

SENATE, No. 3368
STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JUNE 3, 2024

Sponsored by:
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District 29 (Essex and Hudson)
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SYNOPSIS
Concerns law protecting residential tenants from lead-based paint hazards.

CURRENT VERSION OF TEXT
As introduced.

AN ACT concerning lead-based paint hazards in residential rental property, including establishing lead-based paint hazard programs, amending P.L.2021, c.182, and repealing section 1 of P.L.2007, c.251.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2021, c.182 (C.52:27D-437.16) is amended to read as follows:

1. a. As used in this section:

"Common area" means the interior portions of a building used for residential rental purposes that are generally accessible to residential tenants, but not including the interior of individual dwelling units. Common areas shall include, but not be limited to hallways, stairs, foyers, basements, laundry rooms, and the interior of attached or detached garages, if the areas are generally accessible to residential tenants, and the areas are not located within the interior of an individual dwelling unit.

"Dust wipe sampling" means a sample collected by wiping a representative surface and tested in accordance with a method approved by the United States Department of Housing and Urban Development.

"Dwelling unit" means a single-family living space, including a single family home, or an apartment, room, or rooms within a two-family or multiple-family building, that is occupied or intended to be occupied for sleeping or dwelling purposes by one or more persons living independently of persons in similar dwelling units.

"Planned real estate development" means a planned real estate development, as defined by section 3 of P.L.1977, c.419 (C.45:22A-23).

"Tenant turnover" means the time at which all existing occupants vacate a dwelling unit and all new tenants move into the dwelling unit.

"Visual assessment" means a visual examination for deteriorated paint or visible surface dust, debris, or residue.

b. (1) Subject to subsection c. of this section, in a municipality that maintains a permanent local agency for the purpose of conducting inspections and enforcing laws, ordinances, and regulations concerning buildings and structures within the municipality, either:

(a) the permanent local agency shall inspect [every single-family, two-family, and multiple rental dwelling] each rental dwelling unit, and the common area within each building that

contains a rental dwelling unit, and that is located within the municipality [at tenant turnover] for lead-based paint hazards; or

(b) to provide for the inspection of each rental dwelling unit and the common area within each building that contains a rental dwelling unit located within the municipality, the governing body shall enter into a contract with a lead evaluation contractor, certified to provide lead paint inspection services by the Department of Community Affairs, or enter into a shared service agreement with a local unit, to inspect those rental dwelling units and the common areas for lead-based paint hazards.

A municipality shall cause the inspection of rental dwelling units and common areas for lead-based paint hazards at tenant turnover or within [two] three years of the effective date of P.L.2021, c.182 (C.52:27D-437.16 et al.), whichever is earlier. Thereafter, all such units shall be inspected for lead-based paint hazards the earlier of every three years or upon tenant turnover, except that an inspection upon tenant turnover shall not be required if the owner has a valid lead-safe certification pursuant to this section. The municipality shall charge the dwelling owner or landlord a fee sufficient to cover the cost of the inspection.

(2) Subject to subsection c. of this section, in a municipality that does not maintain a permanent local agency for the purpose of conducting inspections and enforcing laws, ordinances, and regulations concerning buildings and structures within the municipality, the [municipality shall hire] governing body shall either enter into: a contract with a lead evaluation contractor, certified to provide lead paint inspection services by the Department of Community Affairs, or a shared service agreement with a local unit, to inspect [every single-family, two-family, and multiple] each rental dwelling unit and the common areas within each building that contains a rental dwelling unit, and that is located within the municipality for lead-based paint hazards.

A municipality shall cause the inspection of rental dwelling units for lead-based paint hazards at tenant turnover [for lead-based paint hazards] or within [two] three years of the effective date of P.L.2021, c.182 (C.52:27D-437.16 et al.), whichever is earlier. Thereafter, all such units shall be inspected for lead-based paint hazards the earlier of every three years or upon tenant turnover, except that an inspection upon tenant turnover shall not be required if the owner has a valid lead-safe certification pursuant to this section. The municipality shall charge the dwelling owner or landlord a fee sufficient to cover the cost of the inspection, including the cost of hiring the lead evaluation contractor.

(3) A municipality shall permit the dwelling owner or landlord to directly hire a lead evaluation contractor who is

certified to provide lead paint inspection services by the Department of Community Affairs to satisfy the requirements of paragraph (1) or (2) of this subsection.

(4) A permanent local agency or lead evaluation contractor with the duty to inspect single-family, two-family, and multiple rental dwellings pursuant to this section may consult with the local health board, the Department of Health, or the Department of Community Affairs concerning the criteria for the inspection and identification of areas and conditions involving a high risk of lead poisoning in dwellings, methods of detection of lead in dwellings, and standards for the repair of dwellings containing lead paint.

(5) Fees established pursuant to this subsection shall be dedicated to meeting the costs of implementing and enforcing this subsection and shall not be used for any other purpose.

c. Notwithstanding subsection b. of this section to the contrary, a dwelling unit [in a single-family, two-family, or multiple rental dwelling] shall not be subject to inspection and evaluation for the presence of lead-based paint hazards if the unit:

(1) has been certified to be free of lead-based paint;

(2) was constructed during or after 1978;

(3) is in a multiple [dwelling] family building that [has been registered with the Department of Community Affairs as a multiple dwelling for at least 10 years, either under the current or a previous owner, and] has no outstanding lead-based paint violations from the two most recent cyclical [inspection] inspections performed [on the multiple dwelling] under the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.);

(4) is a single-family or two-family seasonal rental dwelling which is rented for less than six months duration each year by tenants that do not have consecutive lease renewals; or

(5) has a valid lead-safe certification issued in accordance with this section.

d. (1) If a lead evaluation contractor or permanent local agency finds that a lead-based paint hazard exists in a dwelling unit upon conducting an inspection pursuant to this section, then the owner of the dwelling unit shall remediate the lead-based paint hazard by using abatement or lead-based paint hazard control methods, approved in accordance with the provisions of the "Lead Hazard Control Assistance Act," P.L.2003, c.311 (C.52:27D-437.1 et al.). Upon the remediation of the lead-based paint hazard, the lead evaluation contractor or permanent local agency shall conduct an additional inspection of the unit to certify that the hazard no longer exists.

(2) If a lead evaluation contractor or permanent local agency finds that no lead-based paint hazards exist in a dwelling unit upon conducting an inspection pursuant to this section or following remediation of a lead-based paint hazard pursuant to paragraph (1) of this subsection, then the lead evaluation contractor or permanent local agency shall certify the dwelling unit as lead-safe on a form prescribed by the Department of Community Affairs as provided for in regulations or guidance promulgated pursuant to section 8 of P.L.2021, c.182 (C.52:27D-437.20). The lead-safe certification provided to the property owner by the lead evaluation contractor or permanent local agency pursuant to this paragraph shall be valid for ~~two~~ three years.

e. Beginning on the effective date of P.L.2021, c.182 (C.52:27D-437.16 et al.), property owners shall:

(1) ~~provide evidence of a valid lead-safe certification obtained pursuant to this section as well as evidence of the most recent tenant turnover at the time of the cyclical inspection carried out under the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), unless not required to have had an inspection by a lead evaluation contractor or permanent local agency pursuant to paragraph (1), (2), or (3) of subsection c. of this section;]~~ (Deleted by amendment, P.L. __, c. __) (pending before the Legislature as this bill)

(2) provide evidence of a valid lead-safe certification obtained pursuant to this section to new tenants of the property at the time of tenant turnover unless not required to have had an inspection by a lead evaluation contractor or permanent local agency pursuant to paragraphs (1), (2), (3), ~~and~~ or (4) of subsection c. of this section, and shall affix a copy of such certification as an exhibit to the tenant's or tenants' lease; and

(3) maintain a record of the lead-safe certification which shall include the name or names of the unit's tenant or tenants, if the inspection was conducted during a period of tenancy, unless not required to have had an inspection by a lead evaluation contractor or permanent local agency pursuant to paragraphs (1), (2), (3), ~~and~~ or (4) of subsection c. of this section.

f. ~~[If a lead evaluation contractor or permanent local agency finds that a lead-based paint hazard exists in a dwelling unit upon conducting an inspection pursuant to this section, then the lead evaluation contractor or permanent local agency shall notify the Commissioner of Community Affairs, who shall review the findings in accordance with section 8 of the "Lead Hazard Control Assistance Act," P.L.2003, c.311 (C.52:27D-437.8)]~~ Each municipality shall deliver to the Department of Community Affairs a list identifying each dwelling unit inspected pursuant to

this section, and each dwelling unit determined to contain a lead-based paint hazard. The department shall, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), submit an annual report to the Legislature indicating the number of inspected dwelling units identified to have lead-based paint hazards. The report shall list the number of inspected dwellings and dwelling units identified to have lead-based paint hazards within each county.

g. (1) If a dwelling is located in a municipality in which less than three percent of children tested, six years of age or younger, have a blood lead [level] reference value greater than or equal to five ug/dL, or any other blood lead level adopted by the Department of Health, according to the central lead screening database maintained by the Department of Health pursuant to section 5 of P.L.1995, c.328 (C.26:2-137.6), or according to other data deemed appropriate by the [commissioner] Commissioner of Community Affairs, then a lead evaluation contractor or permanent local agency may inspect for lead-based paint hazards through visual assessment. The Commissioner of Community Affairs may determine an appropriate blood lead reference value on the basis of multiple years of data.

(2) If a dwelling unit is located in a municipality in which at least three percent of children tested, six years of age or younger, have a blood lead [level] reference value greater than or equal to five ug/dL, or any other blood lead level adopted by the Department of Health, according to the central lead screening database maintained by the Department of Health pursuant to section 5 of P.L.1995, c.328 (C.26:2-137.6), or according to other data deemed appropriate by the [commissioner] Commissioner of Community Affairs, then a lead evaluation contractor or permanent local agency shall inspect for lead-based paint hazards through dust wipe sampling. The Commissioner of Community Affairs may determine an appropriate blood lead reference value on the basis of multiple years of data. The disclosure of this data for the purposes of this section shall not constitute the disclosure of the identity of a child pursuant to section 5 of P.L.1995, c.328 (C.26:2-137.6).

(3) If a lead hazard is identified in an inspection of one of the dwelling units in a building consisting of two- or three- dwelling units, then the lead evaluation contractor or permanent local agency shall inspect the remainder of the building's dwelling units for lead hazards, with the exception of dwelling units that have been certified to be [free of lead-based paint] lead-safe. The lead evaluation contractor or permanent local agency may charge fees in accordance with this section for such additional inspections.

h. In addition to the fees permitted to be charged for inspection of rental housing pursuant to this section, each municipality shall assess an additional fee of \$20 per unit inspected by a certified lead evaluation contractor or permanent local agency for the purposes of the "Lead Hazard Control Assistance Act," P.L.2003, c.311 (C.52:27D-437.1 et al.) concerning lead hazard control work, unless the unit owner demonstrates that the Department of Community Affairs has already assessed an additional inspection fee of \$20 pursuant to the provisions of section 10 of P.L. 2003, c. 311 (C.52:27D-437.10). In a planned real estate development, any inspection fee charged pursuant to this subsection shall be the responsibility of the unit owner and not the homeowners' association, unless the association is the owner of the unit. The fees collected pursuant to this subsection shall be deposited into the "Lead Hazard Control Assistance Fund" established pursuant to section 4 of P.L.2003, c.311 (C.52:27D-437.4).

(cf: P.L.2021, c.182, s.1)

2. Section 2 of P.L.2021, c.182 (C.52:27D-437.17) is amended to read as follows:

2. a. The Department of Community Affairs, in consultation with the Department of Health, shall establish a Statewide multifaceted, ongoing educational program designed to meet the needs of tenants, property owners, realtors and real estate agents, insurers and insurance agents, and local building officials about the nature of lead-based paint hazards, the importance of lead-based paint hazard control and mitigation, and the responsibilities set forth in P.L.2021, c.182 (C.52:27D-437.16 et al.). In developing and coordinating this educational program, the department shall seek the participation and involvement of private industry organizations, including those involved in real estate, insurance, mortgage banking, and pediatrics :

(1) create an electronic version of the program which shall be available on the Internet. The program shall not exceed three hours;

(2) promulgate, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules for the dissemination of information about the requirements of P.L.2021, c.182 (C.52:27D-437.16 et al.) to all prospective owners of pre-1978 dwellings during the real estate transaction, settlement, or closing;

(3) provide updated educational materials regarding amendments to P.L.2021, c.182 or changes to the regulations adopted pursuant thereto; and

(4) solicit requests to enter into ongoing, funded partnerships to provide specific counseling information services to tenants and affected parties on their rights and responsibilities with regard to lead-based paint hazards and lead poisoning.

b. [Prior to the effective date of P.L.2021, c.182 (C.52:27D-437.16 et al.), the department shall:

(1) Create educational materials outlining the rights and responsibilities of parties subject to the provisions of P.L.2021, c.182 (C.52:27D-437.16 et al.).

(2) Establish guidelines and a trainer's manual for a lead-based paint hazard seminar for rental property owners or designated persons, which the department shall forward to all public and private colleges and universities in New Jersey, to other professional training facilities, and to professional associations and community organizations with a training capacity. The department shall approve proposals to offer the seminar from institutions; provided that the proposals are consistent with the guidelines. The department shall create an electronic version of the lead-based paint hazard seminar accessible on the Internet. The seminar shall be available to tenants, property owners, and other interested parties.

(3) Promulgate rules for the dissemination of information about the requirements of P.L.2021, c.182 (C.52:27D-437.16 et al.) to all prospective owners of pre-1978 dwellings during the real estate transaction, settlement, or closing.

(4) Solicit requests to enter into ongoing, funded partnerships to provide specific counseling information services to tenants and affected parties on their rights and responsibilities with regard to lead-based paint hazards and lead poisoning.] (Deleted by amendment, P.L. __, c. __) (pending before the Legislature as this bill)

c. [The lead-based paint hazard seminar established pursuant to of this section shall not exceed three hours in length. The department shall offer the seminar for a maximum fee of \$50 per participant.] (Deleted by amendment, P.L. __, c. __) (pending before the Legislature as this bill)

(cf: P.L.2021, c.182, s.2)

3. Section 1 of P.L.2007, c.251 (C.55:13A-12.2) is repealed.

4. This act shall take effect immediately, however, the provisions of subsection b. of section 1 of P.L.2021, c.182 (C.52:27D-437.16) which authorize a municipal governing body to provide lead-based paint inspection services by contract or shared service agreement shall apply retroactively to authorize an agreement entered into on or after July 22, 2022.

STATEMENT

This bill amends provisions of P.L.2021, c.192 (C.52:27D-437.16 et. al) to clarify the laws that require inspections of certain residential rental properties for lead-based paint hazards. Additionally, the bill would repeal a section of the "Hotel and Multiple Dwelling Law" (HMDL), P.L.2007, c.251, s.1 (C.55:13A-12.2), which requires the Department of Community Affairs (DCA) to inspect single-family and two-family rental dwellings for lead-based paint hazards.

Under current law, if a municipality maintains a permanent local construction code enforcement agency, the local agency is required to inspect certain residential rental dwellings for lead-based paint hazards, however, if a municipality does not maintain a permanent local agency, the municipality is required to hire a lead evaluation contractor to conduct inspections. This bill provides municipalities that maintain a local code enforcement agency the option of either conducting inspections in-house or hiring a certified lead evaluation contractor to perform the inspections. Alternatively, the bill proposes allowing any municipality to satisfy the lead-based paint inspection requirements through entry into a shared service agreement with another local unit.

Current law exempts units within a multiple dwelling that have been registered with DCA for at least 10 years, and which have no outstanding lead violations from the most recent HMDL cyclical inspection. This bill replaces reference to a dwelling's registration with an exclusion from lead-based paint inspection requirements for multiple dwellings that have no outstanding lead-based paint violations from the two most recent HMDL cyclical inspections.

Current law excepts certain types of dwelling units from lead-based paint inspection requirements. One such exception is for dwelling units within a multiple dwelling, which multiple dwelling has been registered with DCA for at least 10 years, and which has no outstanding lead violations from the most recent HMDL cyclical inspection. DCA has indicated that current law's reference to being "registered" with DCA is problematic and leads to confusion in administering the law. To address this concern, the bill proposes deleting reference to a dwelling's registration with DCA and instead exclude a multiple dwelling from lead-based paint inspection requirements if the multiple dwelling has no outstanding lead-based paint violations from the two most recent HMDL cyclical inspections.

Under current law, a “lead-safe certification” provided to a property owner by a lead evaluation contractor or a permanent local construction code enforcement agency is valid for two years. This bill extends validity of a lead-safe certification to three years so the certification period will run together with lead inspection timeframes.

Under current law, if an inspection identifies a lead-based paint hazard within a dwelling unit, the inspector is required to notify DCA, and DCA is required to review those findings for the purpose of determining whether the lead-based paint hazard warrants the removal and relocation of residents and provision of assistance. Current law does not specify or establish a funding mechanism for DCA to fund this relocation assistance. Therefore, the bill amends current law to only require a municipality to deliver to DCA a list identifying each dwelling unit inspected, and each dwelling unit determined to contain a lead-based paint hazard. Additionally, the bill requires DCA to submit an annual report to the Legislature indicating the number of inspected dwelling units identified to have lead-based paint hazards within each county.

Current law specifies child blood-lead levels which trigger certain lead paint inspection modalities. The bill instead provides the Department of Health with the power to adopt other blood-lead level standards, and empowers DCA to identify other data appropriate for distinguishing between whether an inspection must include a dust-wipe sampling or may be accomplished through a visual inspection.

Current law requires DCA to establish an educational program on lead-based paint hazard control and mitigation. One component of this program is establishment of a lead-based paint hazard seminar, designed specifically for rental property owners, but available to tenants, property owners, and other interested parties. The bill proposes amending this requirement to specify that DCA is to create an electronic version of the lead-based paint educational program, that the program not exceed three hours in length and be available on the Internet. Additionally, the bill proposes requiring DCA: to adopt rules for the dissemination of information about the bill’s requirements to prospective owners of pre-1978 dwellings during the real estate transaction, settlement, or closing; to provide updated educational materials regarding amendments to the lead-based paint hazard laws or changes to the regulations adopted pursuant thereto; and to solicit requests to enter into funded partnerships to provide information and counseling to tenants and affected parties on their rights and responsibilities with regard to lead-based paint hazards and lead poisoning.

Finally, the bill proposes repealing a provision of current law that provides for lead-based paint inspections by DCA as part of the five-year cyclical inspection process under the HMDL. DCA has recommended the repeal of this section, asserting that it is unnecessary in light of provisions of the 2021 enactment, which provided for lead-based paint inspections by local enforcing agencies and private contractors. Additionally, the bill deletes a related provision that currently requires property owners to provide evidence of a valid lead-safe certification at the time of the cyclical HMDL inspection.

The bill would take effect immediately upon adoption, however, the bill provisions which authorize a municipal governing body to provide lead-based paint inspection services by contract or shared service agreement would apply retroactively to authorize an agreement entered into on or after July 22, 2022.