insure residential property against liability resulting from lead-bearing paint hazards if a certificate of lead-free status or a certificate of lead-safe status is in effect for the property. The State Residential Lead Liability Fund must offer policies that insure residential property in Wisconsin against liability resulting from lead-bearing paint hazards if the fund manager (i.e., the Commissioner of Insurance) makes a determination, as specified by rule, that insurance providing residential property owners with liability coverage for lead-bearing paint hazards is not either sufficiently affordable or sufficiently available in the private insurance market. Prior to making the determination, the manager must work with insurers to encourage the offering of this coverage in the private market. A policy may be issued by the fund only for property for which a certificate of lead-free status or a certificate of lead-safe status is in effect.

The manager is required to promulgate rules specifying premiums, coverage limits and covered expenses for policies issued by the fund and may promulgate other rules necessary to administer the fund. The manager must specify premiums at a level that the manager determines will be sufficient to pay all costs of the fund. The manager must, on an ongoing basis, review the cost and availability of insurance in the private insurance market that provides residential property owners with liability coverage for lead-bearing paint hazards and periodically submit a report to the Legislature on the cost and availability of this insurance in the private market. The State Residential Lead Liability Fund terminates if, after eight years, the manager has not made the determination that liability coverage is not sufficiently affordable or sufficiently available in the private insurance market.

7. Admissibility of Lead Dust Test Results

The Substitute Amendment provides that the results of a test for the presence of lead in dust are not admissible in a civil or criminal action or an administrative proceeding unless the test was conducted by a person certified for this purpose by DHFS.

8. Fees and Funding

The Substitute Amendment authorizes DHFS to impose a fee for issuance of a certificate of lead-free status and a fee for issuance for a certificate of lead-safe status that may not exceed the actual costs of issuance and of maintaining the registry. The department must review the fees every two years and adjust the fees to reflect the actual costs. The Substitute Amendment

also authorizes DHFS to request a supplement of general purpose revenues from the Joint Committee on Finance (JCF) to pay initial costs of establishing a registry of properties that are issued certificates of lead-free or lead-safe status. To request this supplement, DHFS must submit a plan to JCF to expend not more than \$520,000 for fiscal year 2000-01. The Substitute Amendment increases the JCF appropriation by \$520,000 for fiscal year 2000-01 for this purpose.

In addition, the Substitute Amendment provides for an increase in the appropriation to DHFS by \$215,000 for fiscal year 2000-01 to provide 5.0 FTE positions on January 1, 2001, for activities relating to certification for the performance of lead paint hazard reduction.

The Substitute Amendment also directs DHFS, in submitting its 2001-03 biennial budget request, to submit a proposal, including a request for additional funding, to conduct lead paint hazards outreach and abatement activities.

9. Proposal on Rehabilitation of Rental Property

The Substitute Amendment requires the Wisconsin Housing and Economic Development Authority, as part of its 2001-03 biennial budget request, to submit a proposal to rehabilitate rental property for low-income persons in Wisconsin.

10. Effective Dates and Initial Applicability

Under the Substitute Amendment, a number of provisions take effect on the day after publication. Several provisions, including those relating to immunity from liability and creation of the State Residential Lead Liability Fund, have a 16-month delayed effective date. The Substitute Amendment provides that the immunity provisions first apply to lead poisoning or lead exposure that occurs on the effective date.

If you would like any further information on this Substitute Amendment, please feel free to contact me at the Legislative Council Staff offices.

PS:wu:ksm;wu