

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1692

SPONSOR: Natural Resources Committee and Senators Jones and Garcia

SUBJECT: Lead Poisoning Prevention

DATE: February 21, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Vaccaro</u>	<u>Caldwell</u>	<u>RI</u>	<u>Favorable</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill establishes the Florida Lead-Based-Paint Certification Program within the Department of Business and Professional Regulation (department). The bill provides legislative findings, provides definitions, and requires the department to adopt rules requiring the development and approval of training programs for the licensing or certification of persons performing certain lead abatement and detection activities. The bill requires the department to establish licensure and certification requirements for persons conducting certain lead abatement and detection activities, and provides that the department shall establish certain fees by rule. The bill provides certain exemptions from licensure or certification, provides rulemaking authority to the department regarding professional conduct and disciplinary action, and provides certain penalties.

II. Present Situation:

On August 31, 1998, a Federal program administered by the U.S. Environmental Protection Agency (EPA) pertaining to lead-based paint activities training and certification went into effect. This program, provided for in 40 CFR part 745, subpart L, mandates training, certification, and licensure for persons conducting specific activities associated with lead inspection, risk assessment, elevated blood lead investigations, and remediation and abatement, that are intended to reduce or eliminate lead-based paint or lead hazards. Under the Federal program, states could apply and receive authorization to run their EPA-approved lead-based program based on the model program that EPA provided by the time the Federal program became fully effective on March 1, 2000. If a state did not establish such a program by that date, the EPA would establish the program and administer it for that state.

Florida does not have a program that would allow the state to administer this program on behalf of EPA. The EPA is currently running the licensing program in Florida. Four training providers

in Florida have been accredited by the EPA to conduct training for participants in Florida. Also, several accredited training providers who are located out of state also periodically conduct training courses within the state. The Bureau of Environmental Epidemiology in the Department of Health is accredited to conduct training, but limits participants to state and county government employees. The EPA had previously determined that county health department staff who conduct Elevated Blood Lead investigations (EBLs) must be licensed as risk assessors in their program. Even with the free training provided by the Department of Health, the cost of licensing through the EPA program is approximately \$300 per staff person.

The Division of Environmental Health in the Department of Health provides educational programs on lead poisoning and prevention. The Bureau of Environmental Epidemiology houses the Childhood Lead Poisoning Prevention Surveillance Program which conducts statewide surveillance using data provided from public and private laboratories and county health departments. This program also provides education and technical assistance to county health departments and the public on the health effects of lead, and the identification and control of lead hazards in the home and environment.

III. Effect of Proposed Changes:

This bill establishes a licensure program for individuals and firms conducting lead-based paint activities in Florida. If approved by the EPA, this program would replace the EPA-run program currently in effect in Florida.

Section 1 provides that the act may be cited as the “Florida Lead-Poisoning Act.”

Section 2 provides legislative findings with regard to the health hazards to children as a result of childhood lead poisoning. The bill provides that even low levels of lead increase a child’s risks of developing permanent reading and learning disabilities, intelligence-quotient deficiencies, impaired hearing, reduced attention span, hyperactivity, behavior problems, and other neurological problems. The bill provides that childhood lead poisoning is dangerous to the public health, safety, and welfare.

The bill provides that childhood lead poisoning is the result of environmental exposure to lead, the most significant source of which is lead-based paint, found in housing built prior to 1978, particularly houses built prior to 1960, which becomes accessible to children in lead-based paint chips, lead-contaminated dust, and lead-contaminated soil.

The bill provides that it is crucial that the identification of lead hazards, including lead-contaminated waste, and subsequent implementation of interim controls or abatement procedures be accomplished in a manner that does not result in additional harm to the public or the environment. Improper lead-hazard abatement constitutes a serious threat to persons residing in or otherwise using an affected structure or site, to those performing lead-hazard-abatement procedures, to the environment, and to the public.

The bill provides that it is in the public interest to establish minimum standards for the training, certification, and licensure of all persons performing lead-hazard detection and lead-hazard-

reduction activities, including inspections, risk assessments, and planning and performance of interim controls or abatement measures.

Section 3 defines the following terms: “abatement;” “accessible surface,” “department,” “friction surface,” “impact surface,” “inspection,” “interim controls,” “lead abatement supervisor/contractor,” “lead-based paint,” “lead-contaminated dust,” “lead-contaminated soil,” “lead-contaminated waste,” “lead firm,” “lead hazard,” “lead-based-paint activities,” “lead-project designer,” “lead inspector,” “program,” “lead risk assessment,” “lead-risk assessor,” and “lead worker.”

Section 4 provides that the Florida Lead-Based-Paint Certification Program is established within the Department of Business and Profession Regulation. The department is designated as the state agency responsible for implementation, administration, and enforcement of the program.

Not later than 1 year after the effective date of this act, the department must adopt rules requiring the development and approval of training programs for the licensing or certification of persons performing lead-hazard detection and lead-hazard-reduction services, which may include, but need not be limited to, lead inspectors, lead-risk assessors, lead-project designers, lead firms, lead supervisors, and lead workers employed by such persons or entities. Rules for the approval of training programs must include:

- Minimum requirements for approval of training providers;
- Curriculum requirements;
- Training-hour requirements;
- Hands-on-training requirements;
- Examinations of competency and proficiency; and
- Training-program quality control.

The rules shall provide for reciprocal approval of training programs having comparable requirements which are approved by other states or by the Federal Government. The approval program may be designed to meet the minimum requirements for federal approval under the U.S. Toxic Substances Control Act and the department shall apply for such approval. The department shall establish by rule fees for the approval of training programs.

The department shall establish training, licensure, and licensure-renewal requirements of lead inspectors, lead-risk assessors, lead-reduction planners, lead-project designers, and lead contractors, and shall establish certification requirements for workers employed by such persons or entities.

A person may not be licensed under this act unless such person has successfully completed the appropriate training program, passed an examination approved by the department for the appropriate category of license, and completed any additional requirement imposed by the department by rule. The department shall consult with the Department of Health in establishing levels of lead in paint and dust that pose health problems.

The department may accept any lead-based paint activity training from a training program accredited by the EPA or from state-accredited training providers approved by the EPA which

are conducted no more than 12 months before the date of application for licensure, in full or partial satisfaction of the training requirements under this act. The department may establish continuing-education requirements for licensees as a condition of license renewal.

The department shall establish, by rule, examination fees, license fees, and license-renewal fees for all licenses issued under this act. The fees must be reasonable, must reflect the cost of issuing and renewing such licenses and the cost of licensing activities regulated under the act, and must be determined in such a manner as to approximate the total of the direct and indirect costs to the state of the operation and administration of the program. Fees may be refunded for good cause as determined by the department.

No more than 6 months after the effective date of rules promulgated by the department, a person may not perform, represent that such person is qualified to perform, or engage in the training of persons to perform any lead-based-paint activities regulated under this act unless such person is licensed or certified by the department. The requirements for licensure or certification do not apply to:

- An owner of a residential dwelling unit performing abatement upon the residential dwelling unit in which he or she resides;
- An employee of a property-management company performing routine cleaning or repainting upon property managed by that company where there is insignificant damage, wear, or corrosion of existing lead-based paint or lead-containing-coating substances; or
- An owner routinely cleaning or repainting his or her property where there is insignificant damage to, wear of, or corrosion of existing lead-based paint or lead-containing-coating substances.

A person who is employed by a state or county health department or state or federal agency and is licensed pursuant to this act as a lead inspector or lead risk assessor is not required to pay any licensure fees.

The department is granted specific rulemaking authority to establish standards of acceptable professional conduct for the performance of lead detection and lead reduction activities as well as specific acts and omission that constitute grounds for the reprimand of any licensee, the suspension or revocation of a license, or the denial of issuance or renewal of a license. The department may revoke or suspend any license, certification, approval, or accreditation issued pursuant to this act.

In addition, the department may adopt rules necessary for the implementation and enforcement of this act. Also, the department may impose civil penalties of not more than \$10,000 for violations of this act. It is unclear, however, how the department, as an agency created under administrative law, can have the authority to impose civil penalties.

The department shall make available to all persons licensed or certified under this act current federal regulations affecting such licensees or certified persons.

The department may issue a corrective order to any person in violation of this act or rules adopted pursuant thereto.

Any person who violated the provisions of this act commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

Section 5 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill requires the department to establish fees by rule for the approval of training programs and to establish fees for the licensing and certification of persons doing lead-hazard detection, assessment, and abatement.

B. Private Sector Impact:

The U.S. EPA currently provides for the licensing and certification of persons doing lead detection, assessment, and abatement activities. Under this bill, there will be a state Lead-Based-Paint Certification Program under which persons engaging in lead detection, assessment, and abatement activities would be required to obtain a state license or certificate in order to conduct such activities. The amount of the fees charged would be set by rule by the Department of Business and Professional Regulation.

C. Government Sector Impact:

The department would be required to establish a Lead-Based-Paint Certification Program and adopt rules to administer the program; adopt fees, by rule, regarding the training programs; and adopt fees, by rule, for the licenses and certificates that would be required of persons conducting lead assessment, reduction, and abatement activities in Florida. In addition, the department would be required to establish testing criteria to test competent individuals in this industry. The department is required to consult with the Department of Health in establishing levels of lead in paint and dust that pose health problems.

The department estimates that it would need 2 FTEs (Regulatory Specialists I) to adequately monitor this program.

An estimated \$38,000 would be required to develop the exam for competent persons during the first year. This includes consultant fees and related travel, development of blueprints and item specifications, and printing. The department anticipates that applicants for licensure would pay a vendor directly for taking the exam.

The department estimates that the licensee population for this profession would be 650 and that the licensing fee would be \$1,363. The bill requires that the fee must be adequate to cover the costs of licensure, including relevant direct and indirect costs. The annual revenue is estimated to be \$885,821 per year. The nonrecurring costs for FY 2002-2003 would be as follows:

Operating Capital Outlay	\$ 3,000
Expenses	\$ 6,122
Start-up Costs	\$ 38,000
Initial Costs	\$622,500

The recurring expenditures are as follows:

	<u>FY2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>
Salaries/Benefits/2 FTEs	\$60,902	\$62,729	\$64,611
Expenses	\$13,708	\$14,119	\$14,543
Recurring Costs*	\$81,323	\$81,323	\$81,323
<i>Subtotal</i>	<i>\$155,933</i>	<i>\$158,171</i>	<i>\$160,477</i>
Non-Operating Exp.			
Service Charges to GR	\$60,266	\$60,266	\$60,266

*Maintenance of 650 licenses on the LicenseEase System, and related exp.

The department indicates that the Professional Regulation Trust Fund would be affected by the establishment of this licensing activity.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.