

Legislative Analysis



LEAD ABATEMENT AND TESTING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4532 (H-5) as reported from committee
Sponsor: Rep. Rachel Hood

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5368 (H-2) as reported from committee
Sponsor: Rep. Julie M. Rogers

House Bill 5369 (H-2) as reported from committee
Sponsor: Rep. Karen Whitsett

Committee: Health Policy
Complete to 12-10-24

SUMMARY:

House Bills 4532, 5368, and 5369 would together amend Part 54A (Lead Abatement) of the Public Health Code to revise the threshold considered an elevated blood lead level in children and change requirements related to lead abatement and mitigation for certain buildings or activities, particularly renovation activities in pre-1978 buildings. Many of the bills' changes would put federal Environmental Protection Agency (EPA) regulations into state law (see "Brief Discussion"). The bills are described together below.

Elevated blood lead level

House Bill 5368 would change the Part 54A definition of the term *elevated blood level*, which now, for purposes of case management in children six and under, means a concentration of 10 micrograms of lead per deciliter of whole blood.¹ The bill would change the term itself to ***elevated blood lead level (EBL)*** and define it to mean a concentration of lead in whole blood that equals or exceeds whichever of the following threshold values is the lowest:

- 3.5 micrograms per deciliter.
- The blood lead reference value for children as determined by the CDC.
- The blood lead reference value for children as determined by DHHS.

Under the lead poisoning prevention program of the Department of Health and Human Services (DHHS), health providers now must report blood lead tests conducted for children in Michigan to DHHS. If DHHS receives notice of lead levels above the threshold amount of 10 micrograms per deciliter, it must contact the child's physician or local public health department.

House Bill 5369 would change the threshold amount in the above provision to an ***elevated blood lead level***. In addition, it would newly require a local health department or physician that is contacted concerning a child under the age of three to refer the child to the Early On program administered by the Department of Lifelong Education, Advancement, and Potential.²

¹ For purposes of lead abatement, it means a concentration of lead in whole blood of 20 micrograms per deciliter for a single venous test or of 15 to 19 micrograms per deciliter in two consecutive tests taken three to four months apart.

² <https://www.1800earlyon.org/>

The bill also would make the same threshold change (from above 10 micrograms to an *elevated blood lead level*) in provisions that require DHHS to annually report to the legislature the number of children six or younger (the bill would change this to include only those younger than six) who received a test showing a blood lead level above the applicable threshold in the previous fiscal year. The bill would require the report to be made by July 1 of each year, rather than the current January 1.

Changes to general definitions that apply to Part 54A

House Bill 4532 would amend the definition of the term *abatement* for purposes of Part 54A. Currently, *abatement* means a measure or set of measures designed to permanently eliminate *lead-based paint hazards*. The bill would remove the word “permanently.” It would include measures designed to eliminate *lead-based paint* (in addition to, or instead of, eliminating lead-based paint hazards). It also would add that *abatement* includes an interim control activity³ or other measure or activity designed to temporarily reduce a lead-based paint hazard. (Currently, measures and activities designed for temporary reduction of a lead-based paint hazard are specifically excluded from being considered *abatement*.)

Lead-based paint hazard means any of the following conditions:

- Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface are equal to or greater than the dust lead hazard levels identified in rules issued under Part 54A.
- Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component.
- Any chewable lead-based painted surface with evidence of teeth marks.
- Any other deteriorated lead-based paint in or on any residential building or *child occupied facility*.
- Surface dust in a *residential dwelling* or child occupied facility that contains lead in a mass-per-area concentration that equals or exceeds the levels established by rules issued under Part 54A.
- Bare soil on residential real property or property of a child occupied facility with lead levels that equal or exceed levels established by rules under Part 54A.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

Child occupied facility means a building or portion of a building constructed before 1978 that is visited regularly by the same child who is six or younger on at least two different days within any calendar week, if each visit lasts at least three hours, the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child occupied facility includes a child care center, a preschool, and a kindergarten classroom.

³ The act defines *interim controls* as a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

The bill would amend this definition to add that a *child occupied facility* may be located in **target housing** or a public or commercial building. If located in a public or commercial building, all of the following would apply:

- If the building contains common areas:
 - The child occupied facility encompasses only those common areas that are routinely used by children six years old or younger, such as restrooms and cafeterias.
 - The child occupied facility does not encompass common areas that children six years old or younger only pass through, such as hallways, stairways, and garages.
- The child occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child occupied facility or a common area encompassed by the child occupied facility, such as restrooms and cafeterias.

Residential dwelling means either of the following:

- A detached single family dwelling unit, including attached structures such as porches and stoops and accessory structures such as garages, fences, and nonagricultural or noncommercial outbuildings.
- A building structure that contains more than one separate residential dwelling unit that is used or occupied, in whole or in part, as the home or residence of one or more people.

Target housing means housing constructed before 1978, except any of the following:

- **Housing for the elderly** or persons with disabilities, unless a child six years old or younger resides in that housing (or is expected to).
- A no-bedroom dwelling.
- An unoccupied dwelling unit pending demolition, as long as the dwelling unit remains unoccupied until demolition.

Housing for the elderly would mean retirement communities or similar types of housing reserved for households composed of one or more persons who are 62 years old or older at the time of initial occupancy. (The bill would add this definition.)

House Bill 4532 also would newly include **renovation** alongside abatement and *lead-based paint activities*⁴ regulated under Part 54A, with attendant safety and certification requirements. Accordingly, the term “renovation” would be added in several places where “lead-based paint activities” are now referenced. The bill also would define certain instruments and processes used in those activities, such as dry disposable cleaning cloths, wet disposable cleaning cloths, wet mopping system, and HEPA (high-efficiency particulate air) filters and vacuums.

Renovation would mean the modification of any existing structure, or portion of a structure, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. Renovation would not include minor repair and

⁴ **Lead-based paint activity** is defined in Part 54A as inspection, risk assessment, and abatement in target housing and child occupied facilities.

maintenance activities as defined in 40 CFR 745.83,⁵ but it would include all of the following:⁶

- The removal, modification, or repair of painted surfaces or painted components, including modification of painted doors, surface restoration, window repair, or surface preparation activity such as sanding, scraping, or other activities that may generate paint dust.
- The removal of building components such as walls, ceilings, plumbing, or windows.
- Weatherization projects such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics and planing thresholds to install weather stripping.
- A renovation to convert a building, or part of a building, into target housing or a child occupied facility.

In addition, House Bill 4532 would remove the defined term *lead-based paint investigation* and, in its substantive provisions, would refer instead to risk assessments (already defined in the code), lead inspections, EBL environmental investigations (defined as described below), and clearance examinations.

House Bill 5368 would provide a definition for the term *emergency renovation operations*. This term is not used in the bills or the act. However, the definition itself includes a substantive provision that exempts the described activities from unspecified laws and rules that otherwise would apply to them.

Emergency renovation operations would mean renovation activities that were not planned but result from a sudden, unexpected event, such as a nonroutine failure of equipment, that if not immediately attended to presents a safety or public health hazard or threatens equipment or property with significant damage. Once the emergency is controlled, applicable laws and rules apply.

House Bill 5368 also would add a definition for the term *firm*, which would be used in the schedule of fees in HB 4532, shown in Table 3 below.⁷ Under the bill, *firm* would mean any of the following:

- A company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.
- A federal, state, tribal, or local governmental agency.
- A nonprofit organization.

Certification of renovators and dust sampling technicians

House Bill 4352 would add *renovator* and *dust sampling technician* to the discipline related to lead-based paint activities (and, under the bill, renovations) for which a qualified applicant must be certified by DHHS. An applicant pursuing certification as a renovator or dust sampling technician would have to complete a course in the appropriate discipline and receive a

⁵ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-745/subpart-E/section-745.83>

⁶ The bill would modify the definitions of the terms *component* and *building component*, used in this definition, to list examples of the kinds of interior and exterior design or structural elements or fixtures that the terms include.

⁷ In addition, the act currently defines the term *certified firm* as a person that performs a lead-based paint activity for which DHHS has issued a certificate of approval under Part 54A.

completion certificate before applying to DHHS for certification. An individual could apply to DHHS for certification to engage in renovations by demonstrating compliance with the specified requirements, or providing a copy of the renovation certification training program, and paying the requisite fees.

Renovator would mean a person who performs renovations or directs workers who perform renovations.

Dust sampling technician would mean an individual who has been trained and certified to conduct optional dust sampling following renovation, repair, painting, or other activities under 40 CFR 745 Subpart E.⁸

The bill also would add renovators and dust sampling technicians to the list of disciplines for which a person may seek accreditation to offer training program courses. The renovator and dust sampling technician course would have to last a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities. Refresher courses could be provided online.

The bill would allow a certified renovator to train workers for renovations for a specific project.

The bill would provide that a dust sampling technician is not allowed to conduct clearance after abatement activities.

Other certification provisions

House Bill 4352 would eliminate certification of, and reference to, clearance technicians.

Current law requires that an individual must pass a third-party examination in the appropriate discipline to become certified as an inspector, risk assessor, abatement worker, or supervisor. The bill would instead require the to pass the appropriate ***state examination***.

State examination would mean the examination for certification under Part 54A in the disciplines of inspector, risk assessor, worker, and supervisor offered and administered by a party other than an ***accredited training program*** (defined as a training program that has been accredited by DHHS to provide training for individuals engaged in lead-based paint activities).

The bill would require an abatement worker course under a training program to last a minimum of 24 training hours, instead of the current 16.

The bill would allow a certified risk assessor to take samples for the presence of lead in paint, dust, and soil to identify a lead-based paint hazard (in addition to abatement clearance testing).

The bill would remove provisions that now require a person seeking certification to perform lead-based paint activities or renovations to indicate whether they have liability insurance and submit proof of Michigan workers' disability compensation insurance.

⁸ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-745/subpart-E>

To maintain certification in a discipline, an individual must pay an annual fee and, every three years, must be recertified by taking the appropriate refresher course and state examination. Under the bill, DHHS would have to deny recertification to an individual with unpaid enforcement fines, if the individual is not successfully executing a payment plan established by DHHS, until the fine is paid in full or a payment plan is established.

Fees

House Bill 4352 would revise fees for lead-based activities and renovations as shown in Tables 1, 2, and 3 under “Fiscal Impact,” below. In addition, DHHS could adjust the fee amounts every three years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit Consumer Price Index and rounded to the nearest dollar.

Registry

House Bill 4352 would change the name of the registry established and maintained by DHHS from the Lead Safe Housing Registry to the Lead Information Housing Registry. The registry provides a public list of properties that have been abated or had interim controls to control lead-based paint hazards. The bill would add properties that have had a risk assessment, lead inspection, EBL environmental investigation, or clearance examination. The bill would also revise the professions qualified to perform that assessment to include certified inspectors and ***EBL investigators***. The bill would require the registry to include at least all of the following information:

- Name of the owner of the building.
- Address of the building.
- Date of construction.
- Property description.
- Date and description of any lead-based paint and interim control activities, including the name of the certified abatement worker or the certified risk assessor who performed the abatement or conducted the inspection, assessment, or clearance testing of the building and the results of the lead hazard control activity.

EBL investigator (defined in HB 5368) would mean a certified risk assessor who has been endorsed by DHHS to conduct ***EBL environmental investigations***.

EBL environmental investigation (defined in HB 5368) would mean both of the following:

- A study of the living environment of a minor with an elevated blood lead level performed by an EBL investigator to identify causative lead exposures.
- The provision of a report by the EBL investigator explaining the results of the study and options for remediation of exposures.

Currently, the owner of ***target housing*** that is offered for rent or lease or the owner of a ***child occupied facility*** must register that property with DHHS if it has been abated or had interim controls performed. The bill would provide that the owner *may* register with DHHS if it has had a lead-based paint inspection or been abated or had interim controls performed.

The bill also would allow properties built after 1978 to be listed on the registry if proof of the year built is submitted (instead of any lead-based paint or ***lead hazard control activity*** reports).

Lead hazard control activity would mean a measure or set of measures designed or performed specifically to reduce or eliminate lead-based paint hazards in target housing and child occupied facilities, such as abatement, interim controls, and clearance examinations.

Administration and enforcement

House Bill 4532 would require rules developed and issued by DHHS to administer and enforce lead-related activities under the code to do all of the following:

- Adopt by reference the provisions of the regulations issued by the EPA for renovation work practice activities.
- Allow **vertical containment** to be used in any renovation or lead-based paint activity.
- Allow for **lead hazard screens** to identify well-maintained housing during local property maintenance code enforcement.

Vertical containment would mean a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area.

Lead hazard screen would mean that term as described in 40 CFR 745.227(c).⁹

At its own discretion or upon written complaint, DHHS could investigate the acts of accredited training programs, certified parties, or persons allegedly engaged in activities or renovations, and could deny, suspend, or revoke certification or accreditation if noncompliance or other violations were found. The bill would provide that information identifying a complainant or person who submits a tip or complaint to DHHS regarding lead-related violations is exempt from disclosure under the Freedom of Information Act (FOIA).

The address of a residential dwelling where a risk assessment, lead inspection, EBL environmental investigation, or clearance examination occurred (as required to be reported to DHHS) would not be exempt from disclosure under FOIA. (The name and phone number of the dwelling's owner, agent, or tenant would still be exempt, as under current law.)

The bill would provide that DHHS could conduct unannounced site inspections on renovation projects, as those projects do not require notification.

Fines

The bill would increase the maximum administrative fines for violations under Part 54A from \$2,000 to \$5,000 for a first violation, \$5,000 to \$8,000 for a second violation, and \$10,000 to \$13,000 for a third or subsequent violation (as shown in Table 4 under "Fiscal Impact," below).

Currently, administrative fines can be assessed for each violation or each day that a violation continues. The bill would provide that the violator is subject to the above fine amounts for each violation and a fine of \$500 each day a violation continues.

The bill also would revise the statute of limitations for DHHS to issue a citation for a violation of Part 54A from 180 days after discovery of the alleged violation to three years after discovery.

⁹ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-R/part-745/subpart-L#745.227>

Finally, the bill would increase the maximum fine for a person who engages in a lead-based paint activity under Part 54A and who willfully or repeatedly violates the relevant rules or who fails to correct the violation from DHHS from \$5,000 to \$15,000 for a first offense and from \$10,000 to \$25,000 for a second or subsequent offense (as shown in Table 5 under “Fiscal Impact,” below).

Other provisions

The code has two identical sections numbered 5474b. House Bill 4532 would repeal one of them.

House Bills 4532 and 5368 each cannot take effect unless the other is also enacted.

House Bill 5369 cannot take effect unless House Bill 5368 is also enacted.

HB 4532: MCL 333.5453 et seq.

HB 5368: Proposed MCL 333.5456a

HB 5369: MCL 333.5474

FISCAL IMPACT:

House Bill 4532 would have an indeterminate fiscal impact on state expenditures to the Department of Health and Human Services and local units of government. The fiscal impact of the bill is dependent on fee changes, increased requirements of the state programs of lead poisoning prevention, lead abatement, certification of individuals to perform lead abatement and renovation, lead hazard remediation training, and remediation compliance assistance, enforcement, rule promulgation, and updates to the Lead Information Housing Registry. Added costs would likely be minimal, but appear to be offset with additional fee revenue.

The tables below provide the current and proposed fees for individuals seeking accreditation for training programs and lead-based activities and renovations, as well as the fines associated with violating requirements for completing lead-based activities and renovations. An increase in revenue is dependent on the number of individuals who apply for accreditation, training, and lead-based activities and renovations, as well as the number of fines that are issued to individuals that violate the promulgated rules. While certain fees in Table 1 and Table 2 are proposed to be decreased, the bill has added new fees in Table 3, such as the Initial renovation firm processing fee, and increases the fines in Tables 4 and 5 (as well as adding a fine of \$500 each day a violation continues). House Bill 4532 also proposes an increase in the time frame in which DHHS may fine an individual after initial discovery of violation from 180 days to three years. This may increase the number of administrative fines issued and revenue collected. Any increase in penal fine revenue under the bill would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

Table 1

Seeking Accreditation for Training Program		
Fee type	Current fee	Proposed fee
Initial application processing fee	\$100	No change
Initial accreditation fee per discipline	\$475	\$450
Reaccreditation fee (annual) per discipline	\$265	\$250

Table 2

Seeking Certification for Lead-Based Paint Activities and Renovations		
Fee type	Current fee	Proposed fee
Initial application processing fee	\$25	No change
Inspector (annual)	\$150	\$125
Risk assessor (annual)	\$150	\$125
Supervisor (annual)	\$50	\$75
Project designer (annual)	\$150	\$125
Abatement worker/laborer (annual)	\$25	\$50
Dust sampling technician (every three years)	No current fee	\$50

Table 3

Lead-Based Activities and Renovations Fees		
Fee type	Current fee	Proposed fee
Initial abatement application processing fee	\$100	No change
Abatement firm certification fee (annual) [previously certification fee]	\$220	No change
Initial renovation firm application processing fee	No current fee	\$100
Renovation firm certification fee (annual)	No current fee	\$60

Table 4

Administrative Fines		
Violation	Current fine	Proposed fine
First violation	\$2,000	\$5,000
Second violation	\$5,000	\$8,000
Third or subsequent violation	\$10,000	\$13,000

Note: citations may be issued up to three years (previously 180 days) after discovery of violation

Table 5

Misdemeanor Penal Fines		
Violation	Current fine	Proposed fine
Upon conviction	\$5,000	\$15,000
Second or subsequent offense	\$10,000	\$25,000

House Bills 5368 and 5369 would have an indeterminate fiscal impact on state expenditures to the Department of Health and Human Services and local units of government. House Bill 5368 would lower the elevated blood lead level (EBL) threshold from 10 micrograms per deciliter to 3.5 micrograms to align with the CDC designation of an elevated blood lead level. This would likely increase the number of children reported to the department with EBL, thereby increasing the number of children that are medically eligible for services. This would increase costs for both the department and local health departments, as these services are funded through a cost-sharing model. The bill also may create minimal costs for the Department of Education that would likely be absorbed using existing staff time.

POSITIONS:

A representative of the City of Grand Rapids testified in support of HB 4532 (and indicated support for HBs 5368 and 5369). (1-18-24)

Representatives of the following entities testified in support of HBs 5368 and 5369 (and indicated support for HB 4532) (1-18-24):

- Michigan Council for Maternal and Child Health
- Detroit Lead Parent Advocacy Group

The following entities indicated support for the bills:

- ARC Michigan (1-18-24)
- City of Ann Arbor (1-18-24)
- Ecology Center (1-18-24)
- For the Love of Water (FLOW) (1-18-24)
- Michigan Academy of Physician Associates (1-18-24)
- Michigan Association for Local Public Health (2-6-24)

- Michigan Environmental Council (1-18-24)
- Michigan League for Conservation Voters (1-18-24)
- Michigan League for Public Policy (1-18-24)
- Michigan Nurses Association (1-18-24)
- National Wildlife Federation (1-18-24)
- Parents for Healthy Homes (1-18-24)
- Sierra Club (1-18-24)
- Upper Peninsula Environmental Coalition (1-18-24)
- Wayne State University (1-18-24)

The following entities indicated support for HBs 5368 and 5369:

- Michigan State Medical Society (1-18-24)
- Michigan Association of United Ways (2-6-24)
- Forensic Fluids Laboratories (2-6-24)

The Michigan Association of Health Plans indicated support for HB 5369. (1-18-24)

The Michigan Health and Hospital Association indicated support for HB 5368. (1-18-24)

A representative of the Rental Property Owners Association of Michigan testified in opposition to HB 4532. (1-18-24)

Associated Builders and Contractors indicated opposition to HB 4532. (1-18-24)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.