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STATEMENT OF INTENT

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A statement of intent is necessary for this bill because it grants rulemaking authority to the board of health and environmental sciences.

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The legislature intends that the rules promulgated by the board address health concerns with lead-based paint by establishing requirements applicable to individuals and firms engaged in the identification and abatement of lead-based paint hazards. The rules must provide for certification of persons engaged in lead-based paint occupations, for accreditation of training programs, for issuance of permits and permit conditions for lead-based paint activities, and for setting fees commensurate with costs. The legislature intends that the rules be at least as protective of human health and the environment as corresponding federal regulations.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 8], unless the context requires otherwise, the following definitions apply:

29

30

(1) "Accreditation" means written approval by the department of a training program for persons engaged in lead-based paint occupations.

- 1 (2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.
- 2 (3) "Certification" means issuance of a certificate by the department that permits a person to work
3 in a lead-based paint occupation.
- 4 (4) "Department" means the department of health and environmental sciences.
- 5 (5) "Lead-based paint occupation" means a worker, supervisor, inspector, technician, risk assessor,
6 planner, project designer, or other person directly involved in a lead-based paint activity.
- 7 (6) "Lead-based paint activities" means:
- 8 (a) in the case of target housing:
- 9 (i) risk assessment;
- 10 (ii) inspection; and
- 11 (iii) abatement; or
- 12 (b) in the case of any public building, bridge, or other structure or superstructure:
- 13 (i) identification of lead-based paint and materials containing lead-based paint;
- 14 (ii) deleading;
- 15 (iii) removal of lead form bridges; and
- 16 (iv) demolition.
- 17 (7) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise,
18 franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

19

20 NEW SECTION. **Section 2. Rulemaking authority -- certification -- accreditation -- issuance of**
21 **permits.** The board shall adopt rules establishing standards and procedures for certification of persons
22 engaged in lead-based paint occupations, for accreditation of training programs for persons engaged in
23 lead-based paint occupations, and for issuance of permits for lead-based paint activities. The rules must
24 be as protective of human health and the environment but may not invariably impose burdens on the
25 regulated community beyond federal requirements. The state program need not be identical to or
26 administered and enforced in an identical manner to the federal program. The rules must include but are
27 not limited to:

- 28 (1) standards for training course review and approval;
- 29 (2) procedures for suspension, revocation, and modification of training program accreditation;
- 30 (3) standards for certification of persons engaged in lead-based paint occupations;

- 1 (4) examination requirements for lead-based paint occupations;
- 2 (5) requirements for certification renewal, including periodic refresher courses;
- 3 (6) procedures for suspension, revocation, and modification of certification of persons engaged in
- 4 lead-based paint occupations;
- 5 (7) inspection requirements for lead-based paint projects and credentials of persons engaged in
- 6 lead-based paint occupations;
- 7 (8) criteria for inspections and risk assessments;
- 8 (9) requirements for advance notice to the department of lead-based paint activities, with the
- 9 exception of those industries that are exempt from permit requirements as described in [section 4];
- 10 (10) permit requirements and performance standards for lead-based paint activities and conditions
- 11 that a person is required to meet when conducting lead-based paint activities;
- 12 (11) criteria to determine whether and what type of control measures are necessary for lead-based
- 13 paint activities to ensure that activities are completed in a manner sufficient to protect public health,
- 14 including criteria setting allowable lead limits on interior building surfaces;
- 15 (12) recordkeeping requirements;
- 16 (13) procedures for seeking injunctions and civil and criminal penalties, for assessing administrative
- 17 penalties, and for requiring emergency actions;
- 18 (14) fees, which must be commensurate with costs, for:
- 19 (a) review and approval of training courses;
- 20 (b) application for and renewal of certification by persons seeking to engage in lead-based paint
- 21 occupations;
- 22 (c) issuance of lead-based paint activity permits; and
- 23 (d) inspections of lead-based paint activities;
- 24 (15) procedures to ensure that, for lead-based paint activities having a cost of \$3,000 or less, the
- 25 department shall issue permits within 7 calendar days following the receipt of a properly completed permit
- 26 application and application fee.

27

28 **NEW SECTION. Section 3. Lead-based paint hazard control account.** (1) There is a lead-based

29 paint hazard control account in the state special revenue fund. There must be deposited in the account all

30 money received from:

- 1 (a) fees collected under [sections 1 through 8]; and
2 (b) any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of [sections
3 1 through 8] that are received from the state or federal government or from other sources, public or private.
4 (2) Any accrued interest on funds in the account must remain in the account.
5 (3) Funds in the account are allocated to the department for the purpose of funding the costs of
6 implementing and operating the lead-based paint hazard control program established under [sections 1
7 through 8].

8

9 **NEW SECTION. Section 4. Certification, accreditation, and permit requirements -- restrictions.**

10 (1) To qualify for certification within a particular lead-based paint occupation, prior to July 1, 1996, a
11 person:

12 (a) shall successfully complete a training program for that occupation approved by the department
13 or the United States environmental protection agency;

14 (b) shall pass an examination approved by the department;

15 (c) must meet the additional experience and educational requirements if applicable to the specific
16 discipline; and

17 (d) shall satisfactorily demonstrate equivalent previous training or experience in the occupation as
18 prescribed by the department.

19 (2) After June 30, 1996, a person may not:

20 (a) engage in a lead-based paint occupation unless certified by the department as prescribed by
21 rule;

22 (b) conduct a lead-based paint activity without a permit, with the exception of activities at utility
23 facilities and at heavy industry facilities designated by standard industrial classification designations of
24 division B, major groups 10-14, or division D, major groups 20-39, as listed in the 1987 Standard Industrial
25 Classification Manual;

26 (c) contract with or employ in a lead-based paint occupation a person not certified by the
27 department; or

28 (d) offer a training course for a lead-based paint occupation without department accreditation.

29 (3) A person who applies for certification, accreditation, or a permit pursuant to [sections 1 through
30 8] shall submit the fees and follow procedures prescribed by department rule.

1 **NEW SECTION. Section 5. Records.** A person engaged in a lead-based paint activity shall maintain
2 the records required by department rule concerning the nature of lead-based paint activities.

3
4 **NEW SECTION. Section 6. Civil and criminal penalties.** (1) The department may suspend, deny,
5 or revoke the certification or accreditation of a person who:

6 (a) fraudulently or deceptively obtains or attempts to obtain certification or accreditation;

7 (b) fails to meet the qualifications for certification or accreditation or fails to comply with the
8 requirements of [sections 1 through 8] or of any rule adopted or order or permit issued pursuant to
9 [sections 1 through 8]; or

10 (c) fails to meet any applicable federal or state standard for lead-based paint activities.

11 (2) If the department determines that a violation of [sections 1 through 8] or of a rule adopted or
12 order or permit issued pursuant to [sections 1 through 8] has occurred it may issue an order compelling the
13 person receiving the order to end the violation immediately.

14 (3) A person who purposely or knowingly violates any provision of [sections 1 through 8] or of a
15 rule adopted or order or permit issued pursuant to [sections 1 through 8] is guilty of a misdemeanor.

16 (4) In addition to or instead of the remedies listed in subsections (1) through (3), a person who
17 violates any provision of [sections 1 through 8] or any rule adopted or order or permit issued pursuant to
18 [sections 1 through 8] may be assessed a civil penalty by the district court of up to \$10,000 per day per
19 violation. Each day of each violation constitutes a separate violation.

20 (5) Civil penalties collected under [sections 1 through 8] must be deposited in the general fund.

21 (6) An appeal of any department action under this section must be heard before the board.

22
23 **NEW SECTION. Section 7. Administrative penalties.** (1) In lieu of seeking a civil penalty from the
24 district court, the department may assess administrative penalties of not more than \$1,000 per day per
25 violation against a person who violates any provision of [sections 1 through 8] or any rule adopted or order
26 or permit issued pursuant to [sections 1 through 8]. Each day of each violation constitutes a separate
27 violation.

28 (2) In determining the amount of any penalty assessed pursuant to this section, the department
29 shall take into account:

30 (a) the nature, circumstances, extent, and gravity of the noncompliance; and

- 1 (b) with respect to the person who is liable:
- 2 (i) the person's ability to pay;
- 3 (ii) any prior history of violations;
- 4 (iii) the degree of culpability;
- 5 (iv) the economic benefit or savings, if any, resulting from the noncompliance; and
- 6 (v) any other matters as justice may require.

7 (3) An administrative penalty may not be collected pursuant to this section unless the person
8 charged with the noncompliance is given notice and opportunity for a hearing before the board. The notice
9 and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6. An appeal
10 of any department action under this section must be heard before the board.

11 (4) A person against whom a penalty is assessed under this section may obtain judicial review as
12 provided in Title 2, chapter 4, part 7.

13 (5) Administrative penalties payable under this section must be deposited in the general fund.

14

15 **NEW SECTION. Section 8. Venue.** A civil action to enforce [sections 1 through 8] may be brought
16 in the county in which the violation occurred or in which the violator resides or has its principal place of
17 business or in the first judicial district, Lewis and Clark County.

18

19 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 8] are intended to be
20 codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to
21 [sections 1 through 8].

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0498, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a lead-based paint hazard control program.

ASSUMPTIONS:

1. This act will provide the mechanism to establish a state lead-based paint accreditation and certification program that will be approved by the U.S. Environmental Protection Agency (EPA), thus providing primacy to the state.
2. The Governor's Executive Budget contains a new proposal for a lead abatement accreditation program. The proposal requests 1.00 FTE and total costs of \$64,500 in FY96 and \$60,500 in FY97. Funding for the program comes from fees provided for in Section 2 of this bill, and an EPA grant. Thus, using the Executive Budget as a base, there is no fiscal impact.

FISCAL IMPACT:

Subject to approval and passage of the Executive Budget, there is no fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

This act will make local governments eligible for Housing and Urban Development lead-based paint abatement grants, thus increasing revenues for lead-based paint abatement and reducing expenditures of low-income housing program funds and community development block grants for these same abatement projects.

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

The Montana consumer will benefit by having a well trained workforce available within the state and at a lower cost than if the industry were forced to seek training, accreditation or certification out-of-state or if the consumer were forced to seek out-of-state contractors.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?


The user-fees would be assessed to the industry receiving benefit of the program. The industry typically wants assurances that the fees that it pays are only used for the program for which the fees are collected.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? Yes No (if no, explain)

Continued)

 2-15-95

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


VICKI COCCHIARELLA, PRIMARY SPONSOR DATE

Fiscal Note for HB0498, as introduced

HB 498

(continued)

- d) Does the need for this state special revenue provision still exist? xx Yes
____ No (Explain)

This act will establish a program for state primacy from EPA and will be supported by user fees and federal grants, requiring accounting that the funding source is utilized only for the operation of the program.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No. The legislature would still scrutinize the program budget, establish spending authority, and if found necessary could eliminate funding for the program.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

This act would establish the legislative recognition of need for the lead-based paint accreditation and certification program.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

The dedicated revenue provides accounting efficiencies and documentation of revenue sources and expenditures necessary for a program funded by user fees and federal grants. The general taxpayer should not shoulder the burden of support of a program through which a specific industry derives significant benefits and accounting for this would be very difficult if the program were general funded.

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

HOUSE BILL NO. 498

INTRODUCED BY COCCHIARELLA, JACOBSON, TUSS, HEAVY RUNNER, ELLINGSON
BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A LEAD-BASED PAINT HAZARD CONTROL PROGRAM; CREATING A LEAD-BASED PAINT HAZARD CONTROL ACCOUNT; AND AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO PROMULGATE RULES GOVERNING LEAD-BASED PAINT ACTIVITIES."

STATEMENT OF INTENT

A statement of intent is necessary for this bill because it grants rulemaking authority to the board of health and environmental sciences.

The legislature intends that the rules promulgated by the board address health concerns with lead-based paint by establishing requirements applicable to individuals and firms engaged in the identification and abatement of lead-based paint hazards. The rules must provide for certification of persons engaged in lead-based paint occupations, for accreditation of training programs, for issuance of permits and permit conditions for lead-based paint activities, and for setting fees commensurate with costs. The legislature intends that the rules be at least as protective of human health and the environment as corresponding federal regulations.

It is intended that the state program ~~should invariably be limited to the minimum federal requirements and should not invariably impose burdens on the regulated community beyond federal requirements, while recognizing that the state program need not be identical to or administered and enforced in an identical manner to the federal program~~ NOT IMPOSE ADDITIONAL BURDENS ON THE REGULATED COMMUNITY BEYOND FEDERAL REQUIREMENTS, WHILE RECOGNIZING THAT THE STATE PROGRAM NEED NOT BE IDENTICAL TO OR ADMINISTERED AND ENFORCED IN AN IDENTICAL MANNER TO THE FEDERAL PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 8], unless the context

1 requires otherwise, the following definitions apply:

2 (1) "Accreditation" means written approval by the department of a training program for persons
3 engaged in lead-based paint occupations.

4 (2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

5 (3) "Certification" means issuance of a certificate by the department that permits a person to work
6 in a lead-based paint occupation.

7 (4) "Department" means the department of health and environmental sciences.

8 (5) "Lead-based paint occupation" means a worker, supervisor, inspector, technician, risk assessor,
9 planner, project designer, or other person directly involved in a lead-based paint activity.

10 (6) "Lead-based paint activities" means:

11 (a) in the case of target housing:

12 (i) risk assessment;

13 (ii) inspection; and

14 (iii) abatement; or

15 (b) in the case of any public building, bridge, or other structure or superstructure:

16 (i) identification of lead-based paint and materials containing lead-based paint;

17 (ii) deleading;

18 (iii) removal of lead ~~form~~ FROM bridges; and

19 (iv) demolition.

20 (7) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise,
21 franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

22

23 **NEW SECTION. Section 2. Rulemaking authority -- certification -- accreditation -- issuance of**
24 **permits.** The board shall adopt rules establishing standards and procedures for certification of persons
25 engaged in lead-based paint occupations, for accreditation of training programs for persons engaged in
26 lead-based paint occupations, and for issuance of permits for lead-based paint activities. The rules must
27 be as protective of human health and the environment but ~~may not invariably impose burdens on the~~
28 ~~regulated community beyond federal requirements~~ **NOT MORE STRINGENT THAN FEDERAL LAW.** The
29 state program need not be identical to or administered and enforced in an identical manner to the federal
30 program. The rules ~~must~~ **MAY** include but are not limited to:

- 1 (1) standards for training course review and approval;
- 2 (2) procedures for suspension, revocation, and modification of training program accreditation;
- 3 (3) standards for certification of persons engaged in lead-based paint occupations;
- 4 (4) examination requirements for lead-based paint occupations;
- 5 (5) requirements for certification renewal, including periodic refresher courses;
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- 7 lead-based paint occupations;
- 8 (7) inspection requirements for lead-based paint projects and credentials of persons engaged in
- 9 lead-based paint occupations;
- 10 (8) criteria for inspections and risk assessments;
- 11 (9) requirements for advance notice to the department of lead-based paint activities, with the
- 12 exception of those industries that are exempt from permit requirements as described in [section 4];
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- 14 that a person is required to meet when conducting lead-based paint activities;
- 15 (11) criteria to determine whether and what type of control measures are necessary for lead-based
- 16 paint activities to ensure that activities are completed in a manner sufficient to protect public health,
- 17 including criteria setting allowable lead limits on interior ~~building~~ AND EXTERIOR surfaces;
- 18 (12) recordkeeping requirements;
- 19 (13) procedures for seeking injunctions and civil and criminal penalties, for assessing administrative
- 20 penalties, and for requiring emergency actions;
- 21 (14) fees, which must be commensurate with costs, for:
- 22 (a) review and approval of training courses;
- 23 (b) application for and renewal of certification by persons seeking to engage in lead-based paint
- 24 occupations;
- 25 (c) issuance of lead-based paint activity permits; and
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- 27 (15) procedures to ensure that, for lead-based paint activities having a cost of \$3,000 or less, the
- 28 department shall issue permits within 7 calendar days following the receipt of a properly completed permit
- 29 application and application fee.
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2 paint hazard control account in the state special revenue fund. There must be deposited in the account all
3 money received from:

4 (a) fees collected under [sections 1 through 8]; and

5 (b) any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of [sections
6 1 through 8] that are received from the state or federal government or from other sources, public or private.

7 (2) Any accrued interest on funds in the account must remain in the account.

8 (3) Funds in the account are allocated to the department for the purpose of funding the costs of
9 implementing and operating the lead-based paint hazard control program established under [sections 1
10 through 8].

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12 **NEW SECTION. Section 4. Certification, accreditation, and permit requirements -- restrictions.**

13 (1) To qualify for certification within a particular lead-based paint occupation, ~~prior to July 1, 1996,~~ a
14 person:

15 (a) shall successfully complete a training program for that occupation approved by the department
16 or the United States environmental protection agency;

17 (b) shall pass an examination approved by the department AND BASED ON RULES ADOPTED BY
18 THE U.S. ENVIRONMENTAL PROTECTION AGENCY;

19 (c) must meet the additional experience and educational requirements if applicable to the specific
20 discipline; and

21 (d) shall satisfactorily demonstrate equivalent previous training or experience in the occupation as
22 prescribed by the department.

23 (2) ~~After June 30, 1996,~~ a A person may not:

24 (a) engage in a lead-based paint occupation unless certified by the department as prescribed by
25 rule AND IN CONFORMANCE WITH RULES ADOPTED BY THE U.S. ENVIRONMENTAL PROTECTION
26 AGENCY;

27 (b) conduct a lead-based paint activity without a permit, with the exception of activities at utility
28 facilities and at heavy industry facilities designated by standard industrial classification designations of
29 division B, major groups 10-14, or division D, major groups 20-39, as listed in the 1987 Standard Industrial
30 Classification Manual;

1 (c) contract with or employ in a lead-based paint occupation a person not certified by the
2 department; or

3 (d) offer a training course for a lead-based paint occupation without department accreditation.

4 (3) A person who applies for certification, accreditation, or a permit pursuant to [sections 1 through
5 8] shall submit the fees and follow procedures prescribed by department rule.

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7 **NEW SECTION. Section 5. Records.** A person engaged in a lead-based paint activity shall maintain
8 the records required by department rule concerning the nature of lead-based paint activities.

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11 or revoke the certification or accreditation of a person who:

12 (a) fraudulently or deceptively obtains or attempts to obtain certification or accreditation;

13 (b) fails to meet the qualifications for certification or accreditation or fails to comply with the
14 requirements of [sections 1 through 8] or of any rule adopted or order or permit issued pursuant to
15 [sections 1 through 8]; or

16 (c) fails to meet any applicable federal or state standard for lead-based paint activities.

17 (2) If the department determines that a violation of [sections 1 through 8] or of a rule adopted or
18 order or permit issued pursuant to [sections 1 through 8] has occurred it may issue an order compelling the
19 person receiving the order to end the violation immediately.

20 (3) A person who purposely or knowingly violates any provision of [sections 1 through 8] or of a
21 rule adopted or order or permit issued pursuant to [sections 1 through 8] is guilty of a misdemeanor.

22 (4) In addition to or instead of the remedies listed in subsections (1) through (3), a person who
23 violates any provision of [sections 1 through 8] or any rule adopted or order or permit issued pursuant to
24 [sections 1 through 8] may be assessed a civil penalty by the district court of up to \$10,000 per day per
25 violation. Each day of each violation constitutes a separate violation.

26 (5) Civil penalties collected under [sections 1 through 8] must be deposited in the general fund.

27 (6) An appeal of any department action under this section must be heard before the board.

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30 district court, the department may assess administrative penalties of not more than \$1,000 per day per

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2 or permit issued pursuant to [sections 1 through 8]. Each day of each violation constitutes a separate
3 violation.

4 (2) In determining the amount of any penalty assessed pursuant to this section, the department
5 shall take into account:

6 (a) the nature, circumstances, extent, and gravity of the noncompliance; and

7 (b) with respect to the person who is liable:

8 (i) the person's ability to pay;

9 (ii) any prior history of violations;

10 (iii) the degree of culpability;

11 (iv) the economic benefit or savings, if any, resulting from the noncompliance; and

12 (v) any other matters as justice may require.

13 (3) An administrative penalty may not be collected pursuant to this section unless the person
14 charged with the noncompliance is given notice and opportunity for a hearing before the board. The notice
15 and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6. An appeal
16 of any department action under this section must be heard before the board.

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18 provided in Title 2, chapter 4, part 7.

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22 in the county in which the violation occurred or in which the violator resides or has its principal place of
23 business or in the first judicial district, Lewis and Clark County.

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26 codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to
27 [sections 1 through 8].

28

-END-