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HOUSE BILL 273

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

RICK MIERA

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

**RELATING TO HEALTH; CREATING A PROGRAM TO PREVENT LEAD
POISONING IN CHILDREN; PROVIDING POWERS AND DUTIES; PROVIDING
FOR TRAINING AND CERTIFICATION CONCERNING LEAD HAZARD
ACTIVITIES IN TARGET HOUSING; PROVIDING FOR ENFORCEMENT;
CREATING A FUND; PROVIDING FOR FEES, SANCTIONS AND PENALTIES;
PROVIDING FOR SUNSET OF THE PROGRAM; MAKING AN APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE. -- This act may be cited as the
"Lead Hazard Act".**

**Section 2. PURPOSES. -- The purposes of the Lead Hazard
Act are to:**

**A. establish, pursuant to federal requirements, a
program in the department for prevention of childhood lead
poisoning through regulation of work practices for lead hazard**

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1 identification, risk assessment, reduction and abatement in
2 target housing;

3 B. establish the legislative and regulatory
4 framework necessary for New Mexico to be eligible for federal
5 funding to identify and abate lead hazards for children and
6 help prevent childhood lead poisoning;

7 C. permit New Mexico to administer and enforce
8 rules developed pursuant to Title 4 of the federal Toxic
9 Substances Control Act rather than having the United States
10 environmental protection agency administer and enforce the
11 program in the state;

12 D. provide for certification of professionals
13 conducting lead hazard activities in target housing,
14 accreditation of training providers and development of work-
15 practice standards for target housing; and

16 E. provide for reciprocity of certification and
17 accreditation with other states.

18 Section 3. DEFINITIONS.--As used in the Lead Hazard Act:

19 A. "child" means a person less than six years of
20 age;

21 B. "department" means the department of health;

22 C. "federal requirements" means:

23 (1) Title 4 of the federal Toxic Substances
24 Control Act and rules adopted by the environmental protection
25 agency pursuant to that act as they relate to target housing;

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1 and

2 (2) rules or requirements adopted by the
3 department of housing and urban development regarding
4 eligibility for grants to states and local governments;

5 D. "housing for the elderly" means retirement
6 communities or housing reserved for households composed of one
7 or more persons sixty-two years of age or older;

8 E. "interim control activity" means any measure or
9 set of measures designed to temporarily reduce current or
10 potential human exposure to a lead hazard;

11 F. "lead-based paint" means paint or other surface
12 coatings that contain lead equal to or in excess of one
13 milligram per square centimeter or one-half of one percent by
14 weight;

15 G. "lead hazard" means a substance, surface or
16 object that contains lead and that, due to its condition,
17 location or nature, may contribute to human lead poisoning or
18 lead exposure;

19 H. "lead hazard abatement" means any measure or
20 set of measures designed to permanently eliminate a lead
21 hazard, as specified under federal requirements;

22 I. "lead hazard activities" includes lead hazard
23 identification, risk assessment, reduction and abatement in
24 target housing;

25 J. "lead hazard identification" means the on-site

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1 inspection of target housing for the presence of actual or
2 potential lead hazards;

3 K. "lead hazard reduction" means actions designed
4 to minimize lead hazards in target housing, including lead
5 hazard abatement and interim control activities;

6 L. "lead hazard risk assessment" means an on-site
7 investigation of target housing to determine the existence,
8 nature, severity and location of lead hazards;

9 M. "lead poisoning" or "lead exposure" means a
10 confirmed concentration of lead in whole blood of a child of
11 ten or more micrograms of lead per deciliter of whole blood;

12 N. "secretary" means the secretary of health;

13 O. "target housing" means:

14 (1) housing constructed prior to 1978, except
15 housing for the elderly or persons with disabilities unless
16 one or more children reside or are expected to reside in such
17 housing, and except for zero-bedroom dwellings;

18 (2) a child-occupied facility, which is a
19 residence or other building or portion of a building,
20 constructed prior to 1978, visited regularly by the same child
21 on at least two different days within the week, Sunday through
22 Saturday, when each day's visit lasts at least three hours,
23 the combined weekly visit lasts at least six hours and the
24 combined annual visits last at least sixty hours. Child-
25 occupied facilities include daycare centers, preschools and

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1 kindergarten classrooms; or

2 (3) all structures attached to target housing
3 and the real property upon which target housing stands that
4 may include a lead hazard; and

5 P. "zero-bedroom dwelling" means any residential
6 dwelling in which the living area is not separated from the
7 sleeping area, and includes efficiencies, studio apartments,
8 dormitory housing, military barracks and rentals of individual
9 rooms in residential dwellings.

10 Section 4. DEPARTMENT-- POWERS AND DUTIES. --

11 A. The department is the designated state agency
12 for implementation of federal requirements and shall develop
13 and implement a lead hazard program that meets but is no more
14 stringent than federal requirements.

15 B. The department shall:

16 (1) establish a program for prevention of
17 childhood lead poisoning through regulation of work practices
18 for lead hazard identification, risk assessment, reduction and
19 abatement in target housing;

20 (2) adopt and promulgate rules that:

21 (a) require certification of
22 individuals and firms that offer to perform lead hazard
23 activities in target housing;

24 (b) set training requirements for
25 individuals and firms directly and substantially involved in

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1 the performance of lead hazard activities in target housing;

2 (c) establish accreditation standards
3 for programs that train persons involved in lead hazard
4 activities in target housing, including: 1) minimum
5 requirements for the accreditation of training providers; 2)
6 minimum training curriculum requirements; 3) minimum training
7 hour requirements; 4) minimum hands-on training requirements;
8 5) minimum trainee competency and proficiency requirements; 6)
9 minimum requirements for training program quality control; and
10 7) criteria and procedures for suspension, revocation and
11 modification of accredited training programs;

12 (d) establish standards for performing
13 lead hazard activities in target housing, taking into account
14 reliability, effectiveness and safety;

15 (e) establish criteria and procedures
16 for suspension and revocation of professional certification;
17 and

18 (f) provide for enforcement of the Lead
19 Hazard Act and the rules adopted pursuant to that act;

20 (3) dedicate suitable staff and acquire
21 suitable space, equipment, supplies and other items necessary
22 to carry out the provisions of the Lead Hazard Act and rules
23 adopted pursuant to that act; and

24 (4) apply for and expend available federal
25 funds for lead hazard activities and implementation of the

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1 lead hazard program.

2 C. In order to carry out the purposes of the Lead
3 Hazard Act and to ensure that lead hazard activities do not
4 create additional health hazards, the department may:

5 (1) with prior notification enter target
6 housing where lead hazard activities are being conducted by a
7 paid inspector or contractor for the purpose of monitoring the
8 conduct of those lead hazard activities, at reasonable times
9 and without undue delay;

10 (2) enter and inspect the facilities of an
11 individual or firm providing lead hazard activities training
12 for the purpose of monitoring training activities and
13 equipment, at reasonable times and without undue delay; and

14 (3) collect information from any individual
15 involved in lead hazard activities or training about lead
16 hazard activities.

17 D. The department may, depending on availability
18 of funding:

19 (1) collect and analyze data on the:

20 (a) extent of lead-based paint hazards
21 in New Mexico;

22 (b) lead hazard activities in New
23 Mexico; and

24 (c) certification, accreditation and
25 enforcement activities of the department; and

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1 (2) conduct public education programs on the
2 nature and consequences of lead poisoning, the need for
3 accredited training providers and the need for certified
4 personnel for lead hazard activities.

5 Section 5. COMPLIANCE--ENFORCEMENT.--

6 A. Lead hazard activities shall be performed by
7 certified personnel and shall comply with department rules
8 adopted pursuant to the Lead Hazard Act. Lead hazard training
9 providers shall be accredited by the department and comply
10 with department rules.

11 B. The department shall enforce the provisions of
12 the Lead Hazard Act and rules adopted pursuant to that act by
13 issuance of appropriate orders or decisions and through
14 sanctions and penalties established by federal rules and state
15 rules adopted pursuant to the Lead Hazard Act. Penalties
16 collected pursuant to this section shall be deposited in the
17 general fund.

18 C. State enforcement rules shall make provision
19 for:

20 (1) inspections to determine compliance with
21 rules and standards developed pursuant to the Lead Hazard Act;

22 (2) sampling techniques to determine
23 compliance with rules and standards developed pursuant to the
24 Lead Hazard Act;

25 (3) follow-up for complaints;

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- 1 (4) sanctions and penalties;
- 2 (5) flexible remedies; and
- 3 (6) compliance assistance.

4 Section 6. APPEAL. --

5 A. A person aggrieved by a sanction or penalty
6 issued pursuant to the Lead Hazard Act or rules adopted
7 pursuant to that act may appeal to the secretary within thirty
8 days after receipt of notice of the sanction or penalty. A
9 hearing shall be held within sixty days on each appeal filed.
10 The secretary shall appoint a hearing officer to hear the
11 appeal and provide for due process. The hearing officer shall
12 report his findings to the secretary, who shall make the final
13 decision. The party may appeal the decision of the secretary
14 to the district court. An appeal to the district court shall
15 be on the record.

16 B. While an appeal is pending, compliance with a
17 sanction or penalty shall not be required unless the secretary
18 determines by a separate finding that the violation was
19 intentional or that there exists a hazardous condition that
20 requires immediate compliance with the sanction or penalty so
21 as to eliminate a public health hazard.

22 Section 7. RECIPROCITY. --The department may establish
23 liaison with other states having lead hazard activities
24 programs to assure maximum consistency of program requirements
25 to facilitate reciprocity of certification and accreditation

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1 with other states.

2 Section 8. FUND CREATED--FEES. --

3 A. The "lead hazard fund" is created in the state
4 treasury. The fund shall consist of appropriations; lead
5 hazard activities fees; and public or private grants, gifts
6 and donations. Money in the fund at the end of a fiscal year
7 shall not revert to the general fund. The fund shall be
8 administered by the department, and money in the fund is
9 appropriated to the department to carry out the provisions of
10 the Lead Hazard Act and rules adopted pursuant to that act.

11 B. The department may collect reasonable fees for
12 certification, accreditation and other reviews as may be
13 necessary to carry out the provisions of the Lead Hazard Act
14 and rules adopted pursuant to that act.

15 Section 9. EXPIRATION OF PROGRAM --The lead hazard
16 activities program established pursuant to the Lead Hazard Act
17 shall expire on June 30, 2003, unless continued by the
18 legislature.

19 Section 10. DELAYED REPEAL. --This act is repealed July
20 1, 2003.

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3 **FORTY-THIRD LEGISLATURE**
4 **SECOND SESSION, 1998**
5
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8 **January 30, 1998**
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11 **Mr. Speaker:**
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13 **Your RULES AND ORDER OF BUSINESS COMMITTEE, to**
14 **whom has been referred**
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16 **HOUSE BILL 273**
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18
19 **has had it under consideration and finds same to be GERMANE**
20 **in accordance with constitutional provisions.**
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22 **Respectfully submitted,**
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R. David Pederson, Chairman

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Gubbels, Hobbs, Nicely, Rodella, Ryan, Sanchez,
Williams, S.M

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 4, 1998
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8 Mr. Speaker:
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10 Your ENERGY & NATURAL RESOURCES COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 273
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
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22 _____
23 James Roger Madalena, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HENRC/HB 273

Page 14

4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

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10 The roll call vote was 7 For 2 Against

11 Yes: 7

12 No: Kissner, Roberts

13 Excused: Macko

14 Absent: Chavez, Getty

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1 **FORTY-THIRD LEGISLATURE**
2 **SECOND SESSION, 1998**

3
4 **February 13, 1998**

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7 **Mr. Speaker:**

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9 **Your JUDICIARY COMMITTEE, to whom has been referred**

10 **HOUSE BILL 273**

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12 **has had it under consideration and reports same with**
13 **recommendation that it DO PASS, and thence referred to the**
14 **APPROPRIATIONS AND FINANCE COMMITTEE.**

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16 **Respectfully submitted,**

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20 _____
21 **Thomas P. Foy, Chairman**

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 16

4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

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10 The roll call vote was 8 For 0 Against

11 Yes: 8

12 Excused: Alwin, King, Luna, Mallory, Sanchez

13 Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3
4 February 17, 1998

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 273

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13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

- 15
- 16 1. On page 1, line 15, strike "CREATING A FUND;".
 - 17 2. On page 1, line 16, strike "; MAKING AN APPROPRIATION".
 - 18 3. On page 10, lines 3 through 10, strike Section A in its
19 entirety.
20
 - 21 4. On page 10, line 11, strike "B."
 - 22 5. Renumber the succeeding section accordingly.
23
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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

Respectfully submitted,

Max Coll, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 14 For 3 Against

Yes: 14

No: Bird, Buffett, Pearce

Excused: Marquardt

Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

Page 19

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 18, 1998

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

HOUSE BILL 273, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Shannon Robinson, Chairman

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

Page 20

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 4 For 2 Against

Yes: 4

No: Adair, Boitano

Excused: Garcia, Rodarte, Smith

Absent: None

HB273PA1