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PROTECT PREGNANT WOMEN AND CHILDREN FROM DANGEROUS LEAD EXPOSURES ACT

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany the Protect Pregnant Women and Children from Dangerous Lead Exposures Act of 2008]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works considered an original bill to protect pregnant women and children from dangerous lead exposures.

PURPOSE AND SUMMARY OF THE LEGISLATION

The purpose of the Protect Pregnant Women and Children from Dangerous Lead Exposures Act of 2008 is to protect pregnant women and children from lead exposures during or after lead-based paint cleanups in housing.

The Act would require that the Administrator of the Environmental Protection Agency (EPA) use the best available science to revise the lead-based paint standard, clearance methodology, workplace practices, and training program that the Agency created in a recent rulemaking (73 Fed. Reg. 21692 (April 22, 2008)).

BACKGROUND AND NEED FOR THE LEGISLATION

Lead is a highly toxic substance that can harm the nervous system, reproductive system, cardiovascular system, immune system, and physical development. Lead is particularly harmful to preg-

nant women, infants and children. The federal Centers for Disease Control and Prevention and the Administrator have determined that children in general, and children in low socioeconomic conditions in particular, are at increased risk of lead exposure and adverse health impacts from that exposure. The Census Bureau estimates that in 2006 more than 12,800,000 children under the age of 18 lived in poverty.

In 1992, the federal Centers for Disease Control recognized that 10 micrograms per deciliter of lead in blood should prompt public health actions, but that harmful impacts may occur at blood lead levels below this threshold.

In 2001, the Administrator created lead-based paint hazard regulations required under section 403 of the Toxic Substances Control Act (15 U.S.C. 2683), which identified dangerous levels of lead dust on floors at 40 micrograms per square foot or greater. For window sills, the EPA set the standard at 250 micrograms per square foot or greater. In promulgating the standards, the EPA stated that the:

Standards [were] based on the best science available to the Agency. The Environmental Protection Agency recognizes, however, that the science is constantly developing If new data become available (e.g., empirical data showing that very small amounts of deteriorated paint pose a serious health risk or data showing that hazard control activities are more effective at reducing long-term dust-lead level than assumed by the Environmental Protection Agency), the Agency will consider changing the standards to reflect these data.

In January, 2006, the Administrator proposed its lead-based paint repair and renovation rule (71 Fed. Reg. 1588). That same month the Agency issued a study on the threats of lead dust during renovation and remodeling activities, which the agency used as a basis for judging the protectiveness of its rule. The EPA's Clean Air Science Advisory Committee (CASAC) criticized certain key aspects of the study, including the agency's use the 2001 standards and inadequate cleaning procedures. In particular, the Committee recommended that the "[s]tandards need to be strengthened in view of recent epidemiological data indicating that children are more susceptible to effects from lead than was previously thought." However, the Administrator issued a final rule without incorporating many of the CASAC recommendations.

The Committee believes that lead poisoning is a very serious public health threat, especially for children's health. Lead-based paint dust is one of the most serious routes of lead exposure, including for children. It is also a very preventable route of exposure.

The Committee believes that EPA should use the best available science to establish a lead-based paint standard, as well as related regulatory programs. Specifically, the bill finds that "the revised lead-based paint renovation, repair, and painting rule of the Environmental Protection Agency fails . . . to use the best available science on the adverse impacts of lead on children's health; . . . [fails] to adequately protect the health of pregnant women and children from lead poisoning; and . . . [fails] to contain enforceable methods of verifying that lead levels in homes and other facilities

are safe following lead-based paint renovation, repair, and painting activities.”

SUMMARY OF MAJOR PROVISIONS OF THE BILL

The purpose of the Protect Pregnant Women and Children from Dangerous Lead Exposures Act of 2008, is to protect pregnant women and children from dangerous lead exposures.

The legislation require that the Administrator of the Environmental Protection Agency (EPA) use the best available science to revise the lead-based paint standard, clearance methodology, workplace practices, and training program that the Agency created in a recent rulemaking (73 Fed. Reg. 21692 (April 22, 2008)).

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section designates the title of the bill as the “Protect Pregnant Women and Children from Dangerous Lead Exposures Act of 2008”.

Section 2. Findings

Section (a) contains detailed findings regarding lead toxicity, exposure, and EPA’s activities with respect to lead renovation rules.

Section 3. Definitions

Section 3(1) defines the “Administrator”.

Section 3(2) defines the “Best Available Science” to include scientific studies published in peer-reviewed journals since the Administrator last updated the lead-based paint hazard standard. In particular, the Committee directs the Administrator to consider scientific studies indicating that blood lead levels below 10 micrograms per deciliter pose a threat to children’s health.

Section 4. Protection of pregnant women and children

Section 4(a) directs the Administrator to use the best available science to create a more protective lead-based point hazard standard to safeguard the health of pregnant women and children and to require a clearance methodology that ensure lead dust levels meet that standard. It also requires the Clean Air Science Advisory Committee to review the Agency’s work.

Section 4(b) establishes a deadline for integrating these requirements into the lead-based paint repair and renovation rule.

Section 4(c) requires a periodic reevaluation of the standard and clearance methodology using the best available science.

Section 5. Regulations relating to lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil

Section 5(a) contains definitions for the terms “Final Rule” and “Independent Clearance”.

Section 5(b) establishes deadlines for the Administrator to update the final rule to include requirements concerning independent clearance work by a certified risk assessor or certified sampling technician to ensure compliance with lead hazard standards. This section also describes the methodology to be used in this assessment; the reporting requirements for the work; applicable work-

place practices; and a requirement for trained personnel to be on-site at all times that on-site work is undertaken.

Section 5(c) creates a grant program to expand training opportunities related to lead-based paint repair and renovation work, establishes criteria for this program, authorizes funds, and creates a reporting requirement to assess the program and make recommendations for expanding and better coordinating opportunities.

Section 6. No effect on other effective dates

Section 6 clarifies that nothing in this Act modifies or otherwise affects any effective date described in the final rule. The Committee expects the Agency to meet all existing deadlines that it has already announced.

LEGISLATIVE HISTORY AND VOTES

Votes

On September 17, 2008, the Committee on Environment and Public Works held a business meeting to consider S. 3495, among other pieces of legislation. The Committee on Environment and Public Works approved an amendment from Senator Clinton to include the requirements for independence clearance and a training program, which the Committee accepted by voice vote. The Committee then favorably adopted the amended bill by a voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee notes that the Congressional Budget Office found that “The bill would impose private-sector and intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) on firms certified by EPA to renovate certain properties containing lead-based paint. CBO estimates that the cost of the private-sector mandates would likely exceed the annual threshold established in UMRA (\$136 million in 2008, adjusted annually for inflation).”

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee noted that the Congressional Budget Office has found that “The bill would impose private-sector and intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) on firms certified by EPA to renovate certain properties containing lead-based paint. CBO estimates that the cost of the private-sector mandates would likely exceed the annual threshold established in UMRA (\$136 million in 2008, adjusted annually for inflation). Because of the small number of public entities that would be directly affected by the bill’s requirements, CBO estimates that the cost of the mandates to state, local, and tribal governments would fall below the annual threshold for intergovernmental mandates (\$68 million in 2008, adjusted annually for inflation).”

CONGRESSIONAL BUDGET OFFICE ESTIMATE

SEPTEMBER 26, 2008.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Protect Pregnant Women and Children from Dangerous Lead Exposures Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

PETER R. ORSZAG.

Enclosure.

Protect Pregnant Women and Children from Dangerous Lead Exposures Act of 2008

Summary: This legislation would require the Environmental Protection Agency (EPA) to revise regulations relating to the hazards of lead-based paint, and lead-contaminated dust and soil. CBO estimates that implementing this bill would cost about \$20 million over the 2009–2013 period assuming appropriation of the necessary amounts. Enacting this legislation would not affect direct spending or revenues.

The bill would impose private-sector and intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) on firms certified by EPA to renovate certain properties containing lead-based paint. CBO estimates that the cost of the private-sector mandates would likely exceed the annual threshold established in UMRA (\$136 million in 2008, adjusted annually for inflation). Because of the small number of public entities that would be directly affected by the bill's requirements, CBO estimates that the cost of the mandates to state, local, and tribal governments would fall below the annual threshold for intergovernmental mandates (\$68 million in 2008, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of this legislation is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					2009– 2013
	2009	2010	2011	2012	2013	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Grant Program to Expand Training Opportunities:						
Authorization Level	2	2	2	1	0	7
Estimated Outlays	1	1	2	2	1	7
EPA Administrative Support:						
Estimated Authorization Level	3	3	3	2	2	13
Estimated Outlays	3	3	3	2	2	13
Total Changes:						
Estimated Authorization Level	5	5	5	3	2	20
Estimated Outlays	4	4	5	4	3	20

Basis of estimate: For this estimate, CBO assumes that this legislation will be enacted near the start of fiscal year 2009 and that the necessary amounts will be appropriated each year. Estimated

outlays are based on historical spending patterns for similar programs.

This legislation would authorize the appropriation of \$7 million over the 2009–2012 period for EPA to provide grants to entities to support training concerning the hazards of lead-based paint. Assuming appropriation of the authorized amounts, CBO estimates that implementing that provision would cost \$7 million over the 2009–2013 period. Based on information from EPA, CBO also estimates that enacting this legislation would cost about \$13 million over the 2009–2013 period to support EPA’s efforts to revise existing lead regulations.

Intergovernmental and private-sector impact: The bill contains private-sector and intergovernmental mandates as defined in UMRA. The bill would require firms that are certified through EPA to renovate properties containing lead-based paint to:

- Comply with a more restrictive standard for the presence of lead in buildings;
- Conduct a final test (referred to in the bill as a clearance) after completing renovations to ensure compliance with existing lead standards;
- Abide by new standards for workplace practices related to lead;
- Provide a report to the owners and occupants of the renovated property, detailing the measures taken to reduce lead hazards during the renovation work and disclosing any test results for lead contamination at the work site; and
- Ensure that an individual who has completed a training and certification program for handling surfaces with lead-based paint is present at the work site at all times during the renovation work.

CBO expects that the most significant costs of the mandates in the bill would be related to requirements for clearances. Based on estimates of the number of renovations expected per year and the cost of conducting a clearance, CBO estimates that the aggregate cost of the mandates would likely exceed the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for inflation). Because of the small number of public entities that would be directly affected by the bill’s requirements, CBO estimates that the cost of the mandates to state, local, and tribal governments would fall below the annual threshold established in UMRA for intergovernmental mandates (\$68 million in 2008, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Susanne S. Mehlman. Impact on State, Local, and Tribal Governments: Burke Doherty. Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR INHOFE

After much public and scientific debate, EPA this year released regulations aimed at further reducing lead-based paint hazards created by renovation, repair, and painting activities that disturb paint in many structures occupied by children. In issuing the rule, EPA also factored in private-sector concerns relating to practicality, feasibility and cost of compliance.

I believe that EPA exercised proper discretion in issuing the recent lead-based paint standards, especially given the scope of activities affected. EPA estimates that this rule impacts 11.4 million repairs and renovations every year—almost one million separate construction activities a month. Under the new regulations, the average cost of cleanup is estimated to be \$35 per job—if there are 11.4 million jobs, that represents a substantial cleanup cost burden of nearly \$38 million a year.

I believe that EPA properly balanced the need for protective standards with the need to issue a rule that would be practical and understandable for contractors and their clients. The work practices required by the EPA rule have been shown to be effective at protecting children from lead-based paint hazards generated by renovation activities. Further, the rule's "safe work" practice standards are understandable and can be effectively implemented.

This bill's requirement for "dust clearance" sampling would add significant cost and delay to private-sector renovation projects with no significant increase in health protection. The bill's "clearance" requirement would mean contractors would have to delay by several days most projects' completion while waiting for a certified sampler to collect a dust sample, then await the return of sample's laboratory results. I believe this is an unreasonable, unjustified burden to place on contractors and renovation professionals. Moreover, the cost is prohibitive—some have suggested that "clearance sampling" costs could be as high as \$200 per project, which would mean this requirement would cost contractors and their clients nearly \$2.2 billion per year.

This bill also would mandate that EPA issue a revised final lead standard and regulations by April 2009—about 6 months from now. Restructuring the rule based on this legislation's new requirements, then taking that proposal through scientific review and public process is simply not feasible in that short time frame.

As Ranking Member, I reiterate my concern that this Committee is again improperly attempting to impose its political judgment to undermine EPA's regulatory expertise and process. I oppose passage of this bill because I believe that EPA properly balanced human health concerns with private-sector burden, and, most importantly, the rule's requirements have been shown to be effective at protecting children from lead-based paint hazards generated by renovation activities.

JAMES M. INHOFE.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

