

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the public health law, the executive law and the
real property law, in relation to areas at a high risk for
lead paint (Part);

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 PART ____

2 Section 1. Section 1373 of the public health law is amended by adding
3 three new subdivisions 1-a, 1-b and 1-c to read as follows:

4 1-a. Every governmental unit or agency that is charged with or other-
5 wise accountable or responsible for administration and enforcement of
6 the New York state uniform fire prevention and building code, or any
7 other applicable building and fire prevention code, with respect to any
8 residential or non-residential building that is located within an area
9 designated as high risk by the commissioner pursuant to subdivision one
10 of this section, shall submit to the department aggregate reports summa-
11 rizing the outcomes of inspections and remediation conducted pursuant to
12 regulations adopted by the secretary of state pursuant to subdivision
13 seven of section three hundred eighty-one of the executive law, in a
14 format to be determined by the commissioner in consultation with the
15 secretary of state.

16 1-b. (a) The commissioner and the secretary of state shall have the
17 power to determine, individually or jointly, in such manner as he, she,
18 or they deem appropriate, the status of compliance by any governmental

1 unit or agency referred to in subdivision one-a of this section, includ-
2 ing but not limited to any city with a population of over one million,
3 with subdivision seven of section three hundred eighty-one of the execu-
4 tive law and the rules and regulations promulgated thereunder. If the
5 commissioner or the secretary of state, individually or jointly, deter-
6 mine that any such governmental unit or agency is not in compliance with
7 subdivision seven of section three hundred eighty-one of the executive
8 law or any regulations promulgated thereunder, the commissioner may take
9 any of the following actions, either individually or in combination in
10 any sequence:

11 (i) Refer, or request the secretary of state to refer, the matter to
12 the attorney general to institute in the name of the commissioner or the
13 secretary of state an action or proceeding seeking appropriate legal or
14 equitable relief to require such government unit or agency, including a
15 city with a population over one million, to comply with such rules and
16 regulations;

17 (ii) Require the governmental unit or agency in violation of subdivi-
18 sion seven of section three hundred eighty-one of the executive law, to
19 create a corrective action plan, in consultation with the local health
20 department, which shall require the government unit or agency to come
21 into compliance with subdivision seven of section three hundred eighty-
22 one of the executive law and to discontinue any paint condition condu-
23 cive to lead poisoning in any residential or non-residential building
24 located within such government unit or agency's jurisdiction;

25 (iii) Investigate and examine the actions of the governmental unit or
26 agency in violation of subdivision seven of section three hundred eight-
27 y-one of the executive law or of the rules and regulations promulgated

1 thereunder, and declare that such governmental unit or agency is main-
2 taining a public nuisance and:

3 (A) Require the jurisdictional local health department to investigate,
4 identify, and order the discontinuance of a paint condition conducive to
5 lead poisoning in any residential or non-residential building located
6 within the governmental unit or agency subject to the commissioner's
7 declaration of a public nuisance; or

8 (B) Investigate, identify and order, the discontinuance of a paint
9 condition conducive to lead poisoning in any residential or non-residen-
10 tial building located within the governmental unit or agency subject to
11 the commissioner's declaration of a public nuisance.

12 (b) The expense of an investigation pursuant to paragraph (a) of this
13 subdivision, and the discontinuance of any paint conditions conducive to
14 lead poisoning identified during such investigation, shall be paid by
15 the governmental unit or agency determined by the commissioner to have
16 maintained a public nuisance pursuant to this subdivision.

17 1-c. All paint on any residential building which is located in an area
18 designated as high risk by the commissioner pursuant to subdivision one
19 of this section and on which the original construction was completed
20 prior to January first, nineteen hundred seventy-eight, and all paint on
21 the exterior of any non-residential building which is located in an area
22 designated as high risk by the commissioner pursuant to subdivision one
23 of this section and on which the original construction was completed
24 prior to January first, nineteen hundred seventy-eight, shall be
25 presumed to be lead-based. This presumption may be overcome by a certif-
26 ication by a lead-based paint inspector or risk assessor that the prop-
27 erty has been determined through a lead-based paint inspection conducted
28 in accordance with appropriate federal regulations not to contain lead-

1 based paint, or by such other means as may be prescribed by the rules
2 and regulations adopted by the secretary of state pursuant to paragraph
3 c of subdivision seven of section three hundred eighty-one of the execu-
4 tive law.

5 § 2. Section 378 of the executive law is amended by adding a new
6 subdivision 17 to read as follows:

7 17. For any area designated as high risk by the commissioner of health
8 pursuant to subdivision one of section thirteen hundred seventy-three of
9 the public health law, a requirement that the interior and exterior of
10 any residential building that is presumed to have lead-based paint
11 pursuant to subdivision one-c of section thirteen hundred seventy-three
12 of the public health law, and the exterior of any non-residential build-
13 ing that is presumed to have lead-based paint pursuant to subdivision
14 one-c of section thirteen hundred seventy-three of the public health
15 law, be maintained in a condition such that the paint thereon does not
16 become deteriorated paint, unless the deteriorated paint surfaces
17 comprise a minimal surface area. In a city with a population of over one
18 million, such city's local building and fire prevention codes shall
19 include provisions at least as stringent as the provisions of this
20 subdivision.

21 § 3. Section 381 of the executive law is amended by adding a new
22 subdivision 7 to read as follows:

23 7. Notwithstanding any other provision of law, the secretary, in
24 consultation with the commissioner of health, shall promulgate rules and
25 regulations with respect to governmental units and agencies that are
26 charged with or otherwise accountable or responsible for administration
27 and enforcement of the New York state uniform code, or any other appli-
28 cable building and fire prevention code, with respect to any residential

1 or non-residential building located in an area designated as high risk
2 by the commissioner of health pursuant to subdivision one of section
3 thirteen hundred seventy-three of the public health law:

4 a. Requiring that such governmental unit or agency conduct inspections
5 of all residential rental buildings in such high risk areas periodically
6 and at specified times including, but not limited to, as part of an
7 application for a certificate of occupancy, a renewal of a certificate
8 of occupancy, or based upon the filing of a complaint. Such inspections
9 shall include at a minimum a visual assessment for deteriorated paint
10 and bare soil present within the dripline of the building.

11 b. Establishing remedial actions that such governmental unit or agency
12 may require the owner or other person responsible for maintenance of the
13 subject property to take to address violations of the New York state
14 uniform code provisions, and other applicable building and fire
15 prevention code provisions, adopted pursuant to subdivision seventeen of
16 section three hundred seventy-eight of this article, which shall include
17 as appropriate:

18 (i) Obtaining certification by a lead-based paint inspector or risk
19 assessor that the property has been determined through a lead-based
20 paint inspection conducted in accordance with appropriate federal regu-
21 lations not to contain lead-based paint.

22 (ii) Obtaining certification by a lead-based paint inspector or risk
23 assessor that all cited violations have been abated, or interim controls
24 implemented, and clearance has been achieved in accordance with the New
25 York state uniform code or other applicable building and fire prevention
26 codes.

27 (iii) Where exterior deteriorated paint violations, including deteri-
28 orated paint violations on an open porch, and/or bare soil violations

1 are cited, or where interior deteriorated paint violations are cited in
2 a common area, clearance may be established through a visual assessment
3 by a local code enforcement officer after reduction measures have been
4 implemented.

5 c. Establishing standards for a clearance examination and report and
6 for certifications or other documentation required to overcome the
7 presumption created by subdivision one-c of section thirteen hundred
8 seventy-three of the public health law.

9 Notwithstanding any other provision of law, the rules and regulations
10 promulgated pursuant to this subdivision shall, with respect to all
11 governmental units and agencies other than cities with a population of
12 over one million, be considered to be part of the minimum standards
13 adopted pursuant to subdivision one of this section; provided, however,
14 that the closing paragraph of subdivision one of this section shall not
15 apply to inspections required by the rules and regulations promulgated
16 pursuant to this subdivision. Any governmental unit or agency other than
17 a city with a population of over one million that fails to comply with
18 the rules and regulations promulgated pursuant to this subdivision shall
19 be subject to the actions authorized by subdivision four of this
20 section. Any governmental unit or agency, including but not limited to a
21 city with a population of over one million, that fails to comply with
22 such rules and regulations shall also be subject to the actions author-
23 ized by subdivision one-b of section thirteen hundred seventy-three of
24 the public health law.

25 § 4. Paragraphs b and c of subdivision 1 of section 223-b of the real
26 property law, as amended by chapter 584 of the laws of 1991, are amended
27 and a new paragraph d is added to read as follows:

1 b. Actions taken in good faith, by or in behalf of the tenant, to
2 secure or enforce any rights under the lease or rental agreement, under
3 section two hundred thirty-five-b of this [chapter] article, or under
4 any other law of the state of New York, or of its governmental subdivi-
5 sions, or of the United States which has as its objective the regulation
6 of premises used for dwelling purposes or which pertains to the offense
7 of rent gouging in the third, second or first degree; [or]

8 c. The tenant's participation in the activities of a tenant's organ-
9 ization[.]; or

10 d. The tenant's reporting of a suspected lead-based paint hazard to
11 the owner or to any state or local agency.

12 § 5. This act shall take effect on the one hundred eightieth day after
13 it shall have become a law; provided that any rules, regulations, local
14 laws, or ordinances necessary to implement the provisions of this act on
15 its effective date are authorized to be made, adopted, or enacted on or
16 before such effective date.