

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 2202

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Miller

SUBJECT: Florida Childhood Lead Poisoning Reduction Act

DATE: March 16, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Parham</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>CP</u>	_____
4.	_____	_____	<u>GO</u>	_____
5.	_____	_____	<u>FT</u>	_____
6.	_____	_____	<u>AHS</u>	_____
7.	_____	_____	<u>AP</u>	_____

I. Summary:

This bill creates the “Florida Childhood Lead Poisoning Reduction Act” and authorizes the Secretary of Health to appoint a Director of Lead Poisoning Prevention (director). The bill provides legislative findings related to the dangers of lead and specifies the purposes of the legislation, which are related to promoting the elimination of childhood lead poisoning in Florida. The bill establishes the Lead Poisoning Prevention Commission and specifies the duties of the Commission, as well as reporting requirements. The director, in coordination with the Commission, is required to establish a statewide program to prevent, diagnose, and treat lead poisoning, including elimination of the sources of lead poisoning, through surveillance, education, and clinical activities. These functions are subject to appropriation.

The bill provides requirements for property constructed before 1978 to be designated as lead-free or lead-safe properties and specifies actions that must be taken by the property owner, who is not the occupant of the affected property, to protect the occupants from health hazards during work to remove or reduce lead-based-paint or lead-based-paint hazards. If the tenant of an affected property refuses to respond to reasonable requests of the property owner to vacate the property for work to be done, the property owner is immune for any damages arising from the tenant’s refusal to vacate.

The bill provides for voluntary inspections to determine if a property is lead-free or lead-safe and authorizes mandatory inspections under certain circumstances. The property owner of a property that is certified as lead-safe or lead-free, after a voluntary inspection is completed, is deemed in compliance with codes, ordinances, or statutes governing lead-based-paint content of property. The Lead Poisoning Prevention Commission is required to develop procedures for mandatory inspections of all properties built before 1978 or to develop alternative measures of enforcement

and penalties for all such properties that have not been certified lead-free or lead-safe by submission of voluntary inspection results by January 1, 2007. After January 1, 2005, the director or director's local designee must inspect, at the owner's expense, any property that does not appear to comply with the lead-free or the lead-safe standard where a person at risk of lead poisoning resides or visits the property at least 24 hours per week and any property that is the residence of or is visited more than 24 hours per week by a child that is found to have a blood-lead level greater than 15 µg/dL.

Contractors and supervisors performing work for lead-hazard abatement and inspectors who inspect affected properties must be certified by the director, if they meet specified standards. The director must establish fees sufficient to cover the cost of operating the certification of contractors, supervisors, and inspectors. The certification fees shall be deposited in DOH's (DOH) Administrative Trust Fund. The bill provides penalties and prohibitions for violating certification requirements and gives DOH the authority to impose fines or issue citations for violations of the certification provisions or any rules adopted under that section. The fines collected shall be deposited in DOH's Administrative Trust Fund.

The Attorney General and local authorities responsible for housing code enforcement are required to vigorously seek civil remedies and criminal penalties for a property owner in violation of the provisions of the bill. The bill provides specific powers for DOH and other state and local authorities to request a court appointed receiver for a property that continues to violate this act and provides that the receiver may apply for loans, grants and other forms of funding necessary to bring the property into a lead-free or lead-safe condition. The bill declares that a person at risk has a right to housing that is lead-free or lead-safe and provides a private right to injunctive relief against an owner of an affected property that fails to comply with the standards in this act. Cases brought before the court under this provision must be granted an abbreviated hearing. The bill prohibits retaliatory evictions and details actions that are prohibited against a person at risk who is providing information about a lead hazard to authorities.

A statewide educational program to meet the needs of tenants, property owners, health care providers, early childhood educators and providers, realtors and real estate agents, insurers, insurance agents, and local building officials is established.

The bill requires the Director of Lead Poisoning Prevention to establish a screening program for all children in specified target groups by promulgating regulations to screen all children less than 6 years of age. Guidelines for the medical follow-up for children found to have elevated blood-lead levels shall be developed by the director. The director must also keep records on all screenings conducted. The records are to be indexed geographically and by property owner.

This bill creates 14 undesignated sections of law.

II. Present Situation:

Childhood Lead Poisoning

The federal Centers for Disease Control and Prevention (CDC) have termed excessive absorption of lead as "one of the most common pediatric health problems in the U.S. today and it is entirely

preventable.”¹ Approximately 434,000 U.S. children aged 1-5 years have blood-lead levels greater than the CDC recommended level of 10 micrograms of lead per deciliter ($\mu\text{g}/\text{dL}$) of blood. Lead poisoning can affect nearly every system in the body. Because lead poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can cause learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death.

The major source of lead exposure among U.S. children is lead-based-paint and lead-contaminated dust found in deteriorating buildings. Lead-based paints were banned for use in housing in 1978. However, approximately 24 million housing units in the U.S. have deteriorated leaded paint and elevated levels of lead-contaminated house dust. More than 4 million of these dwellings are homes to one or more young children. Children are at particular risk for lead exposure due to their regular hand-to-mouth activity during daily play where lead-based paint is peeling or flaking. The dust from this deteriorating paint is easily ingested and is a significant source of exposure.

According to the children’s Environmental Health Network, children 9 months of age to 2-1/2 years of age are at greatest risk of lead poisoning. They have greater hand-to-mouth activity, their brains are more sensitive to the toxic effects of lead, and they absorb a greater percentage of the lead that is ingested.

Other effects of lead poisoning may include diminished intelligence, learning disabilities, delayed congenital development, interference with calcium metabolism, reduced heme syntheses (or the body’s ability to manufacture red blood cells), reduced kidney function, and damage to the central nervous system. The damage to the central nervous system is not reversible. The extent to which these effects will be present in a child depends on a number of factors, including the duration and intensity of exposure. These factors are still being studied to determine long-term effects of exposure on children.

According to DOH, lead poisoning became a reportable disease in 1992. Since then, more than 7,000 children in Florida have been identified with a confirmed case of lead poisoning, a venous (blood drawn through the vein) blood lead level ≥ 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$). This is likely an underestimation of true morbidity. Even with moderately high levels of lead, many children show no signs or symptoms, and will not be tested. Children enrolled in the Medicaid program are required by federal law to be tested and they represent the largest population screened. Many other children are exposed to lead, but are not screened. Confirmed venous draws are counted as cases, but many children with elevated unconfirmed capillary (finger stick) tests do not receive their appropriate follow-up venous draw. Blood-lead results submitted by laboratories do not always contain complete and consistent identifying information important for thorough public health surveillance.

¹ “Preventing Lead Poisoning in Young Children.” 1991. Office of the Director, National Center for Environmental Health and Injury Control.

CDC Childhood Lead Poisoning Prevention Program

The Lead Contamination Control Act of 1988 authorized the CDC to initiate program efforts to eliminate childhood lead poisoning in the U.S. As a result of this Act, the CDC Childhood Lead Poisoning Prevention Branch was created, with primary responsibility to:

- Develop programs and policies to prevent childhood lead poisoning;
- Educate the public and health care providers about childhood lead poisoning;
- Provide funding to state and local health departments to determine the extent of childhood lead poisoning by screening children for elevated blood-lead levels, helping to ensure that lead-poisoned infants and children receive medical and environmental follow-up, and developing neighborhood-based efforts to prevent childhood lead poisoning; and
- Support research to determine the effectiveness of prevention efforts at federal, state, and local levels.

Since its inception in 1990, the CDC childhood lead poisoning prevention effort has:

- Funded nearly 60 childhood lead poisoning prevention programs to develop, implement, and evaluate lead poisoning prevention activities;
- Provided technical assistance to support the development of state and local lead screening plans;
- Fostered agreements between state and local health departments and state Medicaid agencies to link surveillance and Medicaid data;
- Provided training to public health professionals through CDC's National Lead Training Resource Center;
- Supported the formation of collaborative relationships between CDC's funded partners and other lead poisoning prevention organizations and agencies;
- Developed the Childhood Blood Lead Surveillance System through which 46 states currently report data to CDC;
- Expanded public health laboratory capacity in states to analyze blood and environmental samples and to ensure quality, timely, and accurate analysis of results; and
- Published targeted screening and case management guidelines which provide health departments and health care providers with standards to identify and manage children with elevated blood-lead levels.

One of the goals of the federal Healthy People 2010 initiative² is the elimination of childhood lead poisoning as a public health problem. CDC, the U.S. Department of Housing and Urban Development (HUD), the U.S. Environmental Protection Agency (EPA), and other agencies have developed a federal interagency strategy to achieve this goal by 2010. The key elements of this interagency strategy include:

- Identification and control of lead paint hazards;
- Identification and care for children with elevated blood-lead levels;

² The Healthy People 2010 initiative is a set of health objectives for the U.S. to achieve over the first decade of the new century. The Healthy People 2010 initiative builds on initiatives pursued over the past two decades.

- Surveillance of elevated blood-lead levels in children to monitor progress; and
- Research to further improve childhood lead poisoning prevention methods.

In 2003, CDC awarded \$31.7 million to 42 state and local health departments to develop and implement comprehensive lead poisoning prevention efforts. CDC provides funding to state and local health departments to do the following:

- Develop childhood lead poisoning elimination plans;
- Develop screening plans to target resources to those children at highest risk for lead poisoning;
- Develop surveillance systems to monitor childhood lead poisoning prevention efforts;
- Increase primary prevention activities among pregnant women and those families with children at high risk for lead poisoning;
- Ensure timely and appropriate case management of children with elevated blood-lead levels;
- Develop strategic partnerships with organizations and agencies involved in environmental and child health activities;
- Coordinate with organizations and agencies involved in lead-based paint hazard reduction activities and development of protective policy; and
- Evaluate programmatic impact on childhood lead poisoning prevention efforts.

Funded programs are expected to serve as catalysts and models for the development of non-funded programs and activities in other states and communities.

Health departments are expected to work with interagency and community-based organizations that support the Childhood Lead Poisoning Prevention Program's agenda. These organizations may represent the interests of public health, the medical community, housing owners and organizations, business, labor, parents, and residents of the community. The organizations may include, but are not limited to, neighborhood groups, churches, fraternal organizations, civic organizations, local businesses, and financial institutions that have a vested interest in the viability of the community. Community organizations should be encouraged and supported in their efforts to help with program components such as follow-up, education, and hazard remediation.

Florida Childhood Lead Poisoning Prevention Program

The Childhood Lead Poisoning Prevention Program currently operates in the DOH, Bureau of Community Environmental Health, with two full-time equivalent positions, under a grant from CDC. The DOH program conducts surveillance of childhood lead poisoning; identifies cases of childhood lead poisoning; and monitors case management of poisoned children. Funds are passed through the program to the county health departments to operate local childhood lead poisoning prevention programs. Local programs conduct educational activities for parents, investigate the source of lead in a child's environment, and manage medical treatment of lead poisoned children.

Program staffs work to eliminate blood-lead levels in children by encouraging screening of at-risk children with a screening guidance document, distributing tailored educational materials,

developing statewide policies to ensure the provision of case management and other intervention services, by improving the statewide surveillance system, by using data to produce annual and quarterly reports, and by conducting other activities.

The Childhood Lead Poisoning Prevention Program conducts statewide laboratory-based surveillance of blood-lead levels in children. Lead test results are submitted by laboratories, and program staff maintain a large database. Program staff produce annual and quarterly reports and report an overall decrease in the number of children found with elevated blood-lead levels, and a modest increase in screening of at-risk children for calendar year 2001. However, not all at-risk children have been screened for lead poisoning. One of the program's goals is to increase screening in high-risk areas.

Federal Efforts to Address Residential Lead Hazards

Federal programs addressing lead poisoning involve standards and regulations for lead paint inspections, risk assessments, and abatement; enforcement and compliance with lead regulations; grants to states, cities, and counties to control lead paint hazards in low-income privately-owned housing; grants to states, territories, and Indian tribes to run EPA-approved programs for accreditation of training providers and certification of lead paint professionals; inspections for lead paint hazards in high-risk residential units; evaluation of lead paint detection and abatement methods; development of new technologies; and laboratory accreditation. Virtually all of these activities were authorized in 1992 under Title X of the Residential Lead-Based Hazard Reduction Act.

The EPA's Lead Awareness Program designs outreach activities and educational materials, awards grants, and manages a toll-free hotline to help parents, home owners, and lead professionals learn what they can do to protect their families, and themselves, from the dangers of lead. The National Lead Information Center (NLIC) provides the general public and professionals with information about lead hazards and their prevention.

EPA Accreditation and Certification

The EPA developed regulations for accreditation of training programs for target housing and child-occupied facilities (40 CFR 745.225) and certification of individuals and firms engaged in lead-based paint activities related to target housing and child-occupied facilities (40 CFR 745.226). Published in 1996, these regulations include requirements to ensure that lead inspection and abatement professionals are capable of and required to use work practices that are safe, reliable, and effective. The HUD Lead Paint Hazard Control grant program requires that certified workers be used in its grant program for low-income privately-owned dwelling units.

On August 29, 1996, the EPA published a final rule for the certification and training of lead-based paint professionals (61 FR 45778). At that time, the implementation of the federal program was delayed until August 29, 1998, to allow states and Indian tribes to apply and receive authorization to run their own EPA-approved lead-based paint programs based on the model program that the EPA provided. After March 1, 1999, state training programs could no longer provide, offer, or claim to provide training or refresher training for lead-based paint activities defined in 40 CFR 745.223 without being accredited by the EPA according to the requirements

of 40 CFR 745.225. The rule also provided that after August 30, 1999, no individuals or firms could perform, offer, or claim to perform lead-based paint activities as defined under 40 CFR 745.223 without certification from the EPA under 40 CFR 745.226 to conduct those activities.

A training program can seek accreditation to offer lead-based paint activities courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. To be EPA-accredited, a training program must meet a number of requirements outlined in 40 CFR 745.225(c). Besides general requirements necessary for approval as a training program, there are also specific requirements for training in the specific disciplines of inspector, risk assessor, supervisor, project designer, and abatement worker.

Inspector responsibilities include having background knowledge on lead and its adverse health effects, as well as background knowledge of federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities. Inspectors must also have knowledge of lead-based paint inspection methods, including selection of rooms and components for sampling or testing; knowledge of paint, dust, and soil sampling methodologies; and knowledge of clearance standards and testing, including random sampling [40 CFR 745.225(d)(1)].

Risk assessor responsibilities include collecting background information to perform risk assessments. Risk assessors must also have knowledge of sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food. Risk assessors are responsible for visual inspections for the purposes of identifying potential sources of lead-based paint hazards. Risk assessors must follow the lead-hazard screening protocol, conduct sampling for other sources of lead exposure and interpret lead-based paint and other lead sampling results, including all applicable state or federal guidance or regulations pertaining to lead-based paint hazards. Risk assessors must also develop hazard control options as well as operations and maintenance activities to reduce lead-based paint hazards [40 CFR 745.225(d)(2)].

Supervisor responsibilities include having background knowledge of lead and its adverse health effects, and background knowledge of federal, state, and local regulations and guidance that pertain to lead-based paint abatement. Supervisors are also responsible for understanding liability and insurance issues relating to lead-based paint abatement and risk assessment and inspection report interpretation. Supervisors are responsible for the development and implementation of an occupant protection plan and abatement report, lead-based paint hazard recognition and control, lead-based paint abatement and lead-based paint hazard reduction methods, interior dust abatement/cleanup or lead-based paint hazard control and reduction methods, soil and exterior dust abatement or lead-based paint hazard control and reduction methods, clearance standards and testing, cleanup and waste disposal, and for recordkeeping [40 CFR 745.225(d)(3)].

Project designers are responsible for the development and implementation of an occupant protection plan for large scale abatement projects. Project designers must also have an understanding of lead-based paint abatement and lead-based paint hazard reduction methods; including restricted practices for large-scale abatement projects, interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects, clearance

standards and testing for large scale abatement projects, and integration of lead-based paint abatement methods with modernization [40 CFR 745.225(d)(4)].

Abatement worker responsibilities include having knowledge of information on lead and its adverse health effects, and knowledge of federal, state and local regulations and guidance that pertain to lead-based paint abatement. Abatement workers are also responsible for lead-based paint hazard recognition and control, lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices, interior dust abatement methods/cleanup or lead-based paint hazard reduction, soil and exterior dust abatement methods or lead-based paint hazard reduction [40 CFR 745.225(d)(5)].

Individuals who want to be certified as an inspector, risk assessor, or supervisor must meet certain requirements under 40 CFR 745.226(b). Individuals who want to be certified as an abatement worker or project designer must meet certain requirements under 40 CFR 745.226(c).

EPA-Approved State Lead-Hazard Prevention Programs

Under the 1992 Act, any state that wanted to administer and enforce the federal EPA standards, regulations, or other requirements established under section 402 or 406 of the Act, or both, could develop and submit to the EPA an application for authorization as an EPA- approved state program. Once certified by the EPA, the state program is able to operate in lieu of the corresponding Federal program under section 402 or 406.

The EPA was directed to promulgate rules for a model state program which could be adopted by any state seeking to administer and enforce a state program under the 1992 Act. The model program was designed to encourage states to utilize existing state and local certification and accreditation programs and procedures. The EPA was authorized to distribute grants to states to develop and carry out authorized state programs. If a state did not have a state program authorized by the EPA within two years after rules were promulgated for the regulations under section 402 or 406, the EPA was directed to establish a federal program for section 402 or 406 for each state, and administer and enforce the program in the state.

Florida received grant funding to develop a model state program; however, the state never implemented a lead-hazard prevention program, and grant funds were stopped. An EPA license was required in all states by March 1, 2000. The EPA is currently running the certification program for Florida. Individuals who want to be certified must send an application to the EPA's central office in Washington, D.C., which inspects the application and sends it to the regional office in Atlanta, Georgia for final approval. DOH estimates that approximately 300 individuals are EPA-certified in the Florida. Other states without approved programs include New York, South Carolina, Idaho, North and South Dakota, Alaska, and Hawaii. Most states do run their own EPA-approved lead hazard prevention programs. If Florida were to develop an EPA-approved program, the EPA would no longer certify individuals working in Florida.

The Sunrise Act: Regulation of New Professions

Prior to the 1970s, occupational regulation in Florida was administered through several autonomous, independent boards appointed by the Governor. In the late 1970s, all occupational

regulation was centralized in Florida's Department of Professional Regulation (DPR). However, substantial departmental reorganization moved oversight of health professions from DPR to AHCA, and then to DOH.

The Sunrise Act, s. 11.62(3), F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following:

- That substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote;
- That the skills the profession requires are specialized and readily measurable;
- That the regulation will not have an unreasonable effect on job creation or job retention;
- That other forms of regulation do not or cannot adequately protect the public; and
- That the overall cost effectiveness and economic impact of the proposed regulation is favorable.

The act requires that, upon request, the proponents of regulation of a previously unregulated profession provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference information concerning the effect of proposed legislation to initially regulate a previously unregulated profession on the agency's resources to implement and enforce the regulation.

Public Records Requirements

Section 119.07, F.S. provides that all personal identifying information; bank account numbers; and debit, charge, and credit card numbers contained in records relating to an individual's personal health or eligibility for health-related services made or received by DOH or its service providers are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution, with the exceptions listed below. Information made confidential and exempt under s. 119.07(3)(cc) shall be disclosed:

- With the express written consent of the individual or the individual's legally authorized representative;
- In a medical emergency, but only to the extent necessary to protect the health or life of the individual;
- By court order upon a showing of good cause; or
- To a health research entity, if the entity seeks the records or data pursuant to a research protocol approved by DOH, maintains the records or data in accordance with the approved protocol, and enters into a purchase and data-use agreement with DOH. The department may deny a request for records or data if the protocol provides for intrusive follow-back contacts, has not been approved by a human studies institutional review board, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit. The agreement must restrict the release of any information, which would permit the identification of persons, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.

III. Effect of Proposed Changes:

Section 1. Provides that the act shall be known by the popular name the “Florida Childhood Lead Poisoning Reduction Act.”

Section 2. Provides legislative findings related to the dangers of lead, including statistics on blood-lead levels in children and the effects of not treating children with elevated blood-lead levels, the causes of lead poisoning, the prevalence of lead-based paint in occupied housing, and ways to reduce lead poisoning or prevent paint deterioration.

Section 3. Provides the purposes of the legislation related to promoting the elimination of childhood lead poisoning in Florida. The purposes include to: significantly reduce the incidence of childhood lead poisoning in the state; increase the supply of affordable rental housing that is lead-free and lead-safe; increase public awareness about lead poisoning; and encourage testing, diagnosis, and treatment of lead poisoning in children.

Section 4. Provides definitions for the terms, abatement, affected property, change in occupancy, chewable surface, containment, department, deteriorated paint, director, dust-lead hazard, dwelling unit, elevated blood-lead level, encapsulation, exterior surfaces, friction surface, hazard reduction, HEPA-vacuum, impact surface, inspection, interim controls, interior windowsill, lead-based paint, lead-based-paint hazard, local designee, owner, paint-lead hazard, permanent, person at risk, relocation expenses, tenant, “ug/dL”, “ug/ft²”, and wipe sample.

Section 5. Creates the position of Director of Lead Poisoning Prevention in DOH and establishes the Lead Poisoning Prevention Commission.

Subsection (1) requires the Secretary of Health to appoint the director, who shall be responsible for carrying out and administering all the programs created by this act. The director of the Program for Prevention of Lead Poisoning is authorized to designate local government officials to assist in carrying out her/his duties. The director may contract with an agency(s), individuals, or groups for the provision of necessary services, subject to appropriation.

Subsection (2) provides that, subject to appropriation, the director, working with the commission, shall establish a statewide program for prevention, screening, diagnosis, and treatment of lead poisoning, including eliminating the sources of the poisoning through research, epidemiological, educational, and clinical activities.

Subsection (3) creates the Lead Poisoning Prevention Commission which shall consist of ten members. The members shall serve without compensation. The commission membership includes the Director of Lead Poisoning Prevention, the Secretary of Community Affairs or designee, the Secretary of Environmental Protection or designee, a member of the Florida Senate and a member of the Florida House of Representatives, and five members appointed by the Governor, including a child advocate, a health care provider, a representative of local government, and two owners of rental property in the state. The duties of the Commission include:

- Reporting to the Governor and the Legislature in writing by October 1, 2005, recommending legislation providing additional incentives for all affected property owners to bring their premises into compliance with the lead-safe standards and providing additional means of enforcement and penalties for those property owners who fail to achieve compliance;
- Studying and collecting information on the effectiveness of this act in fulfilling its legislative purposes; and making policy recommendations regarding how best to achieve the legislative purposes of this act;
- Consulting with the responsible departments of state government and state agencies on the implementation of this act; and
- Submitting a report by October 1, 2005, to the Governor and the Legislature on the results of implementing this act.

Section 6. Specifies criteria for determining if a property is “lead-free” or “lead-safe,” and establishes requirements for property owners performing certain maintenance work on affected property.

Subsection (1) provides that an affected property (habitable dwelling units constructed before 1978 - see section 4 of the bill for the complete definition of “affected property.”) is *lead-free* if the affected property was constructed after 1978; or the owner of the affected property submits to the director, or the director’s designee for the jurisdiction in which such property is located, an inspection report that indicates that the affected property has been tested for the presence of lead in accordance with standards and procedures established by the rules promulgated by the department. The report must also state that all interior surfaces of the affected property are lead-free; and that all exterior painted surfaces of the affected property that were chipping, peeling, or flaking have been restored with paint that is not lead-based paint, or no exterior painted surfaces of the affected property are chipping, peeling, or flaking.

Subsection (2) provides that an affected property is *lead-safe* if the lead-based-paint reduction treatments have been completed by a certified lead abatement specialist and in compliance with the rules established by the department. These treatments focus on:

- Visual review of all exterior and interior painted surfaces and removal and repainting of chipping paint, on exterior and interior painted surfaces;
- Stabilization and repainting of any interior or exterior painted surfaces that have lead-based-paint hazards;
- Repair of structural defects that are causing paint to chip or peel;
- Treating all interior windowsills, and window troughs and window wells, in order to make them smooth and cleanable;
- Fixing the top sash of all windows in place in order to eliminate the friction caused by movement of the top sash;
- Rehanging all doors as necessary to prevent the rubbing together of a lead-painted surface with another surface;
- Making all bare floors smooth and cleanable;
- Ensuring that all kitchen and bathroom floors are overlaid with a smooth, water-resistant covering; and

- HEPA-vacuumping and washing of the interior of the affected property with high phosphate detergent or its equivalent.

Subsection (3) requires the department to promulgate rules limiting the effective time for each “lead-safe” certification based on the known effectiveness of the controls used to mitigate the lead-hazard. This shall include evaluations that are done by the property owner or his or her designee. The rules must require that the property owner notify the department of any substantial change in the property, either intentional or accidental, that could impact the “lead-safe” status.

Subsection (4) requires an owner of an affected property to give any tenant of the property at least 48 hours’ notice in writing if the owner intends to do maintenance or repairs that will disturb the paint or interior surfaces of an affected property. A tenant must allow access to the owner of the affected property, at reasonable times, to perform the necessary work. The owner must pay the reasonable expenses that a tenant incurs that are directly related to relocating while the work is being done if it involves the disturbance of paint on interior surfaces.

The owner of an affected property is to make an effort to ensure that at-risk individuals are removed from the property when the repairs and maintenance are taking place. If a tenant refuses to vacate an affected property and the owner has made all reasonable attempts to get the tenant to temporarily vacate, the owner will not be liable for any damages arising from the tenant’s refusal to leave the property.

If a tenant refuses to allow access to an affected property, despite all reasonable efforts by the owner and with advance notice, the owner will not be held liable for any damages arising from the tenant’s refusal to allow access.

Section 7. Establishes provisions relating to voluntary and mandatory inspections of affected properties.

Subsection (1) provides that an owner of an affected property at any time may, at the owner’s expense, have a certified inspector perform an inspection of the affected property to determine whether it complies with the requirements for lead-free and lead-safe property status. The inspector performing the voluntary inspection must submit a verified report of the result of the inspection to the director or the director’s designee, to the owner, and to the tenant of the affected property.

Subsection (2) provides that an affected property certified as lead-free or lead-safe after the owner has a voluntary inspection is deemed in compliance with all state and local requirements whether included in housing codes, ordinances, or any other regulatory or criminal statutes governing lead paint contained in an affected property.

Subsection (3) requires the Lead Poisoning Prevention Commission to develop a proposal for mandatory inspections of all affected properties by January 1, 2007, or to develop alternative measures of enforcement and penalties for all affected properties to ensure that they are lead-free or lead-safe within a reasonable time after January 1, 2007.

Subsection (4) provides that, after January 1, 2005, the director, or the director's local designee for the jurisdiction in which the property is located, must order an inspection, at the owner's expense, of any property that appears to comply with neither the lead-free standard nor the lead-safe standard where a person at risk of lead poisoning resides or visits the property at least 24 hours per week. This inspection must be completed within 90 days of notification.

Subsection (5) requires the director or the director's local designee to order an inspection of any property that is the residence of, or is visited more than 24 hours per week by, a child under age 6 or a pregnant woman that is found to have a blood-lead level greater than 15 µg/dL. This inspection must be completed within 15 days of notification of the director or the designee, and at the expense of the owner.

Subsection (6) requires a verified report of inspection results to be submitted by the inspector to the director or the director's local designee, and to the property owner and the tenant of the affected property.

Section 8. Establishes standards for certification of inspectors and contractors performing work.

Subsection (1) provides that individuals who act as a contractor or supervisor to perform lead abatement as defined in this act must be certified by the department. The department shall certify any individual who meets one of the following standards:

- Regulations to be adopted by the department governing the certification of individuals to engage in lead-based paint activities sufficient to satisfy the requirements of 40 C.F.R. s. 745.325 or any applicable successor provisions;
- Certification by the EPA to engage in lead-based paint activities pursuant to 40 C.F.R. s. 745.226 or any applicable successor provisions; or
- Certification by a state or tribal program authorized by the EPA to certify individuals engaged in lead-based paint activities pursuant to 40 C.F.R. s. 745.325 or any applicable successor provisions.

The department shall, by rule, create exceptions to the certification requirement for instances where the disturbance of lead-based paint is incidental.

Subsection (2) provides that an inspector certified by the department shall conduct all inspections required under section 7 of the act. The requirements necessary to be certified as an inspector are either (a) regulations to be adopted by the department pursuant to this act governing the certification of individuals eligible to conduct the inspections required by this act; or certification to conduct risk assessments by the U.S. Environmental Protection Agency pursuant to 40 C.F.R. s. 745.226(b) or any applicable successor provisions.

Subsection (3) provides that certification of inspectors, contractors, and supervisors shall extend for a period of 3 years unless the department has reason to believe a certified individual has violated the terms of certification or has engaged in unethical or illegal conduct related to inspections in which case certification shall be suspended pending a hearing in accordance with ch. 120, F.S.

Subsection (4) requires the department to establish, by rule, a fee schedule for the certification of individuals performing lead-hazard abatement. A separate fee schedule must be developed for inspectors. The fees must be paid at the time of initial certification and certification renewal. The fees must be sufficient to cover all costs under this section. Fees shall be deposited into the Department of Health's Administrative Trust Fund to be used for certification purposes.

Subsection (5) provides that a person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S. The department may deny a certification or certification renewal if it determines that an applicant does not meet all requirements or has violated any provision of this section. Any applicant who is denied under this section is entitled to a hearing after filing a written request for such hearing in accordance with ch. 120, F.S.

Subsection (6) provides that in addition to any administrative action authorized by ch. 120, F.S., the department may impose a fine, which shall not exceed \$500 for each violation, for a violation of this section, for a violation of any rule adopted under this section, or for a violation of any of the provisions of ch. 386, F.S., (Particular Conditions Affecting Public Health). The department must give notice of intent to impose such a fine to the alleged violator. Each day that a violation continues may constitute a separate violation.

Subsection (7) provides that the department may issue citations that may contain an order of correction or an order to pay a fine, for violations of this section or the rules adopted by the department, when a violation is enforceable by an administrative or civil remedy, or when a violation is a second degree misdemeanor. A citation issued under this section is a notice of proposed agency action. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

The fines imposed by a citation issued by the department may not exceed \$500 for each violation, and each day the violation exists constitutes a separate violation for which a citation may be issued. The department must inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, F.S., of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to appear to contest the citation after having requested a hearing, the recipient has waived his or her right to contest the citation and must pay an amount up to the maximum fine.

The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations for which enforcement actions were taken under this section or other provisions of law or rule. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 755.082 or s. 775.083, F.S.

The department is directed to deposit any fines it collects under this section into Department of Health Administrative Trust Fund to be used for certification purposes under this section.

Section 9. Provides enforcement actions against owners of affected properties who fail to comply with the requirements for lead-free or lead-safe property.

Subsection (1) provides that owners of affected properties who fail to comply with the requirements for lead-free or lead-safe property shall be considered in violation of this act. This section requires the Attorney General and local authorities responsible for housing code enforcement to vigorously seek civil remedies and criminal penalties for a property owner in violation of the provisions of the act, and provides for injunctive relief.

Subsection (2) requires that any civil or criminal actions by state or local officials for violations of the provisions of this act must be reported to the director or the director's designee.

The director is required to prepare an annual report outlining the enforcement actions brought pursuant to this section, the identity of the owners of affected properties, the authority bringing the action, the nature of the action, and a description of the criminal penalties and/or civil relief.

This subsection allows for a declaration of abandonment for any property where the owner does not respond to the second written notice from the director or his designee or other state or local authorities, or two criminal or civil actions by either state or local authorities. This section also provides specific powers for the Attorney General, the director, the Secretary of Community Affairs, the state or local housing authority, DOH, the local health department or other officials with jurisdiction over the affected property to request a court appointed receiver for the property. The receiver, in these instances, may apply for loans, grants and other forms of funding necessary to bring the property into a lead-free or lead-safe condition. A lien against the property will exist until such time as the owner pays the cost incurred by the receiver or foreclosure proceeds can be instituted to recover the receiver's cost.

Section 10. Provides a private right to injunctive relief.

Subsection (1) provides that an at-risk individual has the right to housing which is lead-free or lead-safe under the standards provided in this act.

Subsection (2) provides that if an owner fails to comply with these standards, a person at risk or their parent or legal guardian has a private right of action to seek injunctive relief from a court with jurisdiction against the owner of the infected property in the form of a court order to compel compliance with this act.

Subsection (3) provides that a court shall not grant the injunctive relief requested pursuant to this section, unless, at least 30 days prior to the filing requesting the injunction, the owner of the affected property has received written notice of the violation of standards contained in section 6 and has failed to bring the affected property into compliance with the applicable standards. Proper notice has been given when:

- A person at risk or their parent, legal guardian, or attorney has notified the owner of an affected property that the property fails to meet the requirements for either lead-free or lead-safe status;

- The director or the director's designee, a local or state housing authority, or DOH has notified the owner of the affected property of violations of the provisions of the act occurring within an affected property; or
- A criminal or civil action pursuant to section 10 has been brought by either state or local enforcement officials to enforce this act arising out of violations occurring within an affected property.

Subsection (4) provides that a person who prevails in an action under subsection (2) is entitled to an award of the costs of the litigation and to an award of reasonable attorney's fees in an amount to be fixed by the court.

Subsection (5) provides that cases brought before the court under this section are to be granted an accelerated hearing.

Section 11. Prohibits retaliatory evictions.

Subsection (1) provides that an owner of an affected property may not evict or take any other retaliatory action against a person at risk or their parent or legal guardian if one of these individuals (1) provides information to the owner of the affected property, the director, the director's designee, the Secretary of Community Affairs, the secretary's designee, the Department of Health, the Department of Community Affairs, local health officials, or local housing officials concerning lead-based-paint hazards within an affected property or elevated blood-lead levels of a person at risk; or (2) by enforcing any of their rights under this act.

Subsection (2) provides that, under this section, a "retaliatory action" includes any of the following actions in which the activities protected under section 11(1) are a material factor in motivating said action:

- A refusal to renew a lease;
- Termination of a tenancy;
- An arbitrary rent increase or decrease in services to which the person at risk or their parent or legal guardian is entitled; or
- Any form of constructive eviction.

Subsection (3) provides that a person at risk or their parent or legal guardian subject to an eviction or retaliatory action under this section is entitled to relief deemed just and equitable by the court and is eligible for attorney's fees and costs.

Section 12. Establishes educational programs.

Subsection (1) establishes a statewide educational program to meet the needs of tenants, property owners, health care providers, early childhood educators and providers, realtors and real estate agents, insurers, insurance agents, and local building officials.

Subsection (2) provides that the Governor, in conjunction with the director and the Lead Poisoning Prevention Commission, shall sponsor public service announcements for radio, television, the Internet and print media about lead-based-paint hazards, and the benefits of lead-free or lead-safe housing.

Subsection (3) provides that the director, in consultation with the Lead Poisoning Prevention Commission, shall develop pamphlets about childhood lead poisoning, and the importance of testing for, preventing, and treating childhood lead poisoning by January 1, 2005.

The act requires that the pamphlets to parents or legal guardians of children 6 years old and younger be distributed:

- By the owner of any affected property or their agents or employees at the time of the initiation of a rental agreement to a new tenant whose household includes a person at risk or any other woman of childbearing age;
- By the health care provider at the time of the child's birth and at the time of any childhood immunization or vaccination unless it is established that the pamphlet has been provided previously to the parent or legal guardian by the health care provider within the prior 12 months; and
- By the owner or operator of any child care facility or preschool or kindergarten class on or before October 15 of the calendar year.

Subsection (4) requires the director, in conjunction with the Department of Community Affairs, to establish guidelines and a trainer's manual for a Lead Poisoning Prevention for Properties Awareness Seminar by January 1, 2005. The seminar will be offered by professional associations, community organizations, accredited educational institutions, and for-profit educational providers. The seminar shall be reviewed and approved by the Department of Community Affairs.

Section 13. Establishes a lead screening program for at-risk individuals.

Subsection (1) requires the director to establish a screening program for early detection of individuals with elevated blood-lead levels. The program is to systematically screen children under age 6 in target populations identified in this section. Children within the specified target populations shall be screened with a blood-lead test at age 12 months and 24 months or between the ages of 36 months and 72 months if they have not previously been screened.

The director is required to establish the means and intervals by which to screen all children under age 6, and the guidelines for the medical follow-up for children found to have elevated blood-lead levels. The director is required to consult with recognized professional medical groups and such other sources as he or she deems appropriate to develop the screening requirements.

Subsection (2) provides that the director shall give priority to individuals in the following categories:

- All children enrolled in the Medicaid program at ages 12 months and 24 months, or between the ages of 36 months and 72 months if they have not been screened before;
- Children under the age of 6 years exhibiting delayed cognitive development or other symptoms of childhood lead poisoning;
- Persons at risk residing, or recently residing in the same household, as another person at risk with a blood-lead level of 10 µg/dL or greater;

- Persons at risk residing, or who have recently resided, in buildings or geographical areas in which significant numbers of cases of lead poisoning or elevated blood-lead levels have recently been reported;
- Persons at risk residing, or who have recently resided, in affected properties contained in buildings that during the preceding 3 years have been subject to enforcement actions, injunctive relief actions, or receivership actions for violations of lead-poisoning-prevention regulations as specified by the director; and
- Persons at risk residing in other buildings or geographical areas in which the director reasonably determines there is a significant risk of affected individuals having a blood-lead level of 10 µg/dL or greater.

Subsection (3) provides that the director shall keep records on all screenings conducted pursuant to this section. The records are to be indexed geographically and by property owner.

Under this section, any cases of lead poisoning found during the screening process are to be reported to the infected individual, the parents or legal guardian of the individual if they are a minor, and to the director within 5 working days.

Section 14. Provides rule authority to the department, pursuant to ss. 120.536 and 120.54, F.S., to implement the provisions of the act.

Section 15. Provides that the act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners of dwellings built before 1978 will have to pay to have a lead inspection conducted on each of their properties to determine if the property is eligible for a “lead-free” or “lead-safe” designation. If the property does contain a lead-based paint hazard, the property owner will have to pay to remove or reduce the lead-based paint hazard. An inspection to certify a dwelling is lead-free would cost an estimated \$500-\$1500. An inspection to certify a dwelling is lead-safe would cost an estimated \$150-\$500, and would have to be redone on a regular basis.

C. Government Sector Impact:

Department of Health

No funding source is identified for any of the programs established by this legislation, except the certification program (Section 8), which certifies individuals and firms to conduct the investigations of lead sources and the abatement of lead. The certification program must collect fees to support the program and to support the activities of state and local staff who conduct lead investigations, but the amount of the fees is not listed.

The only new position created by this legislation is the Director of Lead Poisoning Prevention in DOH. However, according to DOH, there are substantial activities that must be performed by the director that would require additional assistance to accomplish. It is estimated that a total of 14 full-time equivalents (FTEs) would be required (including the director position) to implement this program.

Estimated Expenditures	1st Year	2nd Year (Annualized/ Recurring)
Salaries		
Environmental Manager @ 70K	\$69,825.00	\$95,893.00
Systems Project Consultant	\$49,875.00	\$68,495.00
4 Data Entry Operators @ 26K	\$103,740.00	\$142,469.60
3 Registered Nursing Consultant @ 55K	\$164,587.50	\$226,033.50
4 Environmental Specialist III @ 48K	\$191,520.00	\$263,020.80
1 Staff Assistant @ 25K	\$33,250.00	\$34,247.50
Expense		
9 FTE @ Std Professional with Medium Travel @ 16629	\$149,661.00	\$122,112.00
5 FTE @ Std Support Staff	\$40,095.00	\$27,080.00
Operating Capital Outlay		
9 FTE @ Std Professional	\$13,500.00	
5 FTE @ Std Support Staff	\$10,000.00	

	1st Year	2nd Year
Total Estimated Expenditures	\$826,053.50	\$979,351.40
Estimated Revenue		
Registration fees	\$132,018.00	\$133,977.31
Total Estimated Revenue	\$132,018.00	\$133,977.31
Total Costs	\$694,035.50	\$845,374.09

The bill allows the director to designate local representatives to perform most functions that directly involve an affected property. There is considerable latitude in who is eligible to serve as the local designee (DOH, Building Codes, Housing Authority, and others). Therefore, DOH concludes that it is not possible to determine the cost that will be incurred from this program at the local level.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to DOH, the bill provides language that is similar to the model language for accreditation of lead-hazard training programs and individual certification programs required by federal law under the EPA. However, the language is not sufficiently similar to allow Florida to become a state with an EPA-approved certification program.

VIII. Amendments:

None.