

“GET THE LEAD OUT OF VERMONT”

REPORT OF THE COMMITTEE ON RESOURCES

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Resources

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Introduction

The mission of the Get the Lead Out of Vermont task force is to develop a report of recommendations for the Commissioner of Health and the Attorney General for further reducing and eventually eliminating the risk of childhood lead poisoning.

The Resources Committee has understood its charge as identifying the broadest possible range of funding mechanisms to support priorities, programs and recommendations identified by the other three committees in the task force. In undertaking this charge, we have reviewed government, private sector and non-profit approaches, including mechanisms for funding programs that are unrelated to lead. The Committee's intent was to be as inclusive as possible. The funding options listed in this report were those deemed relevant to Vermont. We also include a list of funding mechanisms that were examined but not recommended at this time.

Funding mechanisms identified in this report are categorized broadly under the headings of State-Generated Revenues, Fees, Enforcement Revenues, Grants, Litigation, and Other funding sources. With a few exceptions, they have been derived without specific reference to the forthcoming task force recommendations. The Committee strongly recommends that any fees, fines or revenues described in this report be earmarked for lead activities, rather than going to a general fund.

Though most of this report addresses revenue-producing mechanisms, the Committee also explored fiscal incentives — measures designed to make it economically attractive for specific parties to follow the lead law and to remediate lead hazards at properties across the state.

Principles

The state of Vermont should appropriate annual funds to address childhood lead poisoning. Regardless of what funding methods are selected for implementation, what is indisputable is that Vermont is attempting to control and eliminate childhood lead poisoning solely on federal funds derived from the Centers for Disease Control and Prevention (CDC), the Department of Housing and Urban Development (HUD) and the United States Environmental Protection Agency (EPA). In this regard it is one of the few states with an operating Childhood Lead Poisoning Prevention Program (CLPPP) that has not diversified its funding structure. Given that the CDC funding is not a guaranteed revenue source beyond the latest grant cycle ending in 2010, it is imperative that the state raise and commit money through alternative means as soon as possible. The Committee also notes that CDC funding is increasingly competitive, and that states such as Washington have recently lost this funding.

Fees and fines should follow the principle that the polluter pays. The Committee recognizes that in great part the struggle over financial resources has developed because the principle of polluter pays has not generally been applied to lead poisoning prevention. While laws such as the Superfund or Resource Conservation and Recovery Act (RCRA) require primary producers and distributors of toxic substances to pay costs associated with their products' adverse impacts, this has not generally been the case to date for manufacturers and distributors of lead-based paint and gasoline. Although some recent lawsuits in California and Rhode Island may set a new

precedent, the committee recognizes that it will not be an easy or short path towards acquiring resources from these sources.

In addition to the producers and distributors of lead-based paint and gasoline, the Committee recognizes that culpability for lead poisoned children extends to property owners whose maintenance practices may raise or lower the risk of lead hazards.¹ The failure of property owners to maintain properties adequately incurs high costs for the public and the CLPPP, which is charged under the law to investigate, manage and control all instances of childhood lead poisoning with little state funding support. Accordingly, the Committee recommends seeking payment from all responsible parties, and when this is not possible, seeks to recapture federal- and state-required working costs back from those not following the law.

Failure to act will engender costs. The current budget of the Vermont CLPPP is \$418,000 annually, which covers personnel costs, minimal administrative costs and required CDC travel. This is insufficient to carry out the program goals of moving towards elimination. At a minimum, resources are needed for abatement, enforcement, education and program management. Revenues may also be needed to support a revolving fund for abatement, and to support incentives for Vermonters to take action on reducing lead hazards. These incentives include income tax credits for abatement and financial support for replacing deteriorated windows. Failure to act will compromise the operation of a continuing statewide preventative program.

There is a cost to protecting Vermont's children from lead poisoning. However, failing to act may result in higher costs. These costs are reflected in medical treatment, impaired health and regulatory burden, compromised educational attainment, and lost revenue. Earlier this year some students from Dartmouth prepared an economic report indicating the potential for serious cost accrual if nothing further is done. This report is attached with the caveat that it has not been subject to final professional review as of the time of this writing.

Funding Mechanisms

I. State-Generated Revenues

A. State bond for lead poisoning prevention activities.

Some states (such as Maine, Connecticut, and Rhode Island) issue bonds to raise revenue for environmental projects important to the health of their citizens or environment. A state bond could provide principal for launching programs that address the lead problem. The Committee estimates that as much as \$250,000 or more could be raised through this one action.

B. Appropriation from the state general fund

Ideally, an appropriation would provide a portion of the matching funds now required for the state to qualify for a CDC CLPPP grant (as of July 2006 the match amount was

¹ The committee is not discounting other sources of lead such as fuel and other products at this time.

\$209,000). The Resource Committee strongly recommends that the state signal its commitment to the health of Vermont children through an annual appropriation. States that use some type of annual appropriation for lead poisoning prevention include Carolina, Connecticut, Iowa, Kentucky, Maine, Minnesota, Missouri, New Hampshire, Rhode Island, and Oklahoma.

C. Tax check-off on the annual state income tax form for a Child Health Lead Fund

The Committee recommends a Vermont income tax check-off dedicated to a Child Health Lead Fund. This could raise revenues of up to \$50,000 based on 5 percent participation and \$5 to \$10 per form filed. This option would benefit from high-level executive and/or legislative leadership.

D. Real estate transfer tax earmarked for window replacement

The Committee recommends that this tax be directly linked to a window replacement fund. A dedicated state window replacement fund would eliminate a primary causative factor for childhood lead poisoning, improve energy efficiency, increase property values, and would provide relief to property owners who inherit the burden of lead-based paint. Window replacement is the most expensive and technically complicated measure in abatement. If a landlord were offered financial assistance to pay for materials and a professional installation, the remaining lead-based paint controls could be completed by a lower cost worker, or by the owner. It would promote property maintenance, and stretch limited lead abatement resources. A tax imposed at the time of a real estate transaction would have the dual impact of seeking revenue when capital becomes available, while underscoring the persistence of the lead-based paint hazard in Vermont's housing stock. Though properties would incur a tax at the point of transfer, earmarking the fund for window replacement would return the money back to property owners.

II. Fees

A. Fee of 25 cents per gallon of paint sold wholesale in Vermont

The basis for this funding mechanism is that the paint industry is in great part responsible for the current legacy of lead paint that is on, in and around Vermont's older homes and buildings. The model is used by other states, most recently Maine, which has an aged housing stock and childhood lead poisoning problem very similar to Vermont's. Maine enacted a fee on wholesale paint at 25 cents per gallon, to be charged to the manufacturer, which will produce an estimated annual revenue of \$500,000. Vermont's wholesale volume is approximately half that of Maine; therefore, this fee could raise an estimated \$250,000 annually. California and New Jersey have similar programs.

B. Fee of one penny per gallon of gasoline sold in the state

This proposal is also based on the polluter pays principle. Due to the use of leaded gasoline for approximately 70 years, millions of tons of lead have been deposited into the environment. The phase-out of lead in gasoline began in the mid-1970s, with the full prohibition taking effect in 1986. There are still significant amounts of lead left in soil, especially in urban areas and near highly traveled roadways throughout Vermont. California has adopted this model, and charges the manufacturer a fee for every gallon of

gasoline sold. In 2005, 458,946,614 gallons of gasoline were sold in Vermont. Even a single penny per gallon charged to the manufacturers, then dedicated to this program could produce as much as \$4,589,466 per year.

C. Licensing fees for all professionals related to housing

This would be a surcharge on fees accessed by boards of registration or state agencies for the licensure or certification of professionals working in a field related to housing. The monies collected would be earmarked for the state's lead education program. In Massachusetts, the model for this approach, such a fee is paid by real estate agents, mortgage brokers and lenders, property and casualty insurance brokers and agents, and professionals associated with lead abatement programs. The committee suggests that this surcharge be set between \$25 and \$100. The potential revenue is unclear at this time since we do not have an accurate estimate of the number of professionals subject to such a surcharge; however, through this program Massachusetts has created the Education Trust Fund and over a period of operation exceeding 10 years has a current balance of over \$1,000,000.²

D. Remodelers/contractors licensing fee

An annual licensing fee should be established for the owner of any company that may disturb more than one square foot of painted surfaces in pre-1978 buildings. The owner should pay an annual \$50 licensing fee and be required to attend the requisite training. The committee's recommendation is that only the owner be required to pay the licensing fee; however, any pre-1978 job sites where painted surfaces are being disturbed should have at least one employee who has completed the lead-safe renovator training. The exception would be work conducted at pre-1978 properties that have been certified as lead-free by a licensed lead inspector.

Currently, many states are considering or using models similar to what the Committee is proposing, including Connecticut, Iowa, Massachusetts, Minnesota, Missouri, and Rhode Island.

E. Housing registry fee for landlords

Through our interactions with other committees, the Committee learned that establishment of a rental housing registry will be recommended. The need for such a data base is clear. The lack of a database of rental property owners has been raised as a serious impediment to enforcement of EMPs. Such a registry could have utility as well for safety code enforcement.

The Resource Committee recommends an annual fee of \$20 per unit, with a per-property-owner cap of \$100. A model exists in New Jersey that funnels fees from a rental property registry into the state CLPPP.

The committee considered a suggestion that an annual fee be imposed on rental property owners who submit EMPs. The major argument for this suggestion is that it would produce an annual revenue stream that is logically related to lead hazard reduction.

² As of early 2006.

However, in this report, the Resource Committee has offered numerous other funding mechanisms that would address this need. Consequently, the committee recommends that fees or fines associated with EMPs be related to rental property owners who fail to comply. The committee does not recommend a fee for complying with the EMP statute.

Currently, North Carolina charges a fee to property owners for inclusion on a housing registry.

F. Support from insurance industry to fund EMP training

The insurance industry benefits from the maintenance efforts of its policyholders. The Committee recommends that an annual contribution or fee system be established through which insurance carriers can ensure that their policyholders are educated and trained in Essential Maintenance Practices. The EMP program is valuable to the insurance industry because it decreases costs by reducing risks. In financially supporting training, insurance companies would help to decrease the number of lead-affected children, reduce the risk of lead poisoning litigation, and help safeguard affordable property insurance for Vermonters. The current EMP program is supported solely by HUD, which is not a guaranteed source of funding. Financial support from the insurance industry would ensure the availability and effectiveness of the EMP program.

III. Enforcement Revenues

The Committee has explored options under existing law including those raised by other committees to raise revenue for lead poisoning prevention activities.³ The Committee offers the following options, but does not prioritize their use.

The Committee recommends that exploration be done to examine if statutory amendments could be put in place that would allow revenue gathered through the following enforcement actions be earmarked for lead poisoning prevention rather than going to the General Fund.

A. Civil penalty for property owner failure to perform EMPs

Until July 2006, the Department of Health had not sought civil penalties in the enforcement of the lead laws. Significant dollars might be available initially until owners took compliance more seriously. The committee proposes a penalty of \$250 for failure to submit an affidavit and a penalty of \$500 for failure to complete EMPs. The proposed penalty for filing a fraudulent affidavit is \$5,000. Filing a criminal charge (through the Attorney General's Office) could bring in a higher amount.

³ The committee recognizes that enforcement revenue, once begun would presumably decline as compliance rates improved. Therefore these enforcement revenues do not represent the best option for long-term program sustainability.

B. Civil penalty for failure to follow the state disclosure rules (under Lead Poisoning Act Title 18 section 1751 through 1765)

The Committee recommends that the state conduct inspections for violations of any state rules pertaining to lead paint disclosure. The penalties for violation of the disclosure rule would parallel federal penalties (set at 2006 federal levels).

C. Civil penalty for failure to follow the federal Lead-Based Paint Pre-Renovation Education Rule (406b).

The Committee recommends that the state, with authorization from the EPA, conduct inspections for violations of the Pre-Renovation Education Rule. This rule requires that before a renovator begins compensated work that will disturb more than two square feet of painted surfaces in a pre-1978 building (with some exceptions), he or she must provide the occupants with a federally approved lead poisoning prevention pamphlet. The penalties for violation of this rule would parallel federal penalties.

D. Civil penalty for unlicensed or uncertified contractors

Unlicensed or uncertified contractors performing work that disturbs painted surfaces of more than one square foot in a pre-1978 building would be subject to a penalty of \$500. The exception would be work conducted at pre-1978 properties that have been certified as lead-free by a licensed lead inspector.

E. Civil penalty for a job site without a certified worker

The Committee has made the recommendation that any pre-1978 job site where more than one square foot of painted surfaces are being disturbed needs to have at least one employee who is certified as having completed the lead-safe renovator training. Any contractor found to be in violation of this law would be subject to an initial penalty of \$100, with succeeding offenses stepped up to \$500 per offense. The exception would be work conducted at pre-1978 properties that have been certified as lead-free by a licensed lead inspector.

F. Civil penalty for unsafe renovation of lead-based paint surfaces

The Committee recommends that contractors or rental property owners (if they are conducting the renovations themselves) be held liable whenever a child is poisoned as a result of an unsafe renovation of lead-based paint surfaces. In these cases penalties should go up to \$10,000. If a contractor or property owner employs work practices that distribute lead-based paint to surrounding properties, a minimum penalty of \$500 and liability for the costs of cleanup are recommended.

G. Civil penalties for prohibited work practices

The Committee recommends that contractors or rental property owners (if they are performing the work themselves) be held liable for performing prohibited work practices up to \$10,000 per violation.

H. Reimbursements for required case management

Where appropriate, the state should seek reimbursement for investigation and mitigation of lead-based public health risks or hazards, pursuant to 18VSA §130(b)(5). Where a

property owner has failed to comply with the law necessitating a follow-up inspection from the CLPPP, that cost should be financed by that property owner. At this time the Committee recommends that this cost be limited to a specific dollar amount not to exceed the actual costs incurred by the program for the inspection time and hours of potential travel.

IV. Grants

A. Explore new federal grant opportunities, especially with HUD and EPA

The potential revenue from grants could be several hundred thousand dollars annually. The federal government is reducing its funding opportunities for environmental health, so the challenge is to find the resources necessary to write these competitive funding proposals. The Resource Committee recommends that the state hire a grant coordinator whose primary function is to help compete for these funds in the future. The Department of Health and the CLPPP should provide leadership to encourage regional, county, and city applications for HUD and EPA grants.

Currently, many states utilize additional federal grant funding for childhood lead poisoning prevention, including Arizona, Colorado, Connecticut, Kansas, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, Ohio, Oklahoma, Rhode Island, and Virginia. At the time of this report the Committee was not clear on the specifics of the federal funding sources from each state.

B. Dedicate funds from existing Maternal Child Health Block Grant to lead activities

Dedication of funds from the Maternal Child Health Block Grant to lead poisoning prevention would demonstrate an additional state commitment to the eradication of childhood lead poisoning. The Committee recognizes that a child lead-poisoned during infancy may develop special health care needs that will tax public and private health care systems in the future. A reasonable portion of the grant could be dedicated to lead poisoning activities that support the objectives of maternal and child health; e.g., prenatal lead testing. Vermont should consult with the many other states (including Georgia, Illinois, Maine, New York, Ohio, Pennsylvania, Rhode Island, and Utah) using a portion of this grant for lead poisoning prevention to determine best practices in the allocation of this resource.

C. Other

The Committee notes that communities should be encouraged to pursue funding mechanisms that are appropriate for communities but not the state program. An example is the Community Development Block Grant Program through the U.S. Department of Housing and Urban Development. This program awards communities funds for a range of community development needs, including adequate housing. Communities may also approach their local bankers about making funds available through the Community Reinvestment Act, which was passed in 1977 to ensure that federally insured banks recognize and meet the credit needs of all the communities they are chartered to serve.

Several communities in the country have approached local banks to make CRA funds available for lead poisoning prevention activities such as lead hazard control.

V. Litigation

A. **Settlements procured from lawsuits with property owners and/or contractors over cases of lead-poisoned children**

Potential revenue: Dependent upon the bringing of such cases.

B. **Settlement of suit against paint and coating manufactures**

Potential revenue: (Rhode Island model) results unknown with regard to potential funding.

In 2006, the state of Rhode Island won a lawsuit against three manufactures of lead pigment and/or lead paint, which allegedly caused a “public nuisance” by producing the paint that poisoned thousands of children in the state. This case is now under appeal.⁴

The Committee believes that this option should be pursued by our Office of Attorney General. In practice, and fairly well accepted by the public, is the principle that the polluter should pay. Furthermore, this principle has been codified by statute in numerous environmental areas, and the Superfund model could be instructive. Under Superfund, the state need only find one potentially responsible party (PRP) (in theory a significant contributor to the problem) and that PRP is then liable up to the full costs of the cleanup. The PRP is then allowed to seek contribution from other contributing parties. We are advancing this for consideration by appropriate legal counsel because:

- i. The paint industry has a long history of telling the public that paint containing lead was safe. This practice continued for years after Europe banned the sale of lead-based interior paint in the 1920s.
- ii. States are under increasing pressure to solve critical environmental health problems such as these with little state funding and decreased federal funding.
- iii. It is widely accepted and documented that paint and paint dust is the leading contributor to the problem of childhood lead poisoning.
- iv. Lead in soil found outside of older dwellings containing lead paint can often exceed Superfund levels, which could require cleanup under federal and state environmental law.

VI. Other Funding Sources

A. **Revolving loan fund for lead hazard control**

Revolving loan funds have been used by several states to establish a sustainable source of funding for lead hazard control and other lead-related activities. Some revolving loan funds are authorized by state statute and some by city ordinance. Initial capital may

⁴ One manufacturer settled the case out of court.

come through various means including grants from federal programs such as the U.S. Department of Housing and Urban Development, or from fees (including some previously discussed in this report) such as a fee on the sale of paint, various licensing fees or a real estate transfer tax. Ordinarily, loans through these funds are dedicated to lead hazard control or lead education.

The Resource Committee recommends that a Vermont Revolving Loan Fund be dedicated to eliminating residential lead hazards. Eligibility requirements would mirror those of the Vermont Housing Conservation Board and the Burlington Lead Program. Vermont property owners who meet these requirements and are in compliance with the EMP law would be eligible for a low- or no-interest deferred forgivable loan to eliminate the lead hazards in their properties. Property owners would repay the loan (and sustain the fund) under specific pre-set criteria. For example, Maine's revolving loan program recaptures the entire loan amount if a property is sold or the title is transferred within three years from the date of closing through a mortgage deed on the property. However, if the property owner retains possession and does not transfer the title, the entire amount is forgiven after the three-year period. Maine landlords enrolled in this program must also rent the enrolled units to tenants with incomes at or below the above area median income limits.

Additional incentive options could be developed to ensure that money is made available for families or homeowners with young children. The program can be combined with other tax incentives such as those practiced in Massachusetts, which reduce an owner's tax liability by an incremental amount dependent upon the amount of money expended to bring a property into a lead-safe status.

VII. Incentives

A. Income tax credit

One incentive for property owners to abate lead hazards is a state income tax credit for performing lead hazard abatement. In effect, the state helps finance the cost of controlling lead hazard retroactively — after the property owner abates the lead hazards. A tax credit, once implemented, is administratively simple and requires minimal staffing. However, a mechanism needs to be in place that verifies that lead hazard control activities meet state-set requirements. Massachusetts has effectively used a tax credit for lead hazard control. There, a property owner who performs lead abatement on his or her property is entitled to a state income tax credit of up to \$1,500 of the amount spent per unit for abatement. However, the Massachusetts CLPPP believes that this is too low to provide an adequate incentive and there has been a push to raise it to \$2,500. The Resources Committee suggests an income tax credit of \$2,500.

Sources of funding considered but not recommended at this time

In reviewing mechanisms that have utility for funding Vermont's lead program, the Committee considered several options that were not recommended in this report. In most cases, these were

omitted because they do not fit the culture or the lead situation in Vermont, or because they would not generate enough funding to justify setting up a program. The mechanisms reviewed but not recommended include:

- Taxes on out-of-state purchases
- Taxes on real estate purchases by non-residents
- Document recording fee dedicated to lead prevention
- Fees on new developments in the state
- Use of Electric Utility Benefit Fund
- Fee charged per EMP affidavit

Massachusetts Funding

Research on other state models for funding:

During our exploration of funding mechanisms as a committee, most members were tasked to explore individual states that had diversified their funding streams, emphasizing states that were geographically close or had childhood lead problems similar in proportion to Vermont. As one can note from this draft, Massachusetts is the state most cited for their program, and conversations with their CLPPP director were extremely helpful. This section summarizes some of what we learned that may be applicable to Vermont.

In Massachusetts, the property owner is primarily responsible for funding the costs of lead abatement. We started with this point because the committee believed that this program (above all other lead exposure reduction options), is the one that impacts the resource issue the most. Massachusetts, unlike Vermont has programs and incentives in place to ease the financial burden on the property owner who takes appropriate steps to reduce the potential for environmental lead emissions impacting residents at their properties. Massachusetts law, chapter 111 established a Lead Abatement Loan Program which allows low income families to borrow money to fund their lead abatement activities. The law further states that “not less than one-half of funds allocated for this program shall be distributed to agencies and organizations serving high-risk areas and communities.” Recently (2005) changes were made to this loan program that increased the program’s loan limits and provided loan opportunities for higher income borrowers with a lead-poisoned child. A separate but contributing program, the Home Improvement Loan Program, provides financial assistance to homeowners who may have exceeded the loan limitations of the other program. The program provides \$5,000 to \$25,000 with loan terms from 5 to 20 years. See, <http://www.mass.gov/dph/clppp/financ.htm>.

Massachusetts also offers a lead paint removal state tax credit for qualifying owners of residential premises. The amount of this credit ranges from the cost of repairs up to \$1,500 for property owners who receive a state letter of compliance. Owners receiving a letter of interim control are eligible for a tax credit of up to \$500. These programs provide incentives for owners to comply with the state’s CLPPP and its laws.

Massachusetts has also tackled an issue critical in Vermont, namely the financial obstacles in place that have contributed towards preventing the state from moving towards universal blood lead testing. Massachusetts provides reimbursement for mandatory screening services. The Department of Health regulations outline lead screening services which govern insurance policies, medical services contracts, hospital service contracts and health maintenance contracts. See 105 MASS. CODE REGS. 460.000 (2002).

Further information on how the availability of public loans and tax credits can provide compliance incentives can be found at 23 B.C. Environmental Affairs Law Review 645, 660 (1996).

Overview of Massachusetts lead funding sources:

1. Federal CDC – \$1.25 million annual
2. Federal HUD – \$ 4.5million annual
3. Child Maternal Health Block Grant - \$800,000
4. Fees generated from licensing of contractors, real estate professionals
5. Education trust fund revenue
6. General fund – State of Massachusetts Enforcement