

Lead Paint / Concerns

DHFS - Gail, Kevin, Perry

(1) certified lead inspectors

(2) 254.154 - Milwaukee's authority
~ standards

(3) technical

→ DHFS hands would be tied

→ Section 16

(4) staffing?

Tim Ballering

• funding

• Milwaukee

• language problems

• testing

• Milwaukee

Sections 9, 10, 27 fixed or scrapped

Laurie Casey, ~~Shelia Ruds~~, Jawn Ruez

• funding for testing & inspectors

• 90 day period for new owners is too long
↳ should change to 30 days

• 2 way rebuttable

• ~~section~~ need to be consistent w/ ^{other} sources
of lead

• section 12 needs to be fully restored
more inspection

Bob Breslawer

insurance

Jack Gaboury

• doesn't understand why he is responsible

• Milwaukee prop. owner who thinks he wouldn't be protected
~~Barred~~

Dick Krause

• standards of Milwaukee vs. state

• afraid Milwaukee will turn around & ↑ their standards

Amy Murphy

• one standard reflecting Milwaukee

• 90-day immunity too long
↳ 30 day

• 2 way rebuttable presumption

↳ guilty until proven innocent

↳ can be fixed

Peter Slaby

- cost

John Fischer

• only based on child poisoning

James Gries

Richard Bishop

• ^{affid} ~~feels~~ that immunity ~~will~~ not cover Milwaukee

Stand

• vacuum (hypovac)
• know child's level before they
make in

Assembly passes Sykora's lead paint hazard reduction bill

The Wisconsin State Assembly voted 97-0 recently 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 1/2 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.

Dunn County
3/15/00

Lead paint solution is on way

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, Feb. 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 held a Lead Paint Informational Meeting in Wausau on Friday, Feb. 25, 2000, to discuss the legislation.

Dunn County 2/27/00

Push Begins to Pass Lead Paint Legislation

By Michael Theo

Legislation designed to address legal and liability issues for property owners regarding lead paint hazards has now been drafted and has begun the complicated legislative process toward becoming law. The legislation (AB 806) addresses issues raised in a recent Wisconsin Supreme Court decision which has caused considerable turmoil in the marketplace. It's now a race against time. The legislature must act before March 30th, the scheduled end of their two-year session. Legislators then go home to campaign for the fall elections and won't return until January 2001.

AB 806 is the product of intense negotiations over the past month between REALTORS®, public health officials, the state Apartment Association and the Apartment Association of Southeast Wisconsin, the state Department of Health and Family Services, and four dedicated legislators – Senators Bob Jauch (D-Poplar), Bob Wirsch (D-Kenosha), and Representatives Tom Sykora (R-Chippewa Falls) and Spencer Coggs (D-Milwaukee).

Under the Supreme Court's ruling in the *Antwaun A. v. Heritage Mutual Insurance Co.*, property owners have a new duty to test all chipping paint for lead content in housing built before 1978. What the court decision

Once the remedial work is done, an independent state certified inspector would provide owners with a certificate of compliance.

... Owners of properties certified as lead-safe or lead-free will receive protections from lead paint lawsuits.

didn't say is ... what happens next? What duties do owners have if lead is found in the paint? What clean up standards should be used? Who can do the remedial work? What is an owner's liability before and after any efforts to address the lead paint hazard?

The new legislation is designed to answer these and other questions and is intended to protect children and property owners alike. Under the bill, the state will develop new standards for making a property "lead safe" or "lead free." Certified property owners and their agents will be allowed to test for lead paint and to do the work necessary to make their property lead safe or lead free. Once the remedial work is done, an independent state certified inspector would provide owners with a certificate of compliance. A lead-free certificate is good indefinitely, unless revoked. A lead-safe

certificate will be good as long as the certified person determines – based upon the condition of the premises, the type of work done, and any maintenance requirements. Owners of properties certified as lead-safe or lead-free, will receive liability protections from lead paint lawsuits.

This incentive-based legislation does not create new mandates on property owners. Only those owners who seek liability protections will need to do the remediation work on their properties. (Unless a child is detected with elevated blood levels in which case owners must act.)

Finally, the legislation also allows the state to establish an insurance pool for owners to receive property insurance against lead paint hazards, if the private insurance markets fail to provide coverage after clean up standards are established. However, with standards, many insurers predict the private market will develop affordable coverage for owners.

REALTORS® are encouraged to contact their state senators and representatives and ask for support in passing this important legislation.

For more information, contact Michael Theo at mttheo@wra.org.

SEE PAGE 10 OF THIS NEWSLETTER FOR INFORMATION ON LBP CLASSES!



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: March 1, 2000

TO: INTERESTED LEGISLATORS AND OTHER INTERESTED PERSONS

FROM: Pam Shannon, Senior Staff Attorney

SUBJECT: Assembly Substitute Amendment 1 (LRBs0347/1) to Assembly Bill 806,
Relating to Lead Poisoning

This memorandum describes the provisions of Assembly Substitute Amendment 1 (LRBs0347/1) ("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. On February 28, 2000, the Assembly Committee on Housing introduced Assembly Substitute Amendment 1, by unanimous consent, adopted the Substitute Amendment on a vote of Ayes, 6; Noes, 1, and recommended passage of Assembly Bill 806, as amended, also on a vote of Ayes, 6; Noes, 1.

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. Senate Substitute Amendment 1 to Senate Bill 232 was introduced by Senator Robert Wirch on February 29, 2000. It is identical to Assembly Substitute Amendment 1 to Assembly Bill 806.

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 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

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, 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

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, 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 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. 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:rv;wu



Date: March 9, 2000

BACKGROUND

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.

Recent Court Decisions.

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 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 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.

(The above excerpt was taken from a March 7, 2000 memo from Bob Lang, Director of LFB, to Members of the JFC)

SUMMARY OF AB 806 (AS AMMENDED BY COMMITTEE)

Assembly Substitute Amendment 2 to Assembly Bill 806 relates generally to lead bearing paint hazards.

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 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

The Substitute Amendment provides that a property owner and his or her employees 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 employee 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.

Temporary immunity is provided to owners and their employees 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, employee or agent. However, immunity only applies if the owner obtains a certificate of lead free or lead safe status for the dwelling or unit and the person issuing 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 employee 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, immunity only applies if the owner obtains a certificate of lead free or lead safe status for the dwelling or unit and the person issuing 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 per-formed at least 90 days apart.

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 employee 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, employee 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 rules, DHFS must include a summary of the differences between the standards developed under item 3.a., above, and the standards under similar ordinances in 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 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, 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. Report by the Office of the Commissioner of Insurance

Assembly Substitute Amendment 2 directs OCI to review costs 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 hazard is sufficiently affordable and available in the private insurance market.

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

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

The Substitute Amendment 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

The Substitute Amendment also 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.

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 Secretary of Administration is to transfer to the general fund an amount of funding equivalent to the GPR funding provided in the sub amendment (\$730,000) once the Secretary determines that sufficient program revenues are available from fees paid for certificates of lead free and lead safe status and lead workers certificates to fund DHFS's on going 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 Secretary of Administration is directed to allocate all available oil overcharge funds that have not been approved for expenditures as of the effective date of the bill and all accruing interest earnings on those funds for energy efficient window placements in rental properties owned by persons who are seeking a certificate of lead free or lead safe status.

10. 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.

11. 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.

(The above excerpt was taken from a March 8, 2000 Legislative Council memo from Pam Shannon)

AMENDMENTS

Assembly Substitute Amendment 1 to Assembly Bill 806 was introduced and adopted by the Assembly Housing Committee [6-1 (Rep. Reynolds)].

Assembly Substitute Amendment 2 to Assembly Bill 806 was introduced and adopted by the Joint Finance Committee [16-0].

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.

(The above excerpt was taken from a March 7, 2000 memo from Bob Lang, Director of LFB, to Members of the JFC)

PROS

1. This bill encourages proactive clean-up of lead bearing hazards, thus protecting the health and safety of children.
2. AB 806 provides liability immunity to property owners who take the necessary steps to insure their rental property is either lead free or at least lead safe.
3. This legislation establishes lead paint guidelines for the rental industry and health officials.

CONS

1. Opposition raised at the public hearing was addressed in with the Assembly Substitute Amendments.

SUPPORTERS

Rep. Tom Sykora, author; Sen. Robert Jauch, lead co-sponsor; Rep. Spencer Coggs, co-sponsor; Sen. Robert Welch; Wisconsin Realtors Association; Wisconsin Apartment Association; Apartment Association of South Eastern Wisconsin; Madison Area Apartment Association; Northwoods Housing Association; Wisconsin Citizens Action – Parents Against Lead; Beloit Property Managers' Association; individual landlords

OPPOSITION

Wausau Area Apartment Association; Apartment Association of South Eastern Wisconsin – due to amendments, AASEW now supports the bill; individual landlords – either requested changes, which were addressed in the amendments, or felt they were being unfairly penalized in general

HISTORY

Assembly Bill 806 was introduced on February 25, 2000, and referred to the Assembly Committee on Housing. A public hearing was held on February 23, 2000. On February 28, 2000, the Committee voted 6-1 (Rep. Reynolds) to recommend passage of AB 806 as amended.

Assembly Bill 806 was referred to the Joint Finance Committee on March 6, 2000. On March 7, 2000, the Committee voted 16-0 to recommend passage of AB 806 as amended.

CONTACT: Sara Jermstad, Office of Rep. Tom Sykora



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Prev 333 of 333

Subj: Olaf Larson -- Health Department
 Date: Wed, 21 Jun 2000 10:01:57 AM Eastern Daylight Time
 From: "Kathy Gile" <kgecorp@ix.netcom.com>
 To: "Bob Dennik" <wiaptassoc@aol.com>, "Eileen Bruskewitz" <eileenbz@execpc.com>

 In
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Hi Bob & Eileen,

The gentleman that was trying to get hold of me so desperately this week was actually "Olaf Larson -- a Madison member". He attended the first class on Monday and completed it on Wednesday (his maintenance guy too).

Olaf is not a crackpot member and Bob I told him you may want to talk to him also about the following, he is agreeable to working with us. His feeling was very much that he was being set up (you might see Shelly Bruce's hand in this tale). His number is 231-3467.

On Tuesday of last week he was contacted (and in his words -- threatened) by Al Guyent (sp?) from the State Health Department. Amount other things Guyent told him our course was illegal in Wisconsin (of course).

The tale: seems Olaf has a tenant residing in one of his older buildings who is overly concerned about "lead" and she has been haranguing the health department for months about her fears -- she actually has her blood levels, as well as her husband's and children's tested every year -- NO ELEVATED BLOOD LEVELS are involved in this situation. According to Olaf she runs a humidifier in her apartment constantly, keeping moisture levels very high (mold too -- another of her fears), and has caused peeling paint in the bathroom ceiling and other areas of the unit. She has been calling the health department on a weekly basis for months -- (sounds like she's just what the health department was looking for, huh?).

To add insult to injury the tenant is running an illegal "day care" out of her unit. Olaf says she highly educated and spends hours on the internet researching things. She is not a member of a protected class or poor.

Al Guyent informed Olaf he could not do any work in his unit to correct the problem because he was not certified (again remember no elevated BLL's are present), but guess Gyent has assumed that because he the Health Department contacted Olaf -- it now means "certified workers only" -- don't they get creative with the law.

Olaf has taken the following steps (he was sharp enough to suspect very highly he was being set-up). He is having his unit tested (XRF) and he and his maintenance man are going to Milwaukee next week to become "certified". I filled him in a little more on the situation with the Health Department, but he had already seen Shelly Bruce's & Becky's show last week -- he pretty much got it on his own. He has also contacted a real estate attorney about the illegal "daycare" and apprised them of the situation with the Health Department.

He told me he spent his "Father's Day" -- reading the state and federal laws -- which convinced him they are trying to scare him without actual authority



Repl



Repl!



Forw

and/or set him up as an example. He's pissed.

You guys need to talk to Olaf -- (by the way Eileen, you probably know Olaf -- in his past life he was a banker here in Madison).

I told him the laws were changing, but it appears to me he's gotten caught in the quagmire here and his best bet was to do exactly what he was doing -- have his property tested and to have himself & his maintenance person certified, as well as to get legal counsel.

Think we need to stay on top of this situation and help this guy as much as we can. He promised to keep me posted of events as they occur here.

Kathy

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Getting the Lead Out

By Representative Tom Sykora, Chair of Assembly Housing Committee

Sometimes when we see a big problem we just need to fix it. Wisconsin has a history of doing a great job addressing a serious problem and doing something about it. Lead paint and the health concern it creates for our kids is that kind of a problem.

Statistically, 11.1% of Wisconsin children, ages 1 to 5, have elevated blood levels of lead. This compares with 4.4% of children nationally. In part, this is the result of 74% of our nation's housing that has the potential of lead paint hazards. In 1950, much of the lead paint was removed from the marketplace. In 1978 the federal government made it illegal to produce and sell lead paint. Post 1978 housing can be considered lead free.

Thirty years ago, lead in gasoline was the greatest lead hazard. Elevated blood levels were as high as 80% in many areas with heavy traffic. Taking lead out of the gas created dramatic improvements but older housing with lead paint continue to be a problem if not properly maintained.

Last summer the Wisconsin Supreme Court decided two cases that changed the way property owners would do business from now on. In the first case, *Antwaun A vs. Heritage Mutual Insurance Co.*, the court decided that the property owner was liable for a small child who had health problems caused by ingestion of lead paint chips and dust. The ruling stated that a property owner should be aware of deteriorated paint conditions that could lead to lead poisoning; and therefore, has a common law duty to test their residential property for such hazards. The ruling, however, did not define what a property owner must do to fix the problem if lead paint is found as a result of testing.

A second case, *Kevin Peace vs. Northwestern National Insurance Co.*, ruled that lead paint in a residence is a pollutant and therefore, any bodily harm caused due to lead paint chips, dust or flakes is not required to be covered by the property owner's insurance company. The result of this ruling placed the full liability risk of lead damages to residents on the property owner, the agents of the property owner and the property manager. It also increased the risk to the lender in case a property owner with a mortgage was sued.

The long-term outcome of these two rulings was to put affordable housing at risk. Property owners would find it less desirable to own and rent older housing. The rental market industry tends to be highly leveraged and most property owners own four or less units. Concern was that banks would be reluctant to finance pre-1978 properties. While the federal government mandated many new rules and requirements, they did not provide funding for property owners to fix the problem.

In addition to these two rulings, the Environmental Protection Agency (EPA), US Department of Housing and Urban Development (HUD) and Occupational Safety and Health Administration (OSHA) have added a long list of requirements that make the process of cleaning up the lead hazards on a particular property very difficult. There is a statewide shortage of certified professionals from inspectors to sight repair personnel that control or remove the hazard.

It was no surprise when the Wisconsin Apartment Association, Wisconsin Realtors and Wisconsin Builders dropped into my Madison office last year. They saw the problem and they wanted to fix it. Not only did they ask to take a primary role in solving the problem, they wanted to open dialog with the Wisconsin Department of Health and Family Services to help advise them as to what was needed to get the job done. During the discussions that followed, dialog between interested parties grew to include parents with lead-poisoned children, the Milwaukee Health Department, the EPA, HUD, OSHA and even the trial lawyers.

Building a consensus from so many groups seemed to be impossible, but somehow the job got done. The final product was sent to the Governor with unanimous votes of support in the Assembly and the Senate. I worked extensively with Senator Bob Jauch, who previously co-chaired a special study committee on lead paint hazards. The legislation required working out many details and concerns from a variety of perspectives. A bipartisan attack of the problem was absolutely necessary in the current political climate. Always, we kept the children in mind.

As a result of the lead paint bill, the state will be able to certify trainers, inspectors and other personnel for the safe removal and containment of lead hazards. They will work in the private sector as private businesses but will be certified by the state as per federal guidelines.

Prior to the lead paint bill, health departments needed to find the child with elevated lead levels before issuing an order for the property owner to cleanup. Under the old system, kids were being used as lead testing kits. Under the new law, testing takes place using dust swabs and chemicals. Property owners and their agents can implement proven, cost effective methods of eliminating and controlling lead hazards.

The Wisconsin Supreme Court, EPA, HUD and OSHA created the rules but they did not put adequate funding into the pot. Wisconsin already charges the third highest taxes in the nation, so we couldn't afford the price tag of a total abatement program (estimated by some to exceed 4 billion). What is left, is to build a law that would not force the spending onto the taxpayer. Market based incentives to cleanup are needed. Thus, limiting liability for those who voluntarily get certified as lead-safe creates an affordable solution.

In order to limit liability it is necessary to create a clear definition as to what lead free and lead safe is. Certification by the state as lead free is a one-time test but lead safe will be more complicated. Removing all lead paint would be too costly and our experience from asbestos forces us to rethink how we should deal with lead paint. Most of the time proper maintenance provides safe housing at an affordable cost. This is what the experts around the table agreed to. This is what we all agreed to be the practical, affordable and realistic solution. This is the solution we came up with. It will continue to provide safe affordable housing, and it is a solution that we can start with now. Waiting for federal funding may be waiting for dollars that never come.

The lead paint problem has two sets of victims, kids and landlords. The kids pay the big price but the landlords did not buy their property with the knowledge of lead paint being a serious problem. A solution depended on fairness and co-operation. The final product puts property owners into the position that if they cleanup and maintain their property they will be exempt form liability. This provides an incentive for owners to cleanup and prevents the child from getting lead poisoning.

AB806 282 3667

WAA Did It!

Never have I been so proud as to see Governor Thompson's final pen stroke to enact AB806 into law at Milwaukee Children's Hospital. As you know, the main goal of the bill is to prevent exposure of children to lead hazards resulting from deteriorating paint. In addition, AB806 limits a property owner's liability if it is certified by the state as lead safe or lead free. It also establishes an advisory board to develop rules needed to build a clear definition of what lead safe is. As apartment owners, it will be easier to prevent the devastation a lawsuit if you know what to do to prevent one from occurring.

AB806 passed into law because of the hard work and efforts of the Wisconsin Apartment Association and its leadership. Chet Brown and Bob Dennik, worked long hours for the membership across the state. I personally must thank Bob for his work in and out of the Capital. Shaping the WAA into a well-oiled political machine, he brought the Wisconsin Realtors and Wisconsin Builders into the picture.

This proved to be a good plan because they combined their resources with WAA resulting in a final product that the rental owners can support. Without a cooperative association between the housing industry and the DHFS no real reform would happen. True reform demands cooperation of property owners. After all, property owners will be paying for their hazard repairs and removal mandated by the Federal EPA, OSHA and HUD. In short, while the Federal Government mandates, the industry gets to ante up the cash. AB806 allows property owners to pay for affordable interim measures of repair to temporarily control the lead hazard until full abatement is done.

AB806 creates an atmosphere that the Wisconsin DHFS, WAA, Realtors and Builders can feel comfortable. A true partnership requires cooperation and communications in all directions. The goal of AB806 is to do this.

Thanks to Bob's tireless efforts, the team, as I refer to it, put the WAA on the map. No question, the WAA has become a player in the Wisconsin Political Sandbox. This did not happen without dedication and realistic commitment toward the betterment of the rental housing industry. All the WAA members should take ownership and pride for what happened in developing AB806.

The next step will be to build an education process to create knowledgeable landlords and property management personnel. Cleaning up lead should be and must remain affordable, safe and effective. Wisconsin cannot afford to lose it's stock of affordable housing and the WAA.

Best Wishes,

Tom Sykora, Chair Assembly Housing Committee, State of Wisconsin



TOM SYKORA

STATE REPRESENTATIVE

FOR IMMEDIATE RELEASE

March 30, 2000

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

Lead Paint Reduction Bill on Its Way to the Governor

Sykora legislation to protect both children and landlords approved by legislature

Madison... The Wisconsin State Legislature finally approved today legislation that provides legal incentives to landlords to clean up any lead-based paint hazards in their buildings.

State Representative Tom Sykora (R-Chippewa Falls), Chair of the Assembly Housing Committee and author of the bill, has been dedicated, to legislation addressing the issue of lead paint hazards, especially after last summer's Wisconsin State Supreme Court ruling.

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."

Earlier this month, the Assembly did approve a lead paint hazard reduction package; however, the Senate amended a few of the provisions late last night. The Assembly moved to concur as amended by the Senate. Assembly Bill 806, relating to lead paint hazard reduction, will now go to the Governor for final approval.

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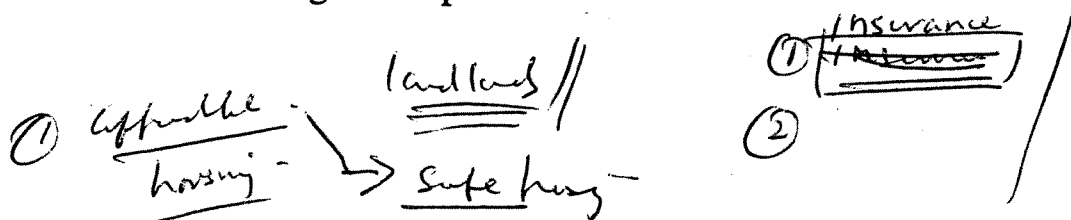
Outline of Remarks by Senator Bob Jauch on 1999 Senate Bill 232
(relating to lead poisoning) to Senate Committee on Economic
Development, Housing and Government Operations (January 21, 2000)

A. Preliminaries

1. Thanks to Senator Wirch for holding the hearing.
2. Bill is the product of Joint Legislative Council's Special Committee on Lead Poisoning Prevention and Control, which held 12 meetings over 1-1/2 years.
3. Committee was comprised of representatives of many groups interested in this serious childhood health issue, including: public health professionals and advocates, housing specialists and property owners.
4. Bill was originally introduced last session, too late to pass. The Joint Legislative Council voted *unanimously* to reintroduce the Bill this session.
5. You have received Joint Legislative Council Report No. 5, which provides background information on the lead poisoning problem and describes the Bill in detail.

B. Problems Relating to Lead Poisoning

1. Lead poisoning is a significant public health hazard, especially for children under age 7 whose developing neurological systems are particularly susceptible--it can cause *permanent* nervous system damage, reduced intelligence and attention span, learning disabilities and behavior problems.
2. Primary source of childhood lead poisoning is lead paint chips and lead-contaminated dust in older homes which are in poor condition or are undergoing remodeling without proper precautions to avoid creating a lead paint hazard.



3. Residential use of lead paint was not banned until 1978, so homes built before that year are likely to contain lead paint. Those built before 1950 are even more likely to have lead paint and in higher concentration.
4. Lead poisoning is particularly serious in Wisconsin--our childhood lead poisoning rate far exceeds the national average. Several factors: nearly 20% of Wisconsin children under age six live in poverty, often in deteriorated housing; an older housing stock that is not in good condition; and harsh midwest climate. Among major U.S. cities, Milwaukee ranks in the top five for the number of children with serious lead poisoning.

5. Currently, no state standards exist for maintaining older property so that children do not become lead poisoned.

6. Property owners can no longer obtain liability insurance to protect them in the event a child living in their property becomes lead poisoned.

7. Although the Department of Health and Family Services (DHFS) and local health departments currently provide lead screening, home inspections, education and outreach, more resources are needed to adequately address the problem.

C. How the Bill Addresses the Problems Related to Lead Poisoning

1. *Establishes housing standards* that owners of occupied dwellings built before 1950 *must* meet and that owners of housing built between 1950-1978 *may* meet and provides for state certification for properties meeting the standards. This addresses the problem of having older housing with lead hazards, but not having standards for how properties are to be maintained in a lead-safe manner.

- Standards include performing such essential maintenance practices as visual inspection and repair of deteriorating paint and determining what is causing the paint to deteriorate, training maintenance staff and using safe work practices.
- Standard treatments are required at unit turnover and are required annually in housing with a child under six.

2. ***Provides property owners with immunity from liability*** relating to lead poisoning or lead exposure, in return for meeting the standards and becoming certified. This addresses the need for incentives to property owners to keep up their properties.
3. ***Establishes a State Residential Lead Liability Fund*** which could issue liability insurance policies for certified properties. This addresses the problem of the unavailability of liability coverage for lead-based paint hazards in the private insurance market. The Insurance Commissioner must first make a finding that liability coverage is not sufficiently available in the private insurance market before issuing policies from the fund.
4. ***Provides funding*** to address issues associated with lead-based paint hazards. This deals with the problem of inadequate funding for current state, local and private efforts to reduce lead hazards to Wisconsin children.
 - The funding includes an appropriation to DHFS of \$2.5 million GPR in fiscal year 2000-01 to fund lead hazard reduction activities, with priority on providing grants and interest-free, deferred payment loans to reduce lead hazards in housing. Funds could also be used for lead poisoning education efforts, housing inspections and the expansion of lead poisoning prevention programs to counties that do not currently have programs. The Joint Finance Committee would have to annually approve a plan to expend these funds.
 - The Bill also directs the Department of Administration to use all available oil overcharge funds that the state receives to reduce lead hazards in dwellings in conjunction with energy conservation activities.
 - The Bill also requires the Wisconsin Housing and Economic Development Authority to attempt to make loans of \$5 million per year in total under two loan programs for funding the elimination, abatement or control of lead paint hazards.

D. Conclusion

1. Bill takes a multi-pronged approach to dealing with the very serious problem of childhood lead poisoning:
 - It addresses the issue of *housing conditions* by creating clear standards so owners of older properties know what they must do to maintain their properties in a lead-safe manner.
 - It addresses the issue of *inadequate liability protection* for responsible property owners by creating a certification process so that owners who meet the standards and obtain certification are afforded immunity from liability.
 - It addresses the issue of the *unavailability of insurance* by creating a State Lead Liability Fund and requiring the Insurance Commissioner to encourage the private insurance industry to offer coverage for lead hazards.
 - It addresses the issue of *inadequate funding* by appropriating GPR dollars for specified activities and requiring the use of oil overcharge funds for lead hazard reduction activities.
 - Finally, it addresses the need for the state to expand its current efforts by requiring DHFS to *promulgate administrative rules* on a variety of subjects related to lead poisoning prevention and lead hazard reduction.
2. Thank you again for agreeing to hear this Bill today. I'd be happy to answer any questions you have.

Notes for remarks on 1999 Assembly Bill ____, relating to lead poisoning to the Assembly Committee on Housing, February 23, 2000

- ***Children with lead poisoning:***
 1. 1990 Census figures indicate that **85%** of all housing in Wisconsin was built before 1980. It is estimated that about **73%** of this housing contains some lead.
 2. Wisconsin's overall lead poisoning rate among children ages 1 to 5 is **11.1%**. This is more than 2 ½ times the national average of 4.4%.
 3. In FY 97, local health departments were able to evaluate the living environments of only **73%** of Wisconsin children with lead poisoning. Outside Milwaukee, only **55%** of identified lead hazards were controlled.

- ***Standards in the bill:*** Wisconsin needs standards, first of all, to create housing where children may live without risking the permanent effects of lead poisoning. Secondly, landlords need to know exactly what they need to do to be able to rent their properties to families with children without the fear that they may be harming a child and risking a major lawsuit.

- ***Standards in other states:*** Four other states and the federal government are requiring properties in given categories to meet standards so they are lead safe. (The states with standards are Massachusetts, Maryland, Rhode Island and Vermont.)

Massachusetts has had strict requirements for abatement of lead hazards in housing built before 1978. Their law has been in effect since 1971. We can learn from their experience.

1. A recent article in the *American Journal of Public Health* concluded that where there are large tracts of old lead-painted rental housing, the prevention of lead poisoning through housing improvements should be the primary goal of state health policy. This article found that lead levels of children in Worcester, MA had decreased relative to those in Providence, RI. These are very similar cities. However, Massachusetts had actively enforced legal requirements for abatement of lead paint hazards. In addition, Rhode Island held its property owners harmless and did not create an incentive for landlords to cure any hazards in their property.
 2. Massachusetts has had problems with abandoned property and strict lead requirements have been cited as one of the reasons for this. In developing this legislation, we have been aware of that risk and have taken it into account.
- ***Certification of properties by certified inspectors or risk assessors:*** One complaint about standards for lead-safe housing is that owners are not permitted to do all of the work required to receive a certificate and immunity from liability themselves. This is an important aspect of this bill, however. A study that has been conducted by the National Center for Lead Safe Housing, and will be released shortly, indicates the importance of verifying lead safety through dust testing. In Maryland property

owners have the option of either abating lead hazards and having the property tested for lead dust *or* completing certain standard treatments and cleaning and having a visual inspection, but no dust testing. The study shows that the properties in which dust testing was not done still have high lead levels.

- ***Holding in Antwaun:*** Last summer, the Wisconsin Supreme Court held that a duty to test for lead arises whenever a landlord of a residential property constructed before 1978 either knows or, in the use of ordinary care ***should know***, that there is peeling or chipping paint on the rental property. The Court also held that where peeling or chipping paint is present in a pre-1978 residential structure, it is foreseeable that lead paint may be present which would expose the inhabitants to an unreasonable risk of harm.

- ***Immunity:*** Under current law, we grant immunity from liability to encourage people to do the right thing in several instances.
 1. Charities that distribute food are immune from liability for any harm that food may cause.
 2. People who give care to another in an emergency situation in good faith are immune from liability.
 3. People acting as foster parents are immune from liability if something should happen to a foster child in their care.

This grant of immunity comes with a lot of specific requirements. A landlord must do more than act in good faith or simply do the job of a landlord. They must meet standards of care and obtain a certificate proving they have done so.



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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.

Jermstad, Sara

From: Theo, Mike - VP Public Affairs [mtheo@wra.org]
Sent: Wednesday, April 12, 2000 2:46 PM
To: JERMSTAD, SARA
Subject: Lead Paint Overview

Sara:

Tom asked that I commit to writing something we were discussing several weeks ago during the pendency of AB 806. I was discussing how unique a model AB 806 was because it in essence represents a whole new approach to reducing lead paint hazards. This new approach is based on (a) providing incentives rather than punishments to property owners for lead hazard controls, and (b) recognizing that future mandates on property owners should be tied to the level state funding assistance. Here's how:

Incentives Rather than Punishments

The single biggest problem with any legislation regarding lead paint hazard is the cost. ie: Who pays to fix the problem? Innocent property owners often don't have the means to remove or effectively control the hazard. Fear of lawsuits and/or new taxation has brought the paint manufacturers into the debate often times working against funding solutions. The enormity of the costs involved is evidenced by the active fear of insurance companies that they may be forced to provide insurance coverage that could kill them. So they have a distinct interest in maintaining lead paint's status as a pollutant for which they need not provide coverage. The upshot: there's a small constituency for a solution and a very large constituency for opposing nearly any legislative solution.

Because of the Antwaun decision, Wisconsin saw clearly that a new approach was feasible, so long as the state was willing to try incentives rather than punishment as a regulatory regime. The new duties and threat of lawsuits resulting from Antwaun provided an opportunity to create a system that provided property owners with conditional immunity from lead poisoning lawsuits in exchange for expending personal funds to create lead safe or lead free units in their properties.

This approach includes the creation of a state certificate program whereby properties receive a certificate of lead safe or lead free for the work owners perform on the property. With the certificate comes the conditional immunity from lawsuits. The certificate can be good for as little as 6 months or it could be permanent (in cases of a lead free certified property).

And herein lies the really unique approach to our law. With this approach, owners can invest as much money as they can afford. If they can't afford to do anything, they don't have to. However, they face the possibility of lawsuits, as they do under current law. If they can afford to do only a minimal amount of work, they can do this and receive certificates that are of shorter duration. For those that have the means to do extensive control procedures, they have every incentive to do so because the duration of their legal immunity will be directly proportional to the control work they perform.

Mandates tied to Money

Second, in addition to protecting children by giving owners with varied financial means a range of options, this law is unique because during the legislative debate, it became clear that any future mandates on property

owners should be made only if the state provides funding assistance to owners.

This approach borrows conceptually from brownfield remediation legislation in that current owners of a property - owners that did not cause the "pollution" - are in essence deemed innocent yet they are required to actively participate in remediation of the problem. And owner action is incentivized by immunity from lawsuits.

Also similar to brownfields, it became clear during the legislative debate that future mandates on property owners would only come if the state provided greater financial assistance to owners. Linking mandates to money not only recognizes the concept of innocent property owners, but also puts the state in a position of protecting affordable housing.

Conclusion

This law therefore presents a new approach to lead paint hazards. An approach that cares equally for innocent children and innocent property owners. It is a model other states should consider.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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

Telephone: (608) 266-1304

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

DATE: March 30, 2000

TO: INTERESTED LEGISLATORS

FROM: Richard Sweet, Senior Staff Attorney

SUBJECT: Senate Amendment 1 to Engrossed 1999 Assembly Bill 806 (Lead-Bearing Paint)

This memorandum describes Senate Amendment 1 to Engrossed 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 report on the affordability and availability of liability insurance for lead-bearing paint hazards, granting rule-making authority, requiring the exercise of rule-making authority and making appropriations.

The amendment makes the following changes to the engrossed bill:

1. The amendment restores "municipality or other political subdivision" to the provision in current law that states that nothing in subch. II of ch. 254, Stats., may be interpreted or implied in any manner to impair the right of any person, entity, municipal or political subdivision to sue for damages or equitable relief.
2. The amendment sunsets the provision in the engrossed bill that provides immunity from liability for owners of dwellings or units 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 or lead-safe status was in effect. Under the amendment, the immunity provision sunsets seven years after it takes effect.

3. The amendment makes the following changes to the provisions of the engrossed bill that provide temporary immunity for owners of dwellings or units for a period of time after they acquire the dwelling or unit:

a. Under the engrossed bill, the immunity is for a 30-day period after acquisition, but is extended for an additional 60 days if the owner takes one of four specified actions. Under the amendment, the immunity is for a 60-day period.

b. The amendment states that the temporary immunity does not apply if the owner fails to comply with an order issued by the Department of Health and Family Services (DHFS) under s. 254.166 (2) (d), Stats., during the 60-day period that requires reduction or elimination of an imminent lead hazard within five days or reduction or elimination of other lead hazards within 30 days.

c. The amendment states that the temporary immunity does not apply if the dwelling or unit is vacant and the owner fails to comply with interim lead hazard control measures specified by DHFS by rule.

d. The amendment sunsets the temporary immunity provision four years after it takes effect.

4. The amendment requires DHFS to prepare reports by March 1, 2002, 2003 and 2004 describing specified activities relating to reducing lead-bearing paint hazards in residential property during the previous calendar year. In addition, the amendment requires that by March 1, 2005, DHFS must prepare a report evaluating the successes or failures of the act created by the bill and rules promulgated under the act in reducing the incidence of lead poisoning or lead exposure in children. The latter report would also include any statutory changes that DHFS feels are needed to further the goal of reducing the incidence of lead poisoning or lead exposure in children. The reports would be submitted to the Legislature and the Governor.

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

RNS:tlw;wu

Sara-

I thought you might want this.
These are the people who were at that
lead meeting in Wausau who signed up
to get a copy of the lead memo. (they
were sent several weeks ago).

I don't need it any longer so toss it
if you don't want it. Thanks - Mary

Lead paint bill gains Assembly approval, sent to governor's desk

BY DENNIS CHAPTMAN
of the Journal Sentinel staff

State Assembly on Thursday gave final approval to a bill that creates a lead paint safety program and sets up a state registry of lead-free and lead-safe homes.

The measure, which won unanimous Senate approval, is now sent to Gov. Tommy G. Thompson for his signature. Existing lead-based paint or dust has been linked to a variety of physical and behavioral problems, including learning disabilities, brain damage and even death. State health records show 4,731 cases of lead

Lawmakers also condemn Confederate flag over S.C. Capitol, pass measure for stiffer 'date rape drug' penalties

poisoning in 1998.

The registry would provide property owners immunity from civil lawsuits if their property was certified as lead-free or 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 Rep. Tom Sykora (R-Chippewa Falls). "We feel this legislation is a step towards ensuring that protection."

Sykora said Wisconsin's overall lead-poisoning rate among

children younger than 6 is 11.1%, more than twice the national average.

Although the Assembly had approved the bill earlier, it needed to sign off on changes made by the Senate on Wednesday.

Those changes included allowing landlords 60 days, instead of 90 days, after buying a property to be immune from liability. And the overall immunity would expire in seven years under the Senate version.

In other Assembly action

Thursday, the final day of the legislative session:

Confederate flag: Lawmakers heatedly debated a resolution by Rep. Marlin Schneider (D-Wisconsin Rapids) that would condemn the flying of the Confederate flag over the Capitol in Columbia, S.C., and urging support of a boycott against the southern state until the flag comes down.

But the proposal stirred bitter partisan bickering over whether state government should be taking a stand on the issue.

In the end, the Assembly adopted a resolution that con-

Please see **ASSEMBLY** page 5

Assembly/Lead paint bill sent to governor

From page 1

Confederate flags flying over the South Carolina Capitol, but backed off on supporting a boycott.

"Twelve thousand Wisconsin boys fought to bring down that flag," Schneider said. "We're requesting that they take it down. That flag is an insult to the military history of Wisconsin."

But Republicans sought to sidetrack a vote on the measure, first sending it to the Assembly Organization Committee. Schneider then tried to pull it from the committee and get a floor vote.

Rep. Marc Duff (R-New Berlin) said the issue was best left to South Carolina's Legislature.

"People need to come to that decision themselves and not have us tell them what to do," he said. "They have a Democratic governor down there. Maybe

that side of the aisle."

"Date-rape drug" penalties: The Assembly also sent to the governor's desk a bill by Rep. Mike Huebsch (R-West Salem) that cracks down on traffickers of the so-called "date rape drug."

The measure calls for increasing the penalty for selling or distributing Rohypnol, or "roofies," from a \$10,000 fine and a prison sentence of up to three years to a \$15,000 fine and a sentence of up to 7½ years in prison.

Douglas County prison: An attempt to authorize the state to lease a privately built prison in Douglas County fell short of the mark.

Rep. Scott Walker, chairman of the Assembly Corrections and Courts Committee, attempted to bring the bill to the floor less than a day after it was introduced. The Wauwatosa Re-

publican said the prison proposed by the Correctional Properties Trust is needed to reduce the state's dependency on using out-of-state private prison placements to ease overcrowding in state prisons.

The proposed prison would initially accommodate 1,200 inmates, but the site could eventually accommodate 2,400. The prison would offer about 350 jobs, and about 1,000 construction jobs would be supported by the project, backers say.

"If we're truly concerned about not sending our inmates out of state, here is our chance to do something about it," Walker said.

Rep. Frank Boyle (D-Superior) said the economic benefits to his area would be significant.

"Douglas County is economically deprived. We've got a higher unemployment rate than Madison or, in some cases, Milwaukee," Boyle said. "We're willing to do whatever we have

to in order to get this facility."

An attempt by Walker to bring the bill to the floor fell short of the needed two-thirds, 57-41.

Ethanol subsidies: The Assembly also approved and sent to the governor a measure that would provide state subsidies for major producers of ethanol.

The bill is intended to help the La Crosse-based City Brewery, which plans to invest \$10 million in ethanol production gear.

Bus driver immunity: The Assembly also approved and sent to the governor a bill by Rep. Sheldon Wasserman (D-Milwaukee) that would grant a school bus driver immunity from civil suit for using an epinephrine injector to administer the drug to a pupil who experiences a life-threatening allergic reaction.

WISCONSIN

Senate OKs lead paint, snowmobile measures

With session winding down, legislation is sent to Assembly

By RICHARD P. JONES
of the Journal Sentinel staff

Madison — Working against deadline, the state Senate on Wednesday passed bills to protect children against lead poisoning and get tough with snowmobilers who drink and drive.

With one day remaining in the session, the Senate unanimously approved and sent the assembly the lead-based paint measure.

The bill was prompted by two supreme court rulings last year. He stated that property owners have the responsibility to test for lead-paint problems, but the other stated that insurance companies do not have to cover any damages.

The legislation, sought by the realty and insurance industries, would establish a lead-based paint safety program

and a state registry of properties that have been certified as lead-free or lead-safe.

Property owners would be immune from civil liability for lead exposure or poisoning if the exposure took place while the property was certified as lead-safe or lead-free.

Earlier this month, the assembly unanimously approved the bill, but the Senate made several changes to the immunity provisions. For example, landlords buying property would be immune from civil liability for the 60 days after the purchase, instead of 90 days under the assembly bill.

The immunity provisions also would expire in seven years under the Senate bill.

According to the bill's author,

Sen. Bob Jauch (D-Poplar), 30% of children tested in Wisconsin have elevated blood-lead levels. Wisconsin children suffer lead poisoning at a rate 2½ to three times the national average, he said.

Ingesting lead dust or chips has been linked to numerous physical and behavioral problems, including learning disabilities, brain damage, even death. State health records show 4,731 lead-poisoning cases were reported in 1998.

"Lead poisoning is a serious problem for children, and a disproportionate burden unfortunately falls upon children in poor families who often suffer eight times the level of lead poisoning than children in families with higher incomes," Jauch

said.

On a 25-8 vote, the Senate also passed and sent the assembly a bill that would revoke snowmobile privileges for one year for first-offense drunken snowmobiling and two years for a second offense. The violator's snowmobile could be seized for a third offense.

Sen. Russ Decker (D-Weston), the bill's author, said the legislation also increases the snowmobile registration fee to \$40 for two years and doubles the snowmobile trail pass to \$20.

Decker said the fee increases would raise \$2 million for trail aid and increased law enforcement. The additional revenue would allow the state to hire seven more wardens, he said.

Decker said snowmobilers

sought the legislation, which was co-sponsored in the Assembly by Rep. DuWayne Johnsrud (R-Eastman).

"The responsible snowmobilers ought not to be subjected to the very few irresponsible snowmobilers," Decker said.

The bill also would set a 50 mph speed limit on trails in public areas from dusk to dawn.

"We got to take a step in a direction to stop these deaths," said Sen. Roger Breske (D-Eland). "We all know what it is: It's speed. They go too fast, and a lot of these accidents are at night, and I know that some of them are drinking also."

On a 31-2 vote, the Senate also sent the Assembly a bill to increase the reimbursement rate for personal care services. Last week, 10 people in wheelchairs staged a protest in the Assembly seeking more money under the medical assistance program.

Please sign up if you would like to receive a memo which will be written describing the lead paired bill with the changes described today.

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