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August 19, 2008

Governor David A. Paterson
c/o Terryl Brown Clemons
Acting Counsel to the Governor
Executive Chamber, Second Floor
New York State Capitol
Albany, New York 12224

**Re: A.6399/ S.6350 – *Comments in Support:*
The Childhood Lead Poisoning Prevention and Safe Housing Act of 2008**

Dear Governor Paterson:

The Empire Justice Center urges you to sign into law the Childhood Lead Poisoning Prevention and Safe Housing Act of 2008. This long overdue legislation is critical to correcting a matter of gross environmental, racial and economic injustice, namely that the state's minority and low-income children remain at far greater risk of lead poisoning than non-minority children in non-poverty areas. Additionally, we want to emphasize that the legislation is structured to assure that no unnecessary or uncontrollable costs are incurred. In fact, signing this legislation will trigger New York State's eligibility for several million dollars in HUD funding from which it has previously been excluded.

Racial and Income Disparities.

Department of Health data confirm that although lead poisoning at the statewide level has dropped considerably over the last decade, lead poisoning persists at very high rates in a small number of neighborhoods ("high risk areas" or "hot spots"). Although there has been little public discussion of this matter, these high-risk areas are home to a stunningly large portion of the state's minority children. Based on the 2001 Department of Health data, one of every three African-American children under age five living outside of New York City lived in one of the 36 (out of over 1600) zip codes identified by the state as a "high risk" zip code. Those zip codes accounted

for over 41% of all new incidences of child lead poisoning at that time. In fact, based on the 2001 data, an African American or Latino child under age 5 was up to nine times more likely to be exposed to lead-paint hazards than a non-minority child. More recent data just made available by DOH shows that the concentration of lead poisoning cases in a small number of geographic areas is a persistent pattern. In 2005, nearly 40% of the new incidences of lead poisoning outside of New York City came from only 22 zip codes.

Although the exact statewide percentage is unavailable,¹ we know that the proportion of all children who actually have been identified to have been poisoned by lead-paint who are minority children *far* exceeds their representation in the population at large. In Monroe County, for example, minority children in 2005 comprised approximately 70% of all children poisoned by lead. Realistically, we know that if the lead poisoning rates that persist in the high risk neighborhoods that have already been identified (some at 15 to 20% or even higher) were prevalent at the statewide level (where the rate is now below 1%) there would be a genuine “hue and cry” to address the problem. We cannot fail to finally take action to address this dangers simply because the minority and non-minority children that live in these neighborhoods have, until now at least, been voiceless in raising this issue.

Part of the lack of progress has been due to the fact that inspections for lead hazards in buildings have largely been viewed by health officials as a “housing” matter and by building inspectors as a “health” matter. In the absence of legislation like A.6399, which requires health and building officials to work together to develop “primary prevention” plans in areas of persistent lead poisoning, the lack of clear responsibility and enforcement authority has kept us from adequately protecting children. As a result, since the early 1990s more than 200,000 children have been clinically identified as having been poisoned and permanently injured by lead, and tens of thousands more children have undoubtedly been poisoned but not been identified.

Indeed in the City of Buffalo where, after New York City, the highest number of the state’s children poisoned by lead reside, and where more than 90% of the African American children lived in high-risk zip codes in 2001, there were no lead-hazard inspections available to concerned parents until a child had already been poisoned and irreversibly damaged by lead. Only after such a poisoning would the local county health department conduct an environmental assessment including a housing inspection. In fact, such an inspection would not even occur under the current Public Health Law unless the elevated blood lead level was *twice* the 10ug/dl level established by the Centers for Disease Prevention and Control. In 2005, there were 266 children poisoned by lead in only six of the city’s zip codes. This legislation is structured to dramatically change that result by authorizing inspection in these high-risk areas *without* a child first having to be found to have an elevated blood lead

¹ The state does not have sufficiently complete records of each case to determine race or ethnicity. This legislation would require reporting by race.

level. Additionally, the legislation would finally lower the intervention level to that recommended by the CDC.

To begin to address this problem in the absence of legislation a “pilot” program was recently initiated by the NYS DOH making possible inspections of at least *some* of the housing in high-risk areas in Buffalo, and in a few other areas of the state, *before* a child is poisoned. That pilot program currently focuses on Erie and seven other counties, and will be expanded to six more counties later this year. Unfortunately though, in each of those counties only a very small number of the highest risk neighborhoods already identified by the state are actually included in the pilot. As a result, we believe this legislation will help strengthen the pilot programs by making highest and best use of state resources to hone in on additional neighborhoods with the severe lead problems, and providing access to tax credits and new federal dollars (see below) that will make these local efforts more successful in terms of encouraging hazard remediation by property owners.

Although we would prefer to see a more accelerated timeline, the legislation does offer a sound approach to expanding the pilot program. It gives the state nine months *after April 1, 2009* to produce a state “primary prevention plan,” and then until January of 2010 to put local prevention plans in place. Accordingly the legislation offers an opportunity to fully apply the lessons learned in the pilot program. Moreover, it finally offers the prospect that a permanent primary prevention plan will be in place *after* the two-year pilot is complete, and provides needed planning authority to make the local primary prevention programs effective. Finally, the legislation authorizes tax credits (subject to subsequent appropriation) that will be essential to assisting property owners to make their low-rent and low-cost housing units safe.

Cost Issues.

We understand the urgency for the state to reduce expenses. Fortunately, this legislation is crafted to assure that the state is not providing a blank check to solve the problem.

This legislation accommodates the state’s cost concerns by specifically including language:

- 1) Assuring that New York State will not be subject to any new responsibilities for which funds have not been appropriated,²

² The “primary prevention” planning requirements are found in Section 7 of the Act, adding a new PHL Section 1378. (This section begins on page 6, line 1, of the “A.6399-C” print). New PHL Section 1378, sub. 4.a. (beginning on page 7 of the “C” print), specifically states:

“Funding for the childhood lead poisoning primary prevention and safe housing plan and any local primary prevention plan included therein shall be subject to appropriation by the state legislature.”

2) Protecting local municipalities and counties from unfunded mandates,³
and

3) Placing a realistic cap on the tax credits available to owners of buildings for making their properties lead safe.⁴

Moreover, apart from the fact that there will be recognized cost reductions in Medicaid, special education, and juvenile justice programs, there is a particularly important *revenue incentive* for the Governor to sign this legislation – ***it includes provisions that, once enacted, will authorize New York State to apply for \$6 to \$7 Million in federal HUD lead hazard control funding that NYS has been unable to compete for since 1998 due to lack of sufficient authorization.***⁵

Although it is concededly important that the state not undertake expensive new programs, the relatively low cost of the initiatives to be undertaken are likely to be more than offset by savings in other social programs and the prospect of additional federal funding. More critically, it would be unconscionable to characterize these as *new expenditures* simply because the state *failed* to take any meaningful efforts to initiate primary prevention programs during the entire twelve years of the prior administration.

Conclusion.

At the statewide level New York State has made tremendous progress in reducing incidents of childhood lead poisoning. But that progress has *not* reached many of our older, mostly urban, neighborhoods. New York State continues to have neighborhoods characterized by ***the highest lead-poisoning rates in the country*** and worse yet, it is minority children -- and minority communities -- who are

³ New PHL Section 1379, sub. 4.b. added by Section 7 of the Act makes any cost to municipalities considered to be "costs of the department" and "such costs shall be reimbursed to the municipality by the department." That paragraph further provides that, "Funding for such costs shall be made available subject to appropriation by the state legislature."

⁴ The "appropriation-dependent" provision for the tax credits is in Section 10 of the Act (on page 16 of the "A.6399-C" print) at lines 1 to 5. That provision states:

"Maximum Aggregate. Pursuant to section one thousand three hundred and seventy nine of the Public Health Law, the maximum amount of credit allowed, in the aggregate for all tax credits shall not exceed fifteen million dollars and funding for such credits is subject to appropriation."

In addition, the corresponding Section 12 of the Act amending PHL 1379 "caps" the certificates that can be issued by the DOH Commissioner. The certificates are the mechanism for a taxpayer to claim the tax credit (in the "A.6399-C" print, that's at page 20, lines 39-48). There are corresponding tax credits applicable to both the corporate and the personal tax, depending on who (or what entity) owns the property.

⁵ Section 7 of the Act, adds a new PHL 1378, sub. 6. (pp. 7-8 of the "C" print) which gives DOH the authority to set up a program for certifying lead inspection programs under the standards set in Section 404 of the federal Toxic Substances Control Act (TSCA). It does this by the cross-reference to the EPA regulations found at, 40 CFR Part 745, Subpart Q. Once New York State certifies that it has done so, that action triggers eligibility for federal lead hazard control competitive funding from which NYS has not heretofore been eligible. Other states that have adopted certification authority have been able to increase their allocations of federal funds, and this funding can be used by the state to pay for additional environmental inspections that will take place once the blood intervention level for environmental assessments is reduced to 10 ug/dl as provided for in the legislation.

suffering. We know where the problem is, and we know how to fix it. We cannot fail to do so any longer.

We implore you to sign this legislation

Respectfully submitted,

Michael L. Hanley
Senior Attorney
On behalf of the Empire Justice Center