



**Testimony of Bobbi Wilding  
Executive Director, Clean+Healthy**

**Before the New York State Joint Legislative Budget Hearing on Health**

**Tuesday, February 28, 2023**

Thank you for the opportunity to submit testimony today on the Health and Mental Health bill in the 2023-24 budget. My name is Bobbi Wilding, Executive Director of Clean+Healthy (formerly Clean and Healthy New York). I have been an advocate for environmental health and justice for the past 25 years. Clean+Healthy's mission is to build a just and healthy society where toxic chemicals are unthinkable. We co-lead, with WEACTION for Environmental Justice and Children's Defense Fund NY, the Lead-Free Kids New York coalition, which brings together groups large and small across the state to achieve lasting lead poisoning prevention action.

My comments today focus on proposals and budget lines related to the state's much-needed efforts to end lead poisoning, decades after the primary sources of this poisoning, namely lead paint inside and on the exterior of homes.

In summary, my comments address the following:

- Governor Hochul's proposed program for rental housing registration, inspection, and remediation of lead paint hazards in 24 communities across the state (Part T of the HMMH Article 7 bill) – we support the approach with amendments (see bill language below)
- The funding that would come with that program, including \$20 million to help low- to-moderate income landlords conduct lead remediation and abatement in their rental properties, which was a primary ask from Lead Free Kids NY for this budget.
- A long-overdue and much-needed \$50 million increase to the budget line for county health departments to conduct primary and secondary lead poisoning prevention activities.

**WHAT'S AT STAKE**

New York has some of the highest rates of lead poisoning among our children. While nationally, only 2.5% of children have blood lead levels at or above 3.5 ug/dL, the Department of Health estimated at a hearing before the NYS Senate in November 2021 that nearly 4% of New York's children have blood lead levels at or above 5 ug/dL – that means more kids with higher amounts of lead in their bodies. The Department of Health cannot determine just how many of our children have levels at or above 3.5, because they do not track the information in a way that allows them to do so.

Lead poisoning causes and contributes to learning and development challenges, impulse control issues, heart disease, and more. There is no safe level of lead in our bodies. And while young

children's developing brains are most susceptible to the harmful effects of lead, adults whose jobs bring them in regular contact with lead suffer organ damage and other health problems.

Why does New York have so many more children in harm's way? One major reason is the age of our housing stock – much of it built before 1978, when lead in interior paint was banned nationally. Secondly, lead in pipes contributes significantly to this overall burden, in part for the same reason – our infrastructure is old. Because lead is an element, and never disappears or breaks down in to something else, it remains a looming threat. Action must be taken or this problem will be one faced by our grandchildren and great grandchildren.

Therefore, the following are essential components of this year's budget:

**Increase allocations to adequately support county health departments' primary and secondary lead poisoning prevention activities from \$14,604,000 to \$64,604,000**

(Bill language location: Starts on line 33 on page 583 of A. 3003/S. 4003, Aid to Localities)

- \$36M to cover costs for children with blood lead levels of 5 ug/dL
- Increased funds to cover expanded hardest hit communities that engage in primary prevention activities.

This allocation covers the costs for counties to conduct secondary prevention (after a child's blood lead levels exceed the action threshold) and in designated counties, to conduct primary prevention (activities that prevent elevated blood lead levels). This line has not been adjusted since at least the FY 2018-19 budget. Since then however, costs and demand have changed dramatically:

- Inflation has risen sharply. Without an increase in funding, wages either must stay stagnant or fewer staff can be employed.
- In 2019, the NYS legislature mandated that the Department of Health match the federal Centers for Disease Control ("CDC") blood lead reference threshold of 5 ug/dL, lowering it from 10 ug/dL. This significantly increased the number of children who should receive interventions to prevent them from having further increased levels. (Note: On October 29, 2021, the CDC revised the blood lead reference further downward, to 3.5 ug/dL, and the NYC health department has already followed suit)
- In 2020-2021, the Covid-19 pandemic quarantines meant that children were spending significantly more time in their homes. This increased the amount of time that children would be exposed in older housing stock.
- Further, most if not all local staff were redirected to pandemic response, creating an even greater backlog of families needing assistance.
- Most recently, the number of counties/localities tasked with conducting primary prevention rose from 15 to 20 - again, with no additional funds allocated. Functionally, this has meant cuts to all existing programs, even those with significant successes, like the City of Rochester.

**Support the Governor's efforts to expand action on rental properties that may have lead paint hazards. To ensure an effective program, strengthen Part T of HMM Article 7.**

This includes incorporating existing proposed policies for testing for lead at the point of sale or rental, having NYS take over enforcement and implementation of RRP, including bringing in the revenue, and requiring insurance companies to include lead poisoning in tenant families in coverage for landlords.

*Please see bill language below that incorporates our recommendations.*

**Support lines in Health and Housing allocations to resource Part T, which includes \$20M for support to landlords who need financial assistance with lead paint remediation, as Lead-Free Kids NY advocates. See below for the locations of line items we support.**

- [Capital Projects Appropriations Bill](#) Pages 380 (line 60), 381 (lines 1-14) LEAD ABATEMENT PROGRAM (CCP) \$20,000,000
- [State Operations Budget](#) Page 326 (lines 47-57) SERVICES AND EXPENSES RELATED TO PROGRAMS FOR REDUCTION OF RISK OF LEAD EXPOSURE IN RENTAL PROPERTIES \$18,536,000
- [State Operations Budget](#) Pages 409 (lines 51-60), 410 (lines 1-9) LEAD ABATEMENT \$268,000

In sum, the recommended amendments to Part T would accomplish the following:

#### **Sections 1 and 2:**

It's essential that any program to address residential lead paint includes single-family dwellings. In Rochester, careful tracking has revealed that they are more likely to contain lead hazards than dwellings with more units.

- To ensure the Department of Health creates a strong and enforceable program, there are several parts of the bill that need mandatory, instead of discretionary, language.
- Further, there are already clear federal regulations that define lead hazards, qualifications of persons inspecting for them, the components of an adequate inspection, etc. New York does not need to recreate the wheel, and direct citation in the bill language will ensure a well-run program. We also add reference to the new section 3 of this bill.
- The state must require the proposed registry and certifications is made available in a publicly searchable database, so as to foster compliance with existing federal regulations requiring disclosure of lead paint and lead hazard records to potential tenants and buyers
- Conditions can deteriorate well before the three-year timeframe for property reinspection. To ensure tenants are not stuck with harmful conditions, tenants and other interested parties must have a right to seek injunctive and other relief where property has lead hazards. Unless a property has had ALL lead paint permanently abated, there is no guarantee whatsoever that paint that is not peeling or damaged at the time of an inspection will not begin to fail in the ensuing 3 years. However, the current statutes that comprise Title X of the PHL do not provide ANY remedy for tenants to obtain relief if a property has lead hazards, as the appellate courts have long maintained. See: *Graham v. Wisenburn*, 70 Misc.2d 492 (S. Ct. Albany Co. 1972) *rev'd*, 39 A.D.2d 334, 336 (3d Dep't 1972), and *Community Action Against Lead Poisoning v. Lyons*, 72 Misc. 2d 662 (S. Ct. Albany Co. 1973), *rev'd*, 43 A.D.2d 201 (3d Dep't 1974), *aff'd*, 36 N.Y.2d 686 (1975).

**Sections 3 and 4:** Would add provisions to Labor Law and Executive Law to mandate NY's administration of the federal renovation, repair, and painting ("RRP"), found at 40 C.F.R. Part 745 Subpart E. This language matches **S. 2191 (Bailey)/ A. 434 (Bronson)**

- Multiple studies by the NYS Department of Health have found that a significant number of child lead poisoning cases were related to RRP activities, which if not performed safely can cause the spread of toxic lead dust.
- Since 2008, federal law has required the use of specified safe work practices and training for RRP work in pre-1978 residential dwellings performed by hired contractors. While the federal RRP rules permit states to assume enforcement of this program, New York (unlike many states) has not done so – even though New York State has the highest number of older residential dwellings with lead-based paint in the nation, and as well the highest number of childhood lead poisoning cases in the nation. This has left enforcement to the federal EPA, which has consistently failed to bring adequate resources to ensure compliance, as EPA's Inspector General reported in 2019. For example, EPA has just 3.5 inspectors to cover a vast region consisting of New York, New Jersey, Puerto Rico and the Virgin Islands.
- Section 3 would enable NY to assume administration of the RRP rules, as authorized by 15 USC § 2684, allowing New York to conduct training, certification, and enforcement of the RRP. The proposal would also require the use of empirically-based dust wipe clearance tests (rather than the problematic "cleaning verification" used in the federal RRP regulations) to assure proper cleaning of hazardous lead dust once work is completed. The fees for accreditation of persons to do this work would be used to fund the program. A detailed report from the Community Foundation of Buffalo estimated that this bill would protect some 140,000 children under age 6 each year from lead hazard exposure in some 483,000 homes undergoing RRP work annually.
- Particularly because New York – 53 years after banning the sale of lead paint – has yet to adopt a statewide property maintenance standard requiring the timely and safe abatement of lead hazards in rental property, this legislation is necessary. Lead ingestion destroys lives.
- This legislation would bring with it access to resources - the EPA collects fees that could bring over \$500,000 a year to the State, and offers grants to states that enforce this program, with the average grant being \$200,000

**Sections 5 and 6:** Would amend real property law to mandate transparency in residential real estate transactions with respect to lead hazards (matches

- New York banned the use of lead-based paint over half a century ago, in 1970 (eight years before the federal ban). However, according to the federal EPA, some lead painted surfaces can be found in 87% of homes constructed before 1940, 69% of homes constructed between 1940 and 1959, and 24% of homes constructed between 1960 and 1978. And unfortunately, 74% of New York's housing stock was constructed prior to 1970, and New York has both the nation's greatest number (over 4 million units), the highest percentage (55%) of pre-1960 and pre-1950 (41%) housing, and the oldest housing inventory among the 50 states. New York state's older housing stock places residents at great risk of exposure to lead hazards, with low-income children living in older housing have the highest risk of lead

poisoning. According to the federal CDC, New York has more children with elevated blood lead levels than any other state.

- Since 1996, federal law has required sellers or lessors of pre-1978 housing to disclose to buyers or renters any knowledge and records about lead paint and lead paint hazards in the dwelling. Unfortunately, however, the same federal law does not actually require that sellers or lessors inspect homes for lead. Thus, the federal law has the unintended effect of disincentivizing lead inspections: if sellers choose to look for and find lead, they have to tell future buyers or renters, putting them at a disadvantage to sellers who choose to remain ignorant of potential lead hazards. For this reason, many realtors actively discourage owners from inspecting for lead at the point of sale, when buyers are in the best position to plan for, finance, and address lead hazards. As a result, purchasers and renters continue to unwittingly move into homes that may expose children to the risk of lead ingestion.
- Section 5 would close this gap by requiring that all residential dwellings be tested for lead-based paint at some point before they can be sold (there would be no requirement for repeated tests). The lead test certificate would be included with the contract of sale, filed with the county clerk when registering the deed, and sent to the health department so all future residents can access this information. Up to \$500 of the cost of this one-time test (or up to \$400 per unit for multifamily structures) would be deductible from the property transfer tax. Real estate brokers would be obligated to tell buyers and sellers about this law. Consistent with existing federal law, landlords would be required to disclose the lead test results to tenants prior to signing a lease. The bill would also enhance New York's existing Property Condition Disclosure Statement with respect to information on lead paint and lead service lines.
- Particularly because New York has yet to adopt a statewide property maintenance standard requiring the timely and safe abatement of lead hazards in rental property, this legislation is necessary. 53 years after New York's ban, it's time to begin identifying the properties that still contain lead paint, and break the cycle of ignorance in real estate transactions.

**Section 7: Would amend insurance law to eliminate the lead exclusion clause in residential rental property insurance policies. S.88 (Ryan)/ A. 1687 (Rivera JD)**

- Tenants often have no control of the conditions of the homes they rent and must rely on landlords to maintain the safety of the premises. Notwithstanding this, unfortunately, outside of New York City and several other cities, New York State lacks a primary prevention law that would require lessors of rental property to eliminate lead-based paint hazards before children are irreparably injured by the ingestion of lead-based paint (or lead-contaminated dust from the degradation or disturbance of older lead-based paint).
- 53 years after New York's ban, injuries caused by exposure to lead-based paint could only occur because of extreme neglect in maintenance that should not be countenanced any longer. If a property owner does not maintain a lead-safe environment for tenants, such exposure can cause severe permanent injury, such as developmental delays, decreased cognitive function, behavioral problems, hypertension and cardiovascular disease, as noted by the sponsor. These injuries often necessitate special educational services and, in many cases, a lifetime of medications for ADHD. The long-term effects of lead exposure can limit New Yorkers ability to hold down a job and meaningfully contribute to society. The federal CDC and

the American Academy of Pediatrics recently revised lead standards to declare there is no safe level of lead.

- Exclusion of insurance coverage for these specific damages of lead exposure leaves an injured victim with no recourse other than to pursue an action against their landlord, who may not have the ability to pay, and would otherwise rely on their insurance for this coverage. When there is no insurance and a landlord is unable to compensate a victim of their negligence, the municipality must pay for all the attendant long-term medical and educational services that children with lead paint exposure experience. Continuing to allow policies to exclude lead-based paint damages harms injured victims who rely on services to survive and the taxpayers who support those services.
- Particularly because New York has yet to adopt a statewide property maintenance standard requiring the timely and safe abatement of lead hazards in rental property, this legislation is necessary to protect renters. Making sure insurance coverage is available to pay claims for damages caused by injury due to exposure to lead-based paint will no doubt encourage insurers to push landlords towards reducing or eliminating the risk that their property will cause devastating injuries to their tenant's children. In the unfortunate instances when exposure does occur, this legislation will prevent an insurer from refusing to pay for medical bills, lost wages, and any other damage inflicted by a landlord's failure to remediate lead-based paint on the property.

Thank you again for this opportunity to share our thoughts on the Health and Mental Hygiene budget bills.

## APPENDIX

### RECOMMENDED CHANGES ON GOVERNOR'S PROGRAM BILL PART T

**Section 1. The public health law is amended by adding a new section 1377 to read as follows:**

§ 1377. State rental registry and proactive inspections to identify lead hazards.

1. The department shall develop a registry for all residential dwellings ~~with two or more units~~ built prior to nineteen hundred eighty which, by virtue of their municipal zoning designation, are potentially eligible for rental, lease, let or hiring out, and are located within communities of concern as identified by the department. Such registry shall only include qualifying residential dwellings outside New York city. Such registry shall be maintained as a searchable public database.

2. All residential dwellings qualifying for registration in accord with this section and offered for rent or presently rented to persons other than the owner or owner's immediate family must be certified as free of lead paint hazards, as defined by the United States department of housing and urban

development and the United States environmental protection agency pursuant to 24 C.F.R. 35.86 and 40 C.F.R. 745.65 or successor regulations, based on inspections conducted and certified at least on a tri-annual basis. ~~Inspection certifications based on inspections conducted on a tri-annual basis.~~ Inspection certifications must be submitted to the local health department or their designee for recording in the rental registry, and made available to the public in a searchable database to facilitate compliance with the disclosure requirements of the United States department of housing and urban development and the United States environmental protection agency pursuant to 24 C.F.R. 35.88(a) and 40 C.F.R. 745.107(a) or successor regulations,

3. The commissioner shall promulgate regulations as needed to administer, coordinate, and enforce this section, including the establishment of fines to be levied in the event of non-compliance with the requirements of this section.

4. Inspection requirements shall be based on regulation and guidance from the department and ~~may~~ shall include qualifications ~~for inspectors~~ to conduct risk assessments as set forth by the United States environmental protection agency pursuant to 40 C.F.R. 745.226(b) or successor regulation, minimum requirements of a compliant inspection and a process for reporting inspection results to local health departments. Minimum inspection requirements ~~may~~ shall include a risk assessment as defined by the United States environmental protection agency pursuant to 40 C.F.R. 745.227(d). ~~visual inspections for deteriorated paint and outdoor soil conditions, as well as the collection of dust wipe samples obtained in accordance with United States Environmental Protection Agency protocols for such procedures.~~

5. Remediation of lead-based paint hazards must be conducted in compliance with all municipal requirements, Article 31-A of the labor law, Lead Safe Housing Rule (CITE HUD - CHAP 10 or 15), and specific requirements specified in regulation.

6. If a property subject to the requirements of this section is found to have a lead paint hazard or is not otherwise in compliance with this section, a tenant, an occupant or other interested persons may seek injunctive relief from a court of competent jurisdiction against the owner of the affected property in the form of a court order to compel removal of such hazard or compliance with this section. The registration of a tri-annual certification pursuant to this section shall not limit the right of a tenant, an occupant or other interested persons to seek injunctive relief, damages for breach of warranty of habitability, or damages for personal injury, in the event lead paint hazards are found in the such premises subsequent to such certification.

§ 2. Paragraphs h and i of subdivision 1 of section 381 of the executive law, as added by chapter 560 of the laws of 2010, are amended and a new paragraph j is added to read as follows:

- h. minimum basic training and in-service training requirements for personnel charged with administration and enforcement of the state energy conservation construction code; [and]
- i. standards and procedures for measuring the rate of compliance with the state energy conservation construction code, and provisions requiring that such rate of compliance be measured on an annual basis[.]; and
- j. *procedures requiring the documentation of compliance with regulations adopted pursuant to section thirteen hundred seventy-seven of the public health law as a condition to issuance of a certificate of occupancy or certificate of compliance following a periodic fire safety and property maintenance inspection for multiple dwellings.*

§ 3. The labor law is amended by adding a new article 31-A to read as follows:

**ARTICLE 31-A**  
**NEW YORK STATE LEAD-SAFE**  
**RENOVATION, REPAIR AND PAINTING ACT**

**SECTION 925. SHORT TITLE.**

**926. LEGISLATIVE FINDINGS.**

**927. DEFINITIONS.**

**928. RESIDENTIAL PROPERTY RENOVATION.**

§ 925. Short title. This article shall be known and may be cited as the "New York state lead-safe renovation, repair and painting act".

§ 926. Legislative findings. The legislature hereby finds and declares that lead poisoning of children persists as one of the most prevalent and preventable environmental diseases in New York. Nearly one hundred thousand children were newly identified with levels of lead in their blood at five micrograms per deciliter in New York state between two thousand eleven and two thousand fifteen. Medical research indicates that children can suffer permanent brain damage at blood levels even lower than five micrograms per deciliter, and that there is no level of lead ingestion which is without adverse impact.

The predominant cause of lead poisoning in children is the ingestion of lead dust from lead-based paint from older residences. Although New York state banned the sale of lead-based paint in nineteen hundred seventy, seventy-four percent of

New York's housing stock was constructed prior to nineteen hundred seventy and ten percent of New York's housing was constructed between nineteen hundred seventy and nineteen hundred seventy-nine while lead-based paint was still available through nineteen hundred seventy-eight. New York state has both the nation's greatest number (over four million units), the highest percentage (55.08%) of pre-nineteen hundred sixty and pre-nineteen hundred fifty (41.0%) housing, and the oldest housing inventory among the fifty states. According to the federal Environmental Protection Agency, some lead painted surfaces can be found in eighty-seven percent of homes constructed before nineteen hundred forty, sixty-nine percent of homes constructed between nineteen hundred forty and nineteen hundred fifty-nine, and twenty-four percent of homes constructed between nineteen hundred sixty and nineteen hundred seventy-eight. New York state's older housing stock places residents at great risk of exposure to lead hazards, with low-income children living in older housing having the highest risk of lead poisoning.

A key source of lead dust is renovation, repair, and painting work in homes that contain lead-based paint. These activities exacerbate lead dust levels and leave harmful dust for many years. Renovation workers often unwittingly expose themselves to lead hazards by using unsafe work practices that result in exposure for workers and their family members.

The federal Environmental Protection Agency (EPA) has developed guidelines to conduct renovations in a lead-safe manner, known as the Renovation, Repair, and Painting (RRP) rule and compliance with the RRP rule is required for all contractors and landlords working in housing and childcare facilities built before nineteen hundred seventy-eight. However, the EPA's enforcement of this program, which includes over six million homes in New York state, is minimal with only seven EPA enforcement actions in New York in two thousand nineteen.

Multiple studies conducted prior to implementation of the RRP rule present the harmful effects of lead dust produced from specifically renovation, repair, and painting activities in homes with lead-based paint. One study of children in New York in two thousand six-two thousand seven found that fourteen percent of the children with extremely high EBLs (twenty micrograms per deciliter and above) were related to renovation, repair and painting activities; all the homes linked to RRP-related lead exposure were built before nineteen hundred seventy-eight except one, and children with lower EBLs (less

than twenty micrograms per deciliter) were estimated to have been primarily exposed to lead through RRP activities in nearly forty percent of cases. This indicates that renovation, repair and painting activities are one of the primary sources of lead exposure in young children. If these rates of exposure from RRP are extrapolated to hold for the entire New York state population of lead-exposed children, approximately nine thousand three hundred twenty-seven children become subject to lead poisoning as a result of renovation, repair, and painting activities each year. Of those, two thousand four hundred eighteen children would experience severely high EBLs of twenty micrograms per deciliter or greater and above. The safe work practices in the RRP rule can also protect the health of renovation workers.

The EPA regulations provide that states can obtain delegation from the federal government to manage their own lead-safe renovation programs, and at least fourteen states have done so and tailored their RRP programs to meet the implementation and enforcement needs of their state. With the oldest housing stock in the nation, New York has an especially serious lead poisoning problem and urgently needs to seek authorization for this program. Doing so will give state agencies the authority to enforce existing regulations and the opportunity to strengthen them in an appropriate manner.

§ 927. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Lead-based paint" means paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis of paint samples with all layers of paint present, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the most recent United States department of housing and urban development guidelines for the evaluation and control of lead-based paint hazards in housing and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive

zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface coating material containing more than 0.009% of metallic lead, based on the non-volatile content of the paint or other similar surface coating material. In the event that the United States environmental protection agency or a successor agency, or the United States department of housing and urban development or a successor agency, or a department or agency of the state of New York that has obtained applicable authorization pursuant to 40 CFR part 745 subpart Q or successor regulation, adopts more stringent definitions of lead-based paint, such definitions shall apply for the purposes of this article.

2. "Lead dust clearance" means mass-per-area concentrations of lead less than five micrograms of lead per square foot on floors and less than forty micrograms per square foot on interior window sills, provided, however, that:

(a) The commissioner may by regulation set more stringent levels for lead dust clearance in the event the commissioner determines such more stringent levels are needed to identify potential lead hazards and protect public health; and

(b) The commissioner shall by regulation adopt such more stringent levels for lead dust clearance as may be set by the United States environmental protection agency or the United States department of housing and urban development.

§ 928. Residential property renovation. 1. The commissioner shall adopt rules and/or regulations, sufficient to satisfy the requirements of 40 C.F.R. 745.326 or its successor regulation, governing:

(a) pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation; and

(b) renovation training, certification, accreditation, and work practice standards programs, including:

(i) procedures and requirements for the accreditation of renovation and dust sampling technician training programs;

(ii) procedures and requirements for accredited initial and refresher training for renovators and dust sampling technicians and on-the-job training for other individuals who perform

renovations; (iii) procedures and requirements for the certification of individuals and/or firms;  
(iv) requirements that all renovations be conducted by appropriately certified individuals and/or firms;  
(v) work practice standards for the conduct of renovations; and  
(vi) clear enforcement mechanisms and procedures for unannounced compliance inspections of properties and for responding to complaints.

2. The regulations adopted under subdivision one of this section shall include provisions:

(a) Requiring the use of lead dust clearance testing, rather than cleaning verification, pursuant to 40 CFR 745.85(c) or successor regulation, and requiring that the collection of dust clearance testing samples be performed by an inspector, risk assessor, or dust sampling technician independent of the owner or contractor and accredited pursuant to (i) the United States environmental protection agency pursuant to

40 CFR 745.226 or 40 CFR 745.90(c) or successor regulation; or (ii) certification by a state or tribal program authorized by the United States environmental protection agency to certify individuals engaged in lead-based paint activities pursuant to 40 CFR 745.325 or successor regulation;

(b) Barring the disturbance or removal of lead-based paint or paint of unknown content using any of the following methods:

(i) dry scraping or dry sanding, meaning the removal of paint or similar surface coating material by scraping or sanding without the use of water misting to reduce dust levels or other similar methods to control dust;

(ii) open flame burning or torching, or the use of heat guns operating above eleven hundred degrees Fahrenheit, or charring paint;

(iii) machine sanding or grinding, or abrasive blasting or sandblasting, without the use of local exhaust control employing a vacuum cleaner device equipped with a high-efficiency particulate air filter capable of filtering out monodispersed particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater;

(iv) paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States consumer product safety commission under 16 CFR

1500.3, and a hazardous chemical in accordance with the United States occupational safety and health administration regulations under 29 CFR 1910.1200 or 1926.59 or successor regulation, as applicable to the work, methylene chloride and n-methyl-2-pyrrolidone (NMP), and such other chemicals that the department may by rule or regulation determine to be hazardous;

(d) Requiring the on-site presence of a person accredited pursuant to subdivision one of this section at all times during residential property renovation work;

(e) Applying such regulations to all demolition activities;

(f) Directing that municipalities and counties may, upon the approval of the commissioner, assume enforcement in part or whole of such regulations pertaining to residential property renovation;

(g) Requiring training programs authorized by the commissioner to offer such trainings in a manner that is culturally competent including, where needed, multiple languages, and accommodations for individuals with low-literacy;

(h) Directing that pre-work or start-work notifications be filed with such local agencies as the commissioner may designate;

(i) For posting notices in common areas of multi-family housing with a designated phone number for contacting such local agencies as the commissioner may designate for the enforcement of the regulations pertaining to residential property renovation.

3. (a) The accreditation of individuals and/or firms pursuant to the regulations adopted under subdivision one of this section shall extend for a period of three years unless the commissioner has probable cause to believe an individual or firm accredited under this section has violated the terms of such accreditation or has engaged in illegal or unethical conduct related to inspections required by this section, in which case such accreditation to perform inspections shall be suspended pending a hearing in accordance with the provisions of the state administrative procedure act. The commissioner shall establish by regulation a schedule of fees for the accreditation and registration of such individuals and/or firms. Such fees shall be required to be paid at the time of initial registration and at the time of subsequent renewal of registration, and shall be sufficient to cover all costs, including the costs of state personnel, attributable to accreditation activities conducted under this section.

(b) Fees collected pursuant to this subdivision shall be held in a continuing, non-lapsing special fund to be used for accreditation purposes under this section.

(c) Such fund established under paragraph (b) of this subdivision shall be invested and reinvested and any investment earnings shall be paid into the fund.

4. Any violation of the provisions of this section shall be punishable as a misdemeanor, and a civil penalty of not less than ten thousand dollars per violation.

**§ 4. Paragraphs h and i of subdivision 1 of section 381 of the executive law, as added by chapter 560 of the laws of 2010, are amended and a new paragraph j is added to read as follows:**

h. minimum basic training and in-service training requirements for personnel charged with administration and enforcement of the state energy conservation construction code; [and]

i. standards and procedures for measuring the rate of compliance with the state energy conservation construction code, and provisions requiring that such rate of compliance be measured on an annual basis[.]; and

j. procedures requiring the documentation of compliance with regulations adopted pursuant to section nine hundred twenty-eight of the labor law as a condition to issuance of a construction permit.

**§ 5. The real property law is amended by adding a new article to read as follows:**

§ 520. Short title. This article shall be known and may be cited as the "lead-based paint disclosure act".

§ 521. Definitions. As used in this article, the following terms shall have the following meanings:1. "Agent" shall mean a person who is licensed as a real estate broker or a real estate salesperson pursuant to section four hundred forty-a of this chapter and acting in a fiduciary capacity.

2. "Binding contract of sale" shall mean a real estate purchase contract or offer that would, upon signing by the seller and subject to satisfaction of any contingencies, require the buyer to accept a transfer of title.

3. "Broker" shall have the same meaning as "real estate broker" defined by section four hundred forty of this chapter.

4. "Buyer" shall mean any entity that enters into a real estate purchase contract, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

5. "Lead-based paint" shall mean paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis of paint samples with all layers of paint present, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development guidelines for the

evaluation and control of lead-based paint hazards in housing (July 2012) or successor guidelines, and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material containing more than 0.009 percent of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material. In the event that the United States environmental protection agency or a successor agency, or the United States department of housing and urban development or a successor agency, or a department or agency of the state of New York that has obtained applicable authorization pursuant to 40 C.F.R. part 745 subpart Q or successor regulation, adopts more stringent definitions of lead-based paint, such more stringent definitions shall apply for the purposes of this article.

6. "Real estate purchase contract" shall mean any of the following:

(a) a contract which provides for the purchase and sale or exchange of residential real property;

(b) a lease with an option to purchase residential real property;

(c) a lease-with-obligation-to-purchase agreement for residential real property; or

(d) an installment land sale contract for residential real property.

7. "Residential real property" shall mean real property improved by a residential dwelling erected prior to the year nineteen hundred seventy-eight.

8. "Residential dwelling" shall mean a single-family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit within a structure that contains more than one separate residential dwelling unit, used or occupied, or designed to be used or occupied, wholly or partly, as the home or residence of one or more persons whether or not it was or will be occupied.

9. "Seller" shall mean any entity that intends to engage in the transfer of title to a buyer of residential real property, in whole or in part, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, mortgage banker, lender, and nonprofit organizations. The term "seller" also shall mean an entity that transfers shares in a cooperatively owned project.

10. "Test for lead-based paint" shall mean a test for the presence of lead-based paint that has been conducted through both a lead hazard risk assessment and a lead-based paint inspection as defined in 40 C.F.R. 9 745.103, 24 C.F.R. 35.86, and the United States department of housing and urban development guidelines for the evaluation and control of lead-based paint hazards in housing (July 2012), or successor regulations and guidelines, and a report prepared indicating the results of such test, including the locations where tests were performed for lead-based paint and lead-based paint hazards and the readings of all such tests. Such test shall not be valid unless performed by a person accredited pursuant to: (a) certification to conduct lead hazard risk assessment and inspections by the United States environmental protection agency pursuant to 40 C.F.R. 745.226(b) or successor regulation; or (b) certification by a state or tribal program authorized by the United States environmental protection agency to certify individuals engaged in lead-based paint activities pursuant to 40 C.F.R. 745.325 or successor regulation or eligible to conduct the inspections required by this article. For multifamily housing, the test must be conducted in accordance with the United States department of housing and urban development guidelines for the evaluation and control of lead-based paint hazards in housing (July 2012), or successor guidelines.

11. "Transfer of title" shall mean delivery of a properly executed instrument conveying title to residential real property and shall include delivery of a real estate purchase contract that is a lease or installment land sale contract.

§ 522. Inspection of residential real property for lead-based paint prior to transfer of title. 1. (a) Effective August first, two thousand twenty-four, every seller of residential real property pursuant to a real estate purchase contract shall deliver to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale a certificate that such property has been tested for lead-based paint, and provide the report of such test. A copy of the certificate containing the signature of the seller and any report of a test for lead-based paint shall be attached to the real estate purchase contract. A copy of such certificate and report of such test and any subsequent reports of such tests shall be filed with the state

department of health in the department of health in the county where such residential real property is located, and such certificate shall as well be filed with the office authorized under section three hundred seventy-two of this chapter to be registrar of title in the county where such real property is located, and such office shall not accept for filing an instrument of transfer of title unless accompanied by such certificate where applicable.

(b) The presentation of a certificate of such test by a prior owner of said property and evidence of filing such certificate and report with the department of health in the county where such residential real property is located, shall be deemed to be in compliance with the provisions of this subdivision.

(c) In the event the seller has not received from a prior owner a certification and report of such tests as set forth in this subdivision, the costs of testing for lead-based paint and the preparation of a certificate and report thereof as provided in this subdivision shall be deductible by the transferor or grantor, up to the amount of five hundred dollars, or in a building with more than one dwelling unit up to four hundred dollars per dwelling unit tested, from the taxes imposed by sections fourteen hundred two and fourteen hundred two-a of the tax law.

The transferor or grantor shall not be reimbursed for costs in excess of the total taxes imposed by sections fourteen hundred two and fourteen hundred two-a of the tax law.

2. Any provision in a real estate purchase contract or any other document related to the transfer of title in residential real property that purports to waive any right created under state or federal law for the buyer to conduct a risk assessment or inspection of the property to determine the presence of lead-based paint and/or lead-based paint hazards, or any oral agreement that purports to waive such right, is null and void as against public policy, notwithstanding that such waivers might otherwise be permitted by federal law.

3. A certificate that such property has been tested for lead-based paint shall not be required in connection with any of the following transfers of residential real property:

(a) A transfer to a beneficiary of a deed of trust;

(b) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;

(c) A transfer from one co-owner to one or more other co-owners;

(d) A transfer made to the transferor's spouse or to one or more persons in the lineal consanguinity of one or more of the transferors;

(e) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of property settlement, agreement incidental to a decree of divorce, dissolution of marriage, annulment or legal separation;

(f) A transfer to or from the state, a political subdivision of the state, or another governmental entity;

(g) A transfer by a sheriff;

(h) A transfer pursuant to a partition action; or

(i) A transfer of an unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition and lead-safe work practices enumerated in 40 C.F.R. 745 and successor regulations, or more protective state law are followed during the demolition.

4. Nothing contained in this article is intended to prevent the parties to a contract of sale from entering into agreements of any kind or nature with respect to the physical condition of the property to be sold, including, but not limited to, agreements for the sale of real property "as is".

§ 523. Duty of agent. An agent representing a seller of residential real property as a listing broker, or, if the seller is not represented by an agent, the agent representing the buyer of residential real property and dealing with a prospective seller, shall have the duty to timely (in any event, before the buyer signs a binding contract of sale) inform each seller of the seller's obligations under this article. An agent representing a buyer of residential real property, or, if the buyer is not represented by an agent, the agent representing a seller of residential real property and dealing with a prospective buyer, shall have the duty to timely (in any event, before the buyer signs a binding contract of sale) inform such buyer of the buyer's rights and obligations under this article. If an agent performs the duties and obligations imposed upon him or her pursuant to this section, the agent shall have no further duties under this article and shall not be liable to any party for a violation of this article. The department of state may, pursuant to section four hundred forty-one-c of this chapter, revoke or suspend the license of an agent who violates this article.

§ 524. Liability. Nothing contained in this article shall be construed as limiting any existing legal cause of action or remedy at law, in statute or in equity.

**§ 6. The real property law is amended by adding a new section 235-aa to read as follows:**

§ 235-aa. Disclosure of lead-based paint and lead-based paint hazards.

1. Prior to executing a residential lease or rental agreement with a tenant, the owner of real property shall provide the tenant a copy of all reports of a test for lead-based paint issued or prepared pursuant to section five hundred twenty-two of this chapter, and any other report, within the possession or control of the owner, pertaining to lead-based paint or lead-based paint hazards within the meaning of section 4852d of title 42 of the United States Code and the regulations thereunder.

Owners who deliver a disclosure form with all required documents under the provisions of section 4852d of title 42 of the United States Code and the regulations thereunder shall be deemed to have complied with the requirements of this subdivision.

2. Any agreement by a lessee or tenant of premises for dwelling purposes waiving or modifying his or her rights as set forth in this section shall be void as contrary to public policy.

3. An owner who violates this section shall be liable for a civil penalty not to exceed ten thousand dollars, and in addition, a penalty to the tenant not to exceed the equivalent of the amount of rental payments for three months plus any attorney's fees. The powers and remedies set forth in this section shall be in addition to all other existing legal cause of action or remedy at law, in statute or in equity.

**Section 7. The insurance law is amended by adding a new section 3462 to read as follows:**

§ 3462. Exclusion for lead hazards prohibited. No insurer licensed or permitted by the superintendent to provide liability coverage to rental property owners shall exclude, after twenty-six months following the effective date of this section, coverage for losses or damages caused by exposure to lead-based paint. The department shall not permit, authorize or approve any exclusion for injury or damage resulting from exposure to lead-based paint, except as specifically provided for in law, that was not in effect as of the effective date of this section, and all previously approved exclusions shall terminate on or before twenty-six months following the effective date of this section.

§ 8. This act shall take effect immediately; provided, however, section one of this act shall take effect eighteen months after it shall have become a law; and provided further, however, section two of this act shall take effect two years after it shall have become a law; and provided further that §3, §4 and §5 shall take effect on the sixtieth day after it shall have become law. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on or before its effective date are

authorized to be made and completed on or before such effective date.