



Mary Lazich

President
Wisconsin State Senate

**Assembly Committee on Housing and Real Estate
Assembly Bill 257
October 29, 2015**

Thank you Chair Jagler for scheduling Assembly Bill 257 (AB 257) a public hearing, and thank you committee members for attention to AB 257. AB 257 eliminates unnecessary lead testing requirements if lead safe practices are followed.

Department of Health Services (DHS) rules require before renovations are performed on dwellings constructed prior to 1978, an inspection and testing process for lead must be followed. DHS requires that before work can be performed on the dwelling, a company must inspect the dwelling for lead, test the paint samples for the presence of lead, and then file a comprehensive report with its findings of lead with the Department of Health Services. The inspection, testing, and reporting rules for lead-based renovations are an expensive and time consuming process.

The owners of KPH Construction were hired as a consultant for General Mitchell International Airport (GMIA) for the Airport Area Noise Management Program (NMP). KPH took great care to ensure due diligence was given to hazardous materials in the private homes. A portion of the diligence was dedicated to meeting with DHS representatives to provide clarity and agreement about regulations of lead testing requirements.

Midway through the project, the county demanded testing on the homes for the presence of lead. KPH complied with the customers' request. The testing was not necessary for safety reasons because renovations were completed at the highest level of lead safety. DHS commenced action against KPH claiming KPH did not follow reporting and testing requirements.

Representatives from KPH Construction are present today. They will share with the committee technical aspects of AB 257 and the positive impact AB 257 will have on the business climate within Wisconsin.

Current law already exempts work done in a lead-safe manner from lead testing requirements. Under this bill, a company operating in a lead-safe manner is not

Assembly Bill 257
October 29, 2015
Page Two

required to comply with the inspection and testing rules established by DHS should testing be done on a lead-safe renovation. This will allow companies to forgo the rigorous testing and reporting process, while still operating in a safe and responsible manner.

A substitute amendment has been adopted by the Senate Committee on Health and Human Services. The amendment does two things. First, a definition of a "partial lead inspection" has been added to AB 257 making the bill clearer. Second, in the event of a partial lead inspection, the renovator must inform the owner in writing the inspection is a partial lead inspection and not a full lead inspection.

Lead-safe practices ensure the safety of employees and homeowners. AB 257 does not change the inspection and testing rules promulgated by DHS. Renovators are only exempt from the inspection and reporting process at the time all necessary precautions are taken to prevent further lead contamination and lead abatement is performed at the highest standard.

I ask the committee approve AB 257. Thank you for your attention.

Mike Kuglitsch

STATE REPRESENTATIVE • 84TH ASSEMBLY DISTRICT

DATE: October 29, 2015
RE: **Testimony on 2015 Assembly Bill 257**
TO: The Assembly Committee on Housing and Real Estate
FROM: Representative Mike Kuglitsch

Thank you Mister Chairman and Committee Members for allowing me to testify in favor of Assembly Bill 257. I believe that this piece of legislation will streamline home and business renovations on buildings constructed before 1978.

The Department of Health Services requires the use of lead safe renovation for all pre 1978 dwellings and child occupied facilities, such as day cares and pre-schools that are being remodeled. Currently, the Department of Health Services also requires that once an inspector collects 1 paint sample to test for lead, then a full surface by surface lead inspection of the building must be done and a full report prepared. This is required for all of these buildings constructed before 1978, the last year lead paint was able to be used.

AB 257 allows for a company to conduct partial lead inspections before renovation work is done on these pre 1978 buildings, instead of having to inspect the entire building. With this change, businesses can move quickly with restoration and construction projects, bypassing burdensome red tape and reporting requirements. This will lower the costs for restoration projects across the state and shorten renovation time lines in the future. Since the presence of lead is assumed when a partial lead inspection is conducted, renovation companies must still abide by DHS lead safe renovation work practices. It is important to note that although the inspector is not conducting a full inspection of the entire building, safety requirements for the families, children, and the workers will not be changed by AB 257.

A substitute amendment has been introduced to better define what a “partial lead inspection” is. A partial lead inspection is defined as an on-site investigation of one or more painted, varnished, or otherwise coated building components to determine the presence of lead, but not a surface-by-surface investigation. This amendment also states that a person or company that performs a partial lead inspection shall disclose, in writing, to the owner or lessor of the dwelling or premises that the person performed a partial lead inspection. The amendment makes certain that all future owners are aware that only certain parts of the reconstructed building have been inspected and treated for lead.

Also testifying today are members from KPH Construction, who will go through the technical details of the legislation.

Thank you for allowing me to testify today and I ask you to support this common sense legislation. AB 257 will reduce burdensome government regulations and streamline renovation project moving forward.



Change to Wisconsin Department of Health Services Lead Regulation

Below is a summary of a current matter that KPH Construction and KPH Environmental are dealing with involving the General Mitchell Airport's Noise Management Program and the Wisconsin's Department of Health Services Division of Public Health (DHS), Lead and Asbestos Section. KPH Construction and KPH Environmental are respected construction and environmental companies, with many years experience helping clients deal safely with hazards on their projects. We are looking to clarify the state law regarding lead paint while maintaining safety for homeowners. This issue also affects all other owners, contractors and consultants in Wisconsin that work on properties with lead paint.

KPH was hired to be the consultant for the asbestos and lead paint for General Mitchell International Airport's (GMIA) Airport Area Noise Management Program (NMP). As the consultant, KPH conducted limited investigations for both lead and asbestos as it related specifically to the NMP sound treatments regarding new doors and windows. The lead and asbestos work related to the construction was completed by state certified and licensed contractors.

On February 21, 2014, KPH and Dean Jacobsen (an employee of KPH) were cited and fined for failure to adhere to the DHS 163.14 regulations for conducting and reporting lead investigations. The notices of non-compliance and subsequent administrative hearings with the DHS have contended that KPH knowingly and willingly chose to disregard the DHS 163 regulations in conducting our work. On the contrary, KPH, alongside our client and NMP counterparts, sought clarity from the DHS during the early stages of the Program for the expectations from their department with regards to lead activities. At that time it was stated by DHS that if one were to assume all materials were lead containing and work was conducted in a lead safe manner no testing was required. The NMP modified its structure to contractually require all contractors to follow lead safe renovation procedures in all cases, regardless of the whether lead paint was present.

Additionally, while not required by DHS, KPH was required by contract and directed by our client GMIA to collect paint samples for quality control, but not for purposes of dictating where lead safe renovation would be required. With this understanding from the DHS, and with the NMP having directed the contractors to work lead safe regardless of any lead investigations conducted, KPH was caught off guard to receive the notice of non-compliance and fines citing failure to comply with DHS regulations. KPH has done nothing wrong and has worked throughout this project and all projects to ensure that building owners and occupants are not exposed to hazards, including lead.

Having dealt with this matter over the past several months, it is clear to KPH that the lead regulation is poorly written and is not clear on this topic. The impact to KPH has been both financial and contractual in nature.

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The Notices of Non-Compliance outline financial forfeitures required in addition to the legal fees incurred in our defense. Contractually, when pursuing government work, KPH is required to disclose any citations, which then puts us at a disadvantage when being considered for a contract.

KPH has been fighting the citations and is working with Wisconsin legislators to change the lead regulation that will help to provide clarity. In light of this situation, KPH has been working with members of the Wisconsin legislature and with their help has drafted changes below to the State of Wisconsin statutes:

SECTION 1. 254.18 (title) of the statutes is amended to read:

254.18 (title) Lead hazard reduction in dwellings and premises; renovations.

SECTION 2. 254.18 of the statutes is renumbered 254.18 (1).

SECTION 3. 254.18 (2) of the statutes is created to read:

254.18 (2) If the presence of lead-bearing paint of a lead hazard is assumed and a renovation of a dwelling, unit of a dwelling, or premises is performed in a lead-safe manner, any person who performs sampling or testing of a surface in the dwelling or premises relating to that renovation is not required to comply with any requirements established by the department for a lead inspection.

This law change will allow consultants to do limited lead paint sampling as long as lead safe renovation procedures will be used during remodeling. Current law requires inspectors to complete a full inspection and report of the building if they collect even 1 sample. This change will clarify the law, remove a gray area, and move the law back towards its original intent. It will also make this part of the lead statute clearer for consultants and contractors while protecting homeowners and their families from lead exposure.

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