

Approved: 3/19/10

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:03 a.m. on February 16, 2010, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Delia Garcia- excused
Representative Scott Schwab- excused

Committee staff present:

Art Griggs, Office of the Revisor of Statutes
Renae Jefferies, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Jennifer A Lowry, MD, Children's Mercy Hospitals & Clinics
Gary Allsup, Kansas Housing Resources Corporation
Larry Hopkins, Hernly Associates, Inc
Thomas Langer, Kansas Department of Health and Environment
Ben Kitchens, Ben Kitchens Painting Co., Inc
Richard A Baker, Baker Environmental Consulting, Inc

Others attending:

See attached list.

The hearing on **HB 2596** is continued from February 15, 2010

HB 2596 **Secretary of health and environment; rules and regulations regarding remediation of lead-based paint**

Ben Kitchens, Ben Kitchens Painting Co., Inc., gave written only testimony as an opponent of **HB 2596** (Attachment 1). This legislation will cause Kansas to lose millions in Federal funds.

Richard A Baker, Baker Environmental Consulting, Inc., gave written only testimony as an opponent of **HB 2596** (Attachment 2).

Jennifer A Lowry, MD, Children's Mercy Hospitals & Clinics, gave testimony in opposition to **HB 2596** (Attachment 3).

Representative Quigley asked how soon do you see problems in a child that is exposed to lead. Jennifer said it depended on how they ingested it.

Representative Grant asked where the largest area where the problem existed. Jennifer said that it occurred all over the state, wherever there are pre-1978 houses.

Representative Brunk asked if there was something inadequate with the Federal regulations. Jennifer said that KDHE had been a modal state in their training and oversight and remediation.

Representative Suellentrop said that if contractors are required to have all employees trained, the training will increase the costs or remodeling and will perpetuate the problem. Jennifer said her interests were the children and the costs of their medical bills.

Representative Tietze asked if she knew how much lead poisoning costs the health system in Kansas. Jennifer said that it costs the parents when a child needs chelation therapy about \$1,000.00 per prescription and depending on the amount of lead poisoning they may have to have two or three chelation treatments.

Representative Worley asked who is responsible for lead level testing of infants as required. Jennifer said that

2/16

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:03 a.m. on February 16, 2010, in Room 784 of the Docking State Office Building.

it was actually the physicians responsibility to do the testing. KDHE does not have the power to make the physicians do the testing.

Representative Grange asked how do we address the issue of houses that don't get any work done on them at all. Jennifer said that this bill does not affect that residence.

Gary Allsup, Kansas Housing Resources Corporation, presented testimony as an opponent of **HB 2596** (Attachment 4).

Representative Suellentrop asked if we are following Federal guidelines for remediation done in these homes, how are we jeopardizing millions of dollars of federal funding. Gary said that it was a matter of timing. The issue is that all these programs have to be approved and in place by April 22nd.

Larry Hopkins, Hernly Associates, Inc. testified as an opponent of **HB 2596** (Attachment 5).

Representative Grant asked if he trained someone would they be certified to work the job. Larry said that if he trained them as a certified trainer they would be certified.

Representative Suellentrop asked if we have HUD projects and contractors who have all of their staff trained to meet the HUD requirements then we don't have any jeopardy of losing federal funds. Larry said that we have three different entities that govern the lead rules. That would be HUD, EPA and OSHA. The Kansas language that we are talking about today talks about the EPA regulations involving Renovation, Repair and Painting rules, RRP. And in that process there may be some conflicts between the EPA rules and HUD rules because RRP rules are not as stringent as the rules for HUD homes.

Representative Hermanson asked Larry if he thought the Federal guidelines were stringent enough. Larry said they were not stringent enough.

Thomas Langer, Kansas Department of Health and Environment, presented testimony as an opponent of **HB 2596** (Attachment 6).

Representative Suellentrop said in remodeling pre-1978 homes you indicated that not all employees would need to be trained. Thomas said that was correct.

Representative Hermanson asked if KDHE is having trouble enforcing training requirements, why should we make it even more stringent. Thomas said that KDHE had no problem enforcing the law.

Representative Grange asked if he would give the fiscal note as to what it would cost and what it would bring in. Thomas said that initial estimates are zero. We can do this with the staff that we have. We have enabled individuals to register and pay and license via the internet.

Eric Stafford, Associated General Contractors, spoke in support of **HB 2596**. He said that if the KDHE regulations were to pass it would have a significant impact on our members. Since we have a high turnover in this industry why would it be the contractors responsibility to pay to have each employee certified.

Ken Daniels, Midway Wholesale, gave verbal only testimony as an opponent of **HB 2596**. He said that because of the increased regulations he was not going to do this kind of work anymore.

The Chairman closed the hearing on **HB 2596**.

The next meeting is scheduled for February 17, 2010.

The meeting was adjourned at 10:37 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 2-16-10

NAME	REPRESENTING
Bill Miller	AMERICAN SUBCONTRACTORS ASSOC.
Ken Keller	ASA
Dick Morrissey	KDHE
Tom Langer	KDHE
Susan [unclear]	KDHE
Ken Daniel	TIBA
Eric Stafford	AGC of KS
Scott Heidner	ACE KS
Judy Gray	Am Inst of Architects
Neal Angrisano	Johnson County Court.
Chris Wilson	KS Bldg Industry Ass'n
Tom Knight	Knight Enterprises, Ltd
Ding Pham	Rep. Ruiz's intern
Jeff Freeman	Rep. John Grange
Ligh Keck	Kein Law Firm
Phyllis fast	st. of KS - DEM
Larry R. Baser	LKM
Steve Weatherford	KHRC
GARY ALLEN	KHRC
JOHN C. BOTTENBERG	WESTAR
Tom Kueh	KN5B
Rob Johnson	Federico Consulting
Melissa Wangemann	KAC
Larr Oppitz	JA
ERIC KING	KS PD. REGENTS

COMMERCE & LABOR COMMITTEE

DATE: 2/16/10

NAME	REPRESENTING
Ann Hansen	MCA
Diane Gjersted	USA 259



Ben Kitchens Painting Co., Inc.
General Contractor

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February 15, 2010

House Committee on Commerce and Labor HB 2596
Honorable Representatives,

I would like to respond to what I consider the misinformation that is happening with respects to the proposed changes to the lead based paint (LBP) regulations. I have been involved in lead based paint abatement & lead safe work practice (LSWP) activities for over 10 years and consider it a way of life when dealing with pre 1978 houses. My firm is a licensed Lead Activity Firm with the State of Kansas and we conduct our business in accordance with the current regulations. As a matter of policy, we provide at least the minimum LSWP training for each of our employees.

I have been a member of the Manhattan Area Builders Association & Flint Hills Area Builders Association for many years. Rather than the costs and misinformation being expressed by some of those in the Home Building Industry, I implore you to consider the real facts from the following; the real cost to have a person trained in proper LSWP is a grand sum total of \$150.00. The additional labor and material costs to fully and properly implement LSWP is estimated by EPA to cost an additional \$100.00 for each job which consists mainly of plastic & duct tape. On a routine basis, I add from \$150 to \$250 to my proposals for working on pre 1978 buildings.

Under federal law, since 1999, contractors have been required to receive LSWP training and to properly use LSWP when working on federally owned or federally assisted housing. Persons have been trained all across the nation, including Kansas, in the proper use of LSWP since 2002 and I have not seen any of those people who received the training go out of business any faster than those who do not take the required training. I have not seen any more homeowners doing any more of their own renovations than before 2002. I have not seen any pre-1978 houses fall into ruin due to contractors implementing proper LSWP and trying to protect children from becoming lead poisoned. I have not seen or even heard of ANY contractor anywhere in the nation wanting to stop working on any pre-1978

House Commerce & Labor

Date: 2.16.10

Attachment # 1

houses as a result of the use of proper LSWP (in fact, contractors have found out that LSWP has created a new market niche as I have). I have not seen or heard of ANY contractor who considers lead poisoning prevention through the proper use of LSWP a disincentive to their work efforts. Many contractors have found that their insurance rates go down after they show their insurance providers that they have been trained in proper LSWP. Due to the conflict of interest (which is prohibited by Kansas Statute), contractors must not be allowed to provide their own cleaning verification (what is the incentive for a contractor to fail themselves by saying that they did not clean well enough) or to provide their own lead-based paint LBP testing (which is currently prohibited by Federal and State laws, unless they are also licensed/certified as LBP Inspectors or Risk Assessors and even then they cannot provide LBP testing on the same job where they are also providing construction services). EPA and HUD both mandate that persons providing construction related work activities in pre-1978 houses take 8 hours of LSWP training, including 2 hours of hands-on training. It is estimated that by 2011, as many as 42 states will be running their own RRP Program and those states will be more stringent than EPA, just as KDHE has proposed.

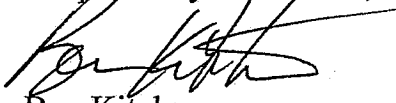
The unfortunate truth is that if HBA groups have their way (such as by passage of HB 2596), the State of Kansas will literally lose untold millions in federal monies, as detailed by the Director of the Kansas Budget, and potentially, more children will become lead poisoned!!! Lead poisoning costs us many millions in tax dollars nationwide due to the additional funding needed to care for lead poisoned children in our schools and in institutions where lead poisoned children end up.

Is the State in a position to lose millions of dollars by adopting a regulation which puts our children and grandchildren at greater risk of lead poisoning?

Please consider keeping the Kansas Lead Regulations as proposed by KDHE. We should all strive to keep our standards as stringent as possible to ensure the future health & safety of our children.

Thank you for your time.

Respectfully Submitted,


Ben Kitchens
President

Larry Hopkins

From: BEC [pbman@bakerenvironmental.com]
Sent: Monday, February 15, 2010 2:23 PM
To: 'Larry Hopkins'
Subject: Vote No Against HB 2596

Sensitivity: Confidential

Larry: Please copy this and distribute to the guy we spoke with this morning.

Please accept this electronic communication as our notification to you of our urgent request for you and for all of your associates to do everything within your control to ensure that the KDHE regulations covering Renovation, Repair and Painting (RRP) is enacted as written, and enacted as expediently as is humanly possible; **please do not adopt HB 2596!**

As a Parent, Grand-Parent, a former Manager of a Childhood Lead Poisoning Prevention Program, a former Renovator and Paint Contractor, and a Kansas Citizen, I have personally witnessed the tragedy and the devastation, as well as the physiological and psychological pain, associated with a person becoming lead poisoned. Lead Poisoning is 100% easily preventable, especially when people use the proper lead-safe work practices (LSWP) as is required under the KDHE RRP regulation. Unfortunately, almost 40% of all lead poisoned children (some 150,000 children nationwide) become lead poisoned because persons who provide construction related work activities (renovation, remodeling, repair, painting, maintenance, modernization, rehabilitation, etc) are not using proper LSWP. Many of the known deaths from lead poisoning in the United States are attributable to the typical way that construction persons carry out their typical RRP types of activities, where they leave lead contaminated dusts and debris behind. The health effects of Lead Poisoning are 100% permanent and irreversible; once the damage is done, it is done for good. There are no pills to be taken to make it all better. It is proven that many of the special needs children in today's schools are there because of becoming lead poisoned. So the obvious answer is to ensure that all efforts are made to ensure that no child or adult becomes lead poisoned in the first place.

LSWP are so easily implemented by those who provide construction related work activities. In my 34 years of professional experience, I can assure you that the extreme majority of all contractors already own about 98% of all of the supplies that they would ever need to use proper LSWP. The only additional cost for the majority of contractors is going to be the cost of a HEPA Vacuum, at an average cost of approximately \$500.00 (some cost as little as \$200.00). When spread out over several projects (I have owned and used HEPA Vacuums for well over 25 years), the cost of a HEPA Vacuum is less than the cost that a contractor would pay for a good hammer. **What are the lives, the health, the safety, and the happiness of your Children, your Grand-Children and/or the Children of your loved ones worth?**

Rather than the costs and mis-information being expressed by those in the Home Building Industry, consider the real facts from the following; the real cost to have a person trained in proper LSWP is a grand sum total of \$150.00. The additional labor and material costs to fully and properly implement LSWP is estimated by EPA to cost an additional \$100.00 for each job. Under federal law, since 1999, contractors have been required to receive LSWP training and to properly use LSWP when working on federally owned or federally assisted housing! I have been training persons all across the Nation,

including Kansas, in the proper use of LSWP since 2002 and I have not seen any of those people who received the training go out of business any faster than those who do not take the required training. I have not seen any more homeowners doing any more of their own renovations than before 2002. I have not seen any pre-1978 houses fall into ruin due to contractors implementing proper LSWP and trying to protect children from becoming lead poisoned. I have not seen or even heard of ANY contractor anywhere in the Nation wanting to stop working on any pre-1978 houses as a result of the use of proper LSWP (in fact, contractors have found out that LSWP has created a new market niche). I have not seen or heard of ANY contractor who considers lead poisoning prevention through the proper use of LSWP a disincentive to their work efforts. Many contractors have found that their insurance rates go down after they show their insurance providers that they have been trained in proper LSWP. Due to the conflict of interest (which is prohibited by Kansas Statute), contractors must not be allowed to provide their own cleaning verification (what is the incentive for a contractor to fail themselves by saying that they did not clean well enough) or to provide their own lead-based paint (LBP) testing (which is currently prohibited by Federal and State laws, unless they are also licensed/certified as LBP Inspectors or Risk Assessors and even then they cannot provide LBP testing on the same job where they are also providing construction services). EPA and HUD both mandate that persons providing construction related work activities in pre-1978 houses take 8 hours of LSWP training, including 2 hours of hands-on training. It is estimated that by 2011, as many as 42 states will be running their own RRP (LSWP) Program and those states will be more stringent than EPA, just as KDHE has proposed under their RRP regulation.

The unfortunate truth is that if HBA groups have their way (such as by passage of HB 2596), the State of Kansas will literally lose untold millions in federal monies, as detailed by the Director of the Kansas Budget (copy of his letter is attached)!!! Lead poisoning costs us many millions in tax dollars nationwide due to the additional funding needed to care of lead poisoned children in our schools and in institutions where lead poisoned children end up. Lead poisoning costs us millions of dollars each year due to the fact that lead poisoning has been proven to cause violent behavior, leading to a significant increase in the numbers of persons being incarcerated. Is the State in a position to lose millions of dollars in federal funding or is the State in a position to continue to spend millions of dollars on persons who are incarcerated because of being lead poisoned, by adopting a regulation (HB 2596) which puts our children and grand-children at greater risk of lead poisoning?

Please help us to **protect our children** (and Adults) of the State of Kansas by way of lending all of your support to the enactment of the KDHE RRP regulation as written. Please do all that you can to encourage all of your associates, as well as those members of the Commerce and Labor House Committee, to enact the KDHE RRP as written and to **vote against HB 2596**.

Thank you for your time.

Richard A. Baker

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2-2



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 J Steven Leeder, PharmD, PhD
 Chief

Section of Medical Toxicology
 Gary S Wasseman, DO
 Chief

February 12, 2010

House Committee on Commerce and Labor,
 House Bill No. 2596
 Testimony of Jennifer A. Lowry, MD

Hello. My name is Dr. Jennifer Lowry. I apologize for my inability to be present for this important discussion regarding House Bill 2596 and to provide testimony in opposition to this bill. Currently, I am a pediatrician, toxicologist and clinical pharmacologist at Children's Mercy Hospitals and Clinics in Kansas City, MO. In addition to caring for the children of Kansas at that institution, I also serve Kansas in two additional roles. First, I am the Medical Director to the University of Kansas Hospital Poison Control Center. As you may be aware, the Poison Control Center helps the public and health care professionals in the management of exposures to poisons, whether drugs or environmental exposures. Second, I am the Director to the Pediatric Environmental Health Specialty Unit for EPA Region 7 which is located at Children's Mercy Hospital but serves the states of Iowa, Nebraska, Missouri and Kansas in the diagnosis and treatment of environmental exposures that occur in children. In all three of these capacities, I have developed a strong relationship with the KDHE's Childhood Lead Poisoning and Prevention Team.

There are three objectives of the Healthy People 2010 Program that I have worked with KDHE on to improve the health of Kansas' children. These are stated below:

(Obj. 8-11): The proportion of children aged 1 to 5 years who had elevated blood-lead levels decreased from 4.4 percent in 1991-1994 to 1.6 percent in 1999-2004. Among non-Hispanic black children in that age range, the decrease was from 11.2 percent in 1991-1994 to 3.1 percent in 1999-2004. The target is zero percent.

(Obj. 8-13): The number of visits to a healthcare facility that results from exposure to pesticides decreased from 22,933 in 1997 to 19,168 in 2004. The target is 11,398.

(Obj. 8-25): Within the context of the umbrella objective to reduce exposure to pesticides, heavy metals, and certain environmental chemicals, the progress of several subobjectives was a featured topic of the data presentation. The blood-level concentration of cadmium in the total population aged 1 year and older was 1.30 micrograms per liter ($\mu\text{g/L}$) in 2000-2002 (1.3 $\mu\text{g/L}$ in 1999-2000). The target is 0.9 $\mu\text{g/L}$. The blood-level concentration of lead in the total population aged 1 year and older decreased from 4.9 $\mu\text{g/L}$ in 1999 to 4.40 $\mu\text{g/L}$ in 2001-2002. The target is 3.4 $\mu\text{g/L}$. The blood-level concentration of mercury in children aged 1 to 5 years decreased from 2.3 $\mu\text{g/L}$ in 1999-2000 to 1.90 $\mu\text{g/L}$ in 2000-2001. The target is 1.6 $\mu\text{g/L}$. In females aged 16 to 49

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 Chengpeng Bi, PhD
 Douglas L Blowey, MD
 Andrea Goedigk, PhD
 Roger Goedigk, PhD
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Administrative Staff
 Melonie F Clifton
 Section Manager
 Connie Aubin, AA

years (i.e., of childbearing age), the blood-level concentration of mercury decreased from 7.1 µg/L in 1999–2000 to 4.60 µg/L in 2000–2001, surpassing the target of 5.0 µg/L. The serum concentration of lindane (beta-HCH) in persons aged 12 years and older decreased from 68.9 nanograms per gram lipid (ng/g lipid) in 1999–2000 to 43.3 ng/g lipid in 2001–2002, which betters the target of 48.2 ng/g lipid.

As you can read in Obj. 8-11, while we have made progress in regard to childhood lead poisoning over the past 20 years, we have failed to remove the risk to children and have not met the 2010 objectives listed. Lead is a neurotoxin that is more commonly found in paint and soil. Lead was placed in paint in the early 1900's as a preservative and, thus, allowed the paint to last for years. The manufacture of leaded paint ceased in the late 1970's, but the effects continue to be seen due to the large number of older homes that still contain this hazard. Young children are at higher risk for the development of lead poisoning due to their curious nature and high hand to mouth activity. Peeling paint from window sills, doors, walls, and porch railings are readily available to the curious child. In addition, the paint is sweet and attractive to children.

The maximum brain growth for a person occurs from birth to 3 years of age when the brain reaches its adult size. However, the brain is not fully formed and connected until the early 20's. As I previously mentioned, lead is a neurotoxin that has no role in the human body. It disrupts cellular mechanisms that can have long standing effects that may become permanent. Unfortunately, the early effects are subtle and may not be known until the lead levels is high and the child's body burden is large. Over time and as the levels increase, the child can develop anemia (levels of 25), kidney problems, IQ deficits (levels of 15), convulsions (levels of 100), encephalopathy (levels of 70) and death. In addition, newer studies suggest that disease such as ADHD, behavioral problems and learning deficits can be seen with levels as low as 5 mcg/dl. And, while the the average lead concentrations across the nation are decreasing, I continue to see children present with elevated blood lead levels above the reportable level of 10 mcg/dl. In fact, the PEHSU was notified of over 100 children in Kansas over the past 5 years with lead levels above 15. Approximately one-third required chelation therapy. All of these children were referred by or involved with the KDHE Lead Program.

As I mentioned, I collaborate with the programs in the 4 state region. I can tell you that Iowa, Nebraska, nor Missouri can meet the gold standard that the State of Kansas provides to the children and their families. The staff of your Childhood Lead Poisoning Program is the most knowledgeable in regard to lead poisoning that have met at the state level. Their nurse case managers are an incredible asset to me, my staff and the families that need their help. While I can aid them in the management of their lead poisoning, I rely on the staff at KDHE to help with the assessment of the home and ensuring that proper management, remediation, and treatment are provided to these families. Without them, I would not be able to ensure the safety of the families of Kansas that are exposed to this poison. Children who require treatment for their elevated blood lead levels cannot be treated in a home that is contaminated, as the treatment can increase the absorption of lead if it continues to be ingested on the medicine. KDHE's Program ensures that home is "clean" and safe for the child to be treated. This saves us time and money as without the "clean" home, the child would require the 19 day treatment occur in a hospital. If a child does require hospitalization for chelation therapy, KDHE can ensure the home is safe the child to be discharged to.

Local health departments are not equipped or as knowledgeable as the program that is currently in place. Often times, I have had to teach the local health departments on what the treatment levels are and what the consequences may be if a home is not properly assessed. In addition, my experience with other State Programs that rely solely on the local health departments is that many children have "fallen through the cracks" and have not had proper follow up to ensure they are not further exposed to lead. Physicians have called me because they don't know what to do with a child with an elevated lead level and not had guidance from their local health department. In addition, I have had cases in which children have been inappropriately chelated and put at risk for an adverse event.

As you may be aware, Medicaid mandates that all children at ages 1 and 2 receive a blood draw for a lead level. This currently is not done within the state of Kansas to the degree that it should. In addition, the Centers for Disease Control and Prevention (CDC) has mandated for universal testing in high risk areas and universal screening in lower risk areas. In the high risk areas of the State of Kansas, universal testing is not done, including on those children on Medicaid. The Staff of KDHE's Lead Poisoning and Prevention Program help me in this regard by providing education to physicians in Kansas on the need for testing. While the numbers of children that are poisoned by lead is decreased, children remain at risk and are found to have elevated levels. Your staff helps to educate the health care communities.

In addition, the KDHE staff has made a great effort in the prevention of lead poisoning. Their staff works with local and regional do-it-yourself stores in the education of the proper way of remodeling homes. It is because of this effort that I had a family come in for testing. They had started to remodel their home and was offered the booklet by a store employee. Once they read it, they asked their pediatrician for a lead test. It came back mildly elevated on their child and the family moved out of the home temporarily for the home to be cleaned. The lead levels are down and the child his healthy. However, without the education provided to them, this child would have been at higher risk.

The current standards and authority that is given to KDHE to adopt rules and regulations, standards, and guidelines that require any person who tests for lead-based paint or performs lead-based paint mitigation in Kansas to make a report to KDHE ensures the safety of Kansas Children. All persons who will working in the role of reducing lead-based paint hazards in areas that are inhabited by children should have the proper training and report this activity to KDHE such that children (and their families) are ensured of their safety from this environmental toxin. If KDHE does not know and cannot enforce that the rules and regulations are followed, there is no guarantee that the children of Kansas will be safe from this toxin in these enviroments. My fear is that we will see an insurgence of lead poisoned children. Given the current climate of low blood lead testing in Kansas children, many lead poisoned children will be missed.

While I can provide you with many more examples of the families who have received help from the Program provided by KDHE and the State of Kansas or the families in which lead poisoning was prevented because of the efforts, the end statement will be the same. Lead poisoning has not been eradicated as desired by year 2010. There continues to be much to do in regard to the education and the management provided to those at highest risk for lead poisoning...our children. The efforts to plan the objectives for Healthy People 2020 are underway. Those that

have participated in the progress review of 2010 have agreed that environmental health, community and public health, and individual health are interdependent. It is their, and my, belief that we should reinforce primary prevention with greater efforts to control or eliminate sources of lead in children's environment before they are poisoned. In conjunction with those efforts, we agree that we should seek to overcome some physicians' apparent lack of concern about secondary prevention and resistance to recommended screening, which often develops as the prevalence of lead poisoning in children declines. I cannot do this on my own. I need your help to do this. I need your help to care for the children of Kansas. And, I feel that their best hopes in the prevention, education, and management of lead poisoning and the home environment lies in the continuation of the KDHE Childhood Lead Poisoning and Prevention Program and current ability to enforce these rules and regulations.

Thank you.



Jennifer Lowry, MD
Clinical Pharmacology and Medical Toxicology
Children's Mercy Hospitals and Clinics.

KANSAS  **HOUSING**
RESOURCES CORPORATION™

February 12, 2010

Honorable Steven Brunk, Chair
House Committee on Commerce and Labor
Kansas House of Representatives
State Capitol
Topeka, KS 66612

Re: Impact of House Bill No. 2596

Dear Chairman Brunk:

Kansas Housing Resources Corporation (KHRC) is a public corporation that administers federal and state housing programs on behalf of the State of Kansas. We are writing to express our opposition to House Bill No. 2596, which potentially jeopardizes millions of dollars of federal funding for housing rehabilitation in Kansas.

KHRC administers a variety of federally funded housing programs, including the Homeowner Rehabilitation Program, HOME Rental Development Program, Neighborhood Stabilization Program (assisting Department of Commerce), Emergency Shelter Grant Program, Weatherization Assistance Program, and Tax Credit Assistance Program. These programs provide funds to Kansas communities, community action agencies, and other nonprofit housing partners to rehabilitate dilapidated housing, stabilize neighborhoods with high rates of foreclosures, and weatherize homes for energy efficiency.

Each of these programs requires that a state-certified risk assessment of lead levels be performed in a home if lead levels exceed a *de minimis* level. As the Environmental Protection Agency (EPA) has approved of the Kansas Department of Health and Environment (KDHE)'s existing program, KDHE-certified inspectors have been able to perform these risk assessments for KHRC's partners, allowing KHRC's programs to provide much needed rehabilitation to Kansas' housing stock.

House Bill No. 2596 endangers the EPA's approval of KDHE's program, which in turn means that state-certified inspectors may not meet federal housing program requirements, which could ultimately shut down any house rehabilitation programs administered by KHRC.

House Commerce & Labor
Date: 2.16.10
Attachment # 4

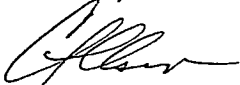
The following page provides a breakdown of KHRC's traditional programs and those funded under the American Recovery and Reinvestment Act (ARRA), which may be impacted by House Bill No. 2596. These programs provide over \$130 million for Kansas communities, much of which may be risked if HB No. 2596 passes. For these reasons, KHRC opposes the Bill and respectfully recommends against passage.

Estimated KHRC Program Dollars Potentially Impacted by HB No. 2596

Kansas Weatherization Assistance Program	\$ 57,900,000 (3 yrs)
Homeowner Rehabilitation Program	\$ 2,173,000
HOME Rental Development Program	\$ 1,500,000
Housing Tax Credit Program	\$ 28,246,000 (\$18.4m in equity)
Housing Credit Exchange Program	\$ 16,531,385
Tax Credit Assistance Program	\$ 3,754,239
Neighborhood Stabilization Program	\$ 20,970,242
Emergency Shelter Program	\$ 51,000

On behalf of the Kansas Housing Resources Corporation, I appreciate the opportunity to provide this testimony and hope you find the information useful.

Sincerely



Gary Allsup
Executive Director



ARCHITECTS
ENVIRONMENTAL CONSULTANTS
GRANT ADMINISTRATORS

920 Massachusetts, Suite 2
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Chairman Brunk and Members of the Committee, thank you for the opportunity to come before the committee today. I stand here to state my opinions concerning HB 2596. This legislation as stated proposes to amend K.S.A. 65-1,202 when pertaining to rules governing the EPA Renovation, Repair, and Painting (RRP) rule set to take full effect on April 22nd, 2010. The legislation as written will not only effect the new RRP rules, but also the current rules we have worked with efficiently and in a costs effective manner for the last 10 years. The legislation will at least impact and may eliminate the federally funded lead poisoning reduction and low income housing rehabilitation programs that pump tens of millions of dollars each year into the Kansas economy. Over the past few months I have heard countless amounts of misinformation, distortions, and scare tactics concerning this legislation. I am here today to give you my perspective on these rules and to ask that you allow the new proposed Kansas rules to take effect as written as soon as possible.

I have worked in the housing industry in many capacities; as a construction company owner, Community Development Block Grant administrator, and low income housing renovation project designer for the past 25 years. Most recently I have dedicated my life to the low-income housing segment of our industry and am certified as a housing inspector and project coordinator, lead-based paint (LBP) risk assessor, LBP inspector and LBP Project Designer. I have personally seen the effects that lead-based paint and lead contaminated dust has played on our children and expectant mothers and know the lasting consequences that lead has on the human body and mind. Thousands of Kansas children have been diagnosed with elevated levels of lead in their blood. This contamination can lead to decreased learning capabilities, violent behavior, everlasting medical ailments, and yes, even death. The long term educational, medical, and corrections costs of these maladies to our state are enormous. The short term costs to control this pollutant are minimal. The new Kansas RRP rules will help insure that workers, children and expectant mother are better protected from lead contamination.

The building industry associations of Kansas have spearheaded the efforts to kill the new Kansas RRP rules. Their literature and the information they are providing is at best misinformed and at worst an all out lie. In their most recent "fact sheet" they have stated that small contractors will be so adversely effected that they many will go out of business. In the 10 years I have been involved with properly trained construction firms, none that I know of have gone out of business due to the lead regulations. In fact, we have seen the number of contractors trained in lead-safe work practices (LSWP) and the number of firms bidding on federally funded low income projects (which require LSWP training) noticeably increase. Many numbers and statistics have been floated by building industry representatives that have no basis in today's reality. The available information from federally funded low-income renovation projects shows that the additional lead regulations imposed over the last 10 years have not decreased the number of homes renovated each year, has helped countless lead poisoned children live in substantially safer environments, and has provided thousands of jobs for countless small construction firms across the nation.

House Commerce & Labor

Date: 2.16.10

Attachment # 5

The building industry associations have also stated that training for the new rules will exceed \$600.00 per employee with some insisting that costs will be more than \$1400.00 per employee. That is completely untrue. As a certified EPA instructor for the new rules, I personally know that costs for instruction average \$125.00 to \$175.00 per individual with some training, namely the training sponsored by the building industry trade associations themselves running less than \$100.00. Firms are required to regularly conduct OSHA training sessions for their employees yet I hear little about the loss of time or income from these meetings. Cumulative time for these meetings should well exceed 8 hours per year if OSHA rules are followed. I have heard of no companies going out of business because of these requirements. Or if left to the contractors are these meetings and training sessions even held? The building associations also hope that only one of their employees will need formal training and that all additional employees will be trained by that person. When it comes to scaffold construction or proper use of a chop saw, on the job training is probably the most efficient form of training. But we are dealing with health and safety issues that go far beyond the knowledge of most construction company owners or employees. The provided KBIA information has many misstatements that can only be accredited to a lack of knowledge, and this is from a group that states that they are experts on the subject. Can we trust that supervisors in construction firms will be able to master this information in 8 hours, be able to explain it to all of their workers in multiple languages, and insure that Kansas children and expectant mothers will be safe?

The KBIA states that the costs to perform third party verification of cleaning following projects at between \$300.00 and \$400.00 per project. KBIA is basing this information on the "clearance" procedures now required by HUD for federally funded housing rehab programs. The Kansas administered programs have stated time and time again that clearance procedures will be less stringent than those currently required by HUD and hope to keep these costs at or below \$150.00 per household. I have performed thousands of clearance tests throughout Kansas and Missouri over the past 12 years and contractors trained in and working with the more stringent HUD lead regulations still fail these more comprehensive clearance tests. Can we trust that contractors will eliminate contamination from our homes and even more, will fail themselves in the process? In addition, KBIA, in its most recent publications state that costs will increase 10-12% per job. Average costs on HUD funded jobs throughout the United States average between 5 and 6% of the gross costs for renovation. While these costs are not inconsequential, what are the costs of a permanently damaged nuerosystem in a child? With declining state revenues for education and low-income healthcare, where will we find the funds for special education or specialized medical treatment?

Also it has been stated that insurance costs will increase for contractors if the Kansas rule takes effect. According to Lloyds of London information, if the current EPA regulations take effect, standard mom and pop construction companies will be classified as environmental testing firms as they will be responsible for clearance activities now charged to third party companies. This will most definitely increase their insurance costs and put the liability completely in their hands. The new Kansas rule will remove the testing and clearance responsibilities from construction firms and place the liability strictly in the hands of professional testing firms. In addition, the same information sates that competently trained firms with professionally trained staffs will look at a reduction in insurance costs over the short and long term. This is in direct conflict with building industry information.

Twelve years ago, I too was ignorant of the consequences of lead contamination and the very simple steps necessary to combat the possible spread of lead contamination in our homes. As a project designer for community development block grant housing renovation work, I knew that I would have to acquire specialized knowledge to be competitive and a leader in my field. Knowledge too complicated

for my professionally trained architectural staff to provide. I too was a construction company owner. I realized with my training that I had left worksites contaminated and had not been as careful as I could have been when renovating homes. I now have acquired more than 500 hours of training over the past 12 years. My still limited expertise didn't happen overnight, and to this day I speak consistently with my colleagues to clarify my understanding of existing regulations and work practices. Will the limited training required by the EPA regulations make our construction companies experts in this field?

In conclusion, I am glad that our building industry partners are concerned for the safety of our citizens and have worked with KDHE in the initial discussions on this rule. But from my experiences I deduced that only professional training and third party cleaning verification can insure the safety of our children. I strongly support the defeat of HB 2596 and ask that you help in defeating this legislation.

Sincerely

A handwritten signature in black ink, appearing to read "Larry Hopkins", with a long, sweeping horizontal line extending to the right.

Larry Hopkins
Environmental Division Manager
Hernly Associates, Inc.
Lawrence, Kansas



Mark Parkinson, Governor
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Testimony on HB 2596
Rules and Regulations regarding lead-based paint removal, repair and painting

Presented to
House Commerce and Labor Committee

By
Thomas Langer, Acting Director, Bureau of Environmental Health
Kansas Department of Health & Environment

February 15, 2010

Chairman Brunk and members of the committee, I am Tom Langer the acting director of the KDHE Bureau of Environmental Health. I oversee the activities of the Healthy Homes and Lead Hazard Prevention Program. This program is directly responsible for the administration of the lead poisoning prevention activities in our state. Over the past 10 years KDHE has identified and assisted thousands of Kansans who have been poisoned from exposure to lead in their homes. These poisonings occur in large part from exposure to deteriorated lead-based paint.

KDHE opposes the provisions of HB 2596. If approved as presented they will cause affected businesses in Kansas to endure undue expense, expose them to increased liability, require expansive recordkeeping, and create a non compliant business subculture in which honest contractors cannot compete. Additionally HB 2596 places at risk a successful public health program that protects the health and safety of Kansas families especially children.

The State of Kansas through KDHE has been authorized by the US Environmental Protection Agency (EPA) to administer the rules, regulations, and programs designed to eliminate lead poisoning. For the past decade KDHE has worked with the residential construction industry, real estate and landlord associations and public health departments in our state supporting contractors while at the same time protecting Kansas families.

In 2008, the EPA placed into effect the Renovation, Repair and Painting (RRP) provisions of regulations dealing with Lead-based Paint Poisoning Prevention in Certain Residential Structures.

HB 2596 seeks to insure that KDHE does not adopt lead based paint rules or regulations that are more stringent than EPA regulations as published in USC 40 CFR 745 et seq. KDHE does not

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House Commerce & Labor
Date: 2.16.10
Attachment # 6

seek to establish rules or regulations which are more expansive or restrictive than EPA's. KDHE seeks to protect Kansas business and the public health by providing efficient cost effective programs and procedures which will be sensible and easy to follow while being cost effective. KDHE has promulgated regulations to accomplish these objectives.

I would like to explain what would occur in Kansas if we implement EPA regulations dealing with RRP exactly as presented in USC 40 CFR 745.

Every contractor in the state whose business may disturb lead based surface coatings in structures built prior to 1978 (target housing) will need to become a "licensed renovation firm." EPA will charge \$300 initially and \$300 every five years for this privilege.

EPA guidelines allow a 90 day time business licensing. EPA regulations prohibit Kansas businesses from performing renovation work on housing during this application time period.

EPA requires the training of "certified renovators" by "accredited training providers". EPA requires that each "licensed renovation firm" to have at least one "certified renovator" trained to perform lead safe work practices during all phases of renovation work, properly test for lead in surface coatings using an EPA approved chemical test kit, perform post work cleaning using proper wet cleaning methodologies, perform post work dust sampling using an EPA approved wet wipe media and perform visual comparison to a cleaning verification card. Certified renovators must keep all records of work performed and testing done and final dust wipe records for the licensed renovation firm, and would be responsible for the training of other staff members in lead safe work practices and will be required to be on the job site when signs are posted, while work area containment is being established and while post work cleaning is being performed and at any other time deemed necessary. The certified renovator will be required to retain the records of the training for review. In the event of problems at a work site due to improper work methods both the certified renovator and the licensed renovation firm would be held accountable.

Accreditation of training providers currently takes up to 180 days. There is only one trainer in Kansas who can only train 10 to 12 students per trainer per class.

EPA regulations state: (40CFR745.81(a)(2)(ii) "On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under §745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in §745.82(a) or (c)."

The Kansas Department of Commerce and Kansas Housing Resource Corporation and each municipality in the state that receives and administers federal funding for housing rehabilitation will need to cease rehabilitation activities on April 22, 2010.

EPA enforcement is the assessment of fines up to \$37,500 per occurrence (day).

KDHE estimates that are at least 5,000 firms that would need to be licensed and subsequently at minimum 5,000 renovators would need to be trained. KDHE estimates that EPA could license hundreds of firms in Kansas during 2010. The existing training provider infrastructure could train several hundred renovators in 2010. Not all firms will be licensed; not all workers will be trained.

Since all firms would not be authorized to work during 2010, KDHE anticipates that the home improvement and remodeling industry in Kansas would suffer greatly following the EPA regulations.

EPA will require that over 100 current contracting firms in Kansas that are already licensed to perform lead-based paint activities re-apply for a renovators license and require them to pay additional fees as prescribed by regulations.

KDHE is concerned about conflict between EPA regulations and current state regulations and the confusion that this will create with contractors.

There is an additional unintended consequence that will also drastically increase company and individual liability. EPA rules will result in a contractor's need to purchase additional "environmental hazard" insurance at an annual cost of at least \$2,500 per year.

The proposed elimination of the Secretary's ability to ask for records will cripple the agency's oversight responsibilities. EPA requires business or individuals to provide information and documents for oversight and verification. The elimination of such an authority will in Kansas regulations becoming less stringent than the EPA regulations and could result in cost the state more than \$500,000 in lost funding annually and eliminate a public health program that assists hundreds of Kansas families every year.

This RRP issue is complex and multifaceted. KDHE firmly believes that Kansas' needs are best served by dealing with the agency as opposed to the EPA. The agency's goals are to 1.) Provide a workable solution which will ensure that work in our state continues uninterrupted; 2.) Ensure that Kansas businesses are treated in a fashion that allows for efficient and cost effective training to be acquired; 3.) Ensure that firms that are properly licensed and workers that are properly trained; and 4.) Provide Kansas contractors with valuable information and compliance assistance and training.

Thank you for the opportunity to appear before the committee today. I will now stand for questions.