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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** SB 1076  
**Author:** Archuleta  
**Version:** 3/7/2022  
**Urgency:** No  
**Consultant:** Gabrielle Meindl

**Hearing Date:** 3/28/2022  
**Fiscal:** Yes

**SUBJECT:** Lead-based paint

**DIGEST:** Requires the Department of Public Health (CDPH) to review and amend its regulations governing lead-related construction work, including training and certification for workers and accreditation for trainers in lead-safe work practices to comply with existing state regulations and with the United States Environmental Protection Agency's (U.S. EPA) Lead Renovation, Repair, and Painting Rule (RRP).

**ANALYSIS:**

Existing law:

- 1) Establishes the federal Lead-Based Paint Poisoning Prevention Act to create a prohibition against the future use of lead-based paint. (42 United States Code § 4851)
- 2) Establishes the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 (also known as Title X) to require anyone selling or leasing single- and multi-family housing units built before 1978 to disclose information about lead-based paint hazards to prospective buyers or tenants.
- 3) Establishes the US EPA's Lead-Based Paint RRP to require workers to be certified and trained in the use of lead-safe work practices, and requires renovation, repair, and painting firms to be US EPA-certified. (Title 40 Code of Federal Regulations (CFR) § 745)
- 4) Prohibits the use of lead-containing paint for residential use in the United States. (Title 16 CFR § 1303)
- 5) Defines "firm" as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or, a nonprofit organization. (Title 40 CFR § 745.83)

- 6) Establishes the Residential Lead-Based Paint Hazard Reduction Program to require any person offering lead-related construction courses to meet CDPH certificate requirements. (Health & Safety Code § 105250)

This bill:

- 1) Requires CDPH to review and amend its regulations governing lead-related construction work, including training and certification for workers and accreditation for trainers in lead-safe work practices to comply with existing state regulations and with the US EPA's RRP.
- 2) Requires the regulations to include, but not be limited to, requiring a copy of the worker and firm certification to be provided before the start of the job to the prime contractor or other employers on the site and to be posted on the job site beside the Division of Occupational Safety and Health (Cal-OSHA) Lead-Work Pre-Job Notification.
- 3) Requires CDPH to adopt regulations establishing fees for the lead-related construction work certifications or accreditations. Requires the fees to be established at levels not exceeding an amount sufficient to cover the costs of developing, administering, and enforcing the standards and regulations adopted by CDPH. Requires the fees to be deposited into the Lead-Related Construction Fund.
- 4) Authorizes CDPH to implement and administer this bill through all-county letters or similar instructions from CDPH until regulations are adopted. Requires CDPH to adopt emergency regulations implementing these provisions. Authorizes CDPH to readopt any emergency regulation that is the same as, or substantially equivalent to, an emergency regulation previously adopted under this bill. Establishes protocol for filing the emergency regulations.
- 5) On or after January 1, 2024, requires a firm, as defined in federal law, and at least one person onsite and employed by a firm doing renovation, repair, or painting work for compensation in a residential or public building to have a certificate for training in lead-safe work practices.
- 6) Establishes a violation of doing renovation, repair, or painting work on or lead-based paint without certification from CDPH to be punishable by imprisonment for not more than six months in the county jail, by a fine of not more than \$37,500, or by both imprisonment and fine.

- 7) Requires CDPH and the Contractors State License Board, on or before July 1, 2023, to collaborate to develop and implement an education and outreach program for every person and firm that is required to have a certificate, to include information on who is required to have a certificate and the requirements and process to obtain a certificate.

## Background

- 1) *Lead is a well-known toxin.* Lead has been listed under California's Proposition 65 since 1987 as a substance that is known to the State of California to cause reproductive damage and birth defects and has been listed as a chemical known to cause cancer since 1992. According to the Office of Environmental Health Hazard Assessment, lead has multiple toxic effects on the human body. Decreased intelligence in children and increased blood pressure in adults are among the more serious non-carcinogenic effects.

There is no level of lead that has been proven safe for children or for adults. Even a slight elevation in blood levels can reduce IQ and stunt development. Millions of children are being exposed to lead in their homes through aging lead-based paint, increasing their risks for damage to the brain and nervous system, slowed growth and development, learning and behavior problems, hearing, and speech problems.

- 2) *Lead paint poisoning.* The Centers for Disease Control and Prevention (CDC) estimates that approximately 2.6% of U.S. children aged 1 - 5 have high levels of lead in their blood (blood lead levels  $\geq 5$  micrograms per deciliter ( $\mu\text{g}/\text{dL}$ )). Childhood lead exposure most often occurs because of aging lead-based paint. Like all paint, lead-based paint inevitably deteriorates: it flakes, chips, and turns to dust and can contaminate the air, soil, floors, and other surfaces in the home. This is particularly true of lead paint on windows, doors, and other friction surfaces. Because children are especially likely to play on the ground and put things in their mouths, lead paint presents a larger risk for them than it does for adults living in the same space.

Although lead paint has been banned in California for decades, lead poisoning from exposure to lead paint continues to plague the state. Despite the prohibition on lead paint, the Legislative Analyst's Office, estimates that about 60% of houses in California were built before 1978 and are presumed to have lead-based paint.

- 3) *History of Lead-based Paint history.* When lead-based paint was marketed before 1978, it was a legal product in great demand because it was washable and durable. It was repeatedly endorsed by the federal, state, and local governments, and specified for use on government buildings until the mid-1970s. For example, the 1950 California Department of Education vocational book on painting endorsed the use of white lead paint.

As uses of lead pigments in paints evolved, so did the primary pathways through which people were thought to be exposed to lead and the level of exposure thought to be safe. It was not until 1974 that household dust emerged as a possible pathway for lead exposure.

Although the federal government banned the use of lead-based paint in 1978, buildings built prior to the ban still likely have lead paint. Due to the significant health issues caused by lead exposure, California requires anyone who performs lead-based paint risk assessment or removal to be certified or accredited by CDPH.

- 4) *State action on lead paint.* In 1991, the California Legislature enacted AB 2038, the Childhood Lead Poisoning Prevention Act of 1991, which established a program within the State Department of Health Services (DHS, which is now CDPH) to meet the requirements of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 and Title X of the Housing and Community Development Act. It required DHS to adopt regulations regarding accreditation of training providers that engage in or supervise lead-related construction work, and required the establishment of fees for the accreditation of training providers, the certification of individuals, and the licensing of entities engaged in lead-related occupations. The fees are deposited into the Lead-Related Construction Fund.

In 2002, the Legislature enacted SB 460 (Ortiz, Chapter 931, Statutes of 2002) to establish the requirement that lead safe work practices be used in pre-1978 buildings. SB 460 added lead hazards to the conditions that make premises uninhabitable and substandard. It also prohibited an individual from disturbing more than a "de minimis" amount of lead-based paint without "containment" (a system, process, or barrier used to contain lead hazards inside a work area).

SB 460 also required any person being paid for lead construction, including inspection, risk assessment, or designing plans for the abatement of lead hazards, and any person performing lead inspections or abatement in a public elementary, preschool, or day care center, to have a certificate from DHS.

- 5) *California's existing regulation on lead-based paint.* CDPH has regulations (California Code of Regulations (CCR), Title 17, Sections 35001, et seq) that spell out requirements for lead hazard evaluation and abatement activities, accreditation of training providers, and certification of individuals engaged in lead-based paint activities.

In addition, Cal-OSHA has regulations (CCR, Title 8, Section 1532.1, et seq) which provide worker protection requirements for employees conducting lead-related construction activities. Cal-OSHA's regulations limit occupational exposure to lead and require employers to use engineering controls, safe work practices, and other control measures. These regulations apply to all employers regardless of what kind of work they perform. Cal-OSHA is currently developing revised lead regulations. As it relates to coordination with Cal-OSHA's worker safety regulations, Cal-OSHA does not see any conflict with what SB 1076 is proposing.

Existing law already authorizes CDPH to have a program that certifies employees that engage in or supervise lead-related construction work, therefore, this proposal fits under CDPH's existing regulatory umbrella for lead-related regulation.

- 6) *Lead-Based Paint Renovation, Repair and Painting (RRP) Rule.* Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children.

On April 22, 2008, the US EPA issued the RRP requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning. Under the RRP, beginning in April 2010, contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. This includes in-house maintenance staff and many types of outside contractors.

Under the RRP, child-occupied facilities are defined as residential, public, or commercial buildings where children younger than age six are present on a regular basis. The requirements apply to renovation, repair, or painting activities. The RRP does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior.

While California's lead laws and federal RRP complement each other in many

ways, subtle differences and inconsistencies between the two make the regulatory framework on lead in buildings confusing. Renovators and contractors are required to learn and adhere to one set of rules for the RRP and another for California, and have to figure out the inconsistencies on their own.

To address these conflicts, SB 1076 would eliminate the current regulatory confusion regarding certification for lead paint removal by requiring CDPH to harmonize federal and state training and certification requirements for lead safe work practices.

- 7) *Need for emergency regulations.* A state agency may adopt emergency regulations in response to a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, or if a statute deems a situation to be an emergency under the Administrative Procedures Act (APA). Because emergency regulations are intended to avoid serious harm and require immediate action, the emergency rulemaking process is substantially abbreviated compared to the regular rulemaking process. SB 1076 requires CDPH to adopt emergency regulations to implement the provisions of the bill.

It is anticipated that it will take CDPH around 3 years to promulgate the regulations through the standard regulatory process under the APA. Emergency regulations are done through a streamlined process, and remain in effect for a limited time.

SB 1076 includes emergency regulatory authority because old houses are the biggest risk for lead exposure according to the U.S. EPA, and roughly 7.8 million homes in California may have lead-based paint. Given the highly toxic nature of lead and the ubiquity at which it is found in older building stock, having clear, understandable rules in place for lead-paint renovation or abatement is critical. Any delay could result in unnecessary lead exposure because of confusion over state compliance.

## Comments

- 1) *Purpose of Bill.* According to the author, “SB 1076 will protect children from lead poisoning by harmonizing state and federal training and certification requirements for lead safe work practices related to work that can disturb lead paint. Additionally under this proposal, California will follow the lead of fourteen other states and streamline state and federal requirements to address confusing inconsistencies and to move enforcement of this new program down

to the local level.”

**DOUBLE REFERRAL:**

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Public Safety Committee.

**Related/Prior Legislation**

SB 377 (Monning, 2017) would have required the CDPH to promulgate regulations governing lead-related construction work to conform to the US EPA’s RRP Rule. This bill died on the Assembly inactive file.

SB 1073 (Monning, 2016) would have required CDPH to update regulations governing lead-related construction work to conform to the US EPA’s RRP Rule. This bill was amended with content unrelated to this subject.

SB 460 (Ortiz, Chapter 931, Statutes of 2002) established the requirement that lead safe work practices be used in pre-1978 buildings.

**SOURCE:** Environmental Working Group and California Association of Code Enforcement Officers

**SUPPORT:**

Association of Environmental Contractors  
Bay Area Business Roundtable (BABRT)  
California Association of Code Enforcement Officers  
California Nurses for Environmental Health and Justice  
California Rural Legal Assistance Foundation  
Center for Environmental Health  
Clean Water Action  
County of Santa Clara  
Demolition With Hazards  
Environmental Working Group  
Families Advocating for Chemical and Toxics Safety  
Friends Committee on Legislation of California  
Impact Oakland Now  
Lead and Environmental Hazards Association  
San Francisco Bay Physicians for Social Responsibility  
Southern California Environmental Contractors Association  
Western Center on Law and Poverty

**OPPOSITION:**

None received

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