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Bill Analysis
Legislative Service Commission

Sub. H.B. 248

124th General Assembly
(As Reported by H. Health & Family Services)

Reps. Williams, Schaffer, Kearns, Barrett, Otterman, R. Miller, Lendrum, Rhine, G. Smith, Jones, D. Miller, Allen, Hollister, Ford, Roman, Jolivette, Seitz, Gilb, Kilbane, Patton, McGregor, Aslanides, Schneider, S. Smith, Cirelli

BILL SUMMARY

- Limits lead abatement requirements by permitting lead hazards to be addressed by lead-safe renovation, essential maintenance practices and preventive treatments, and interim controls.
- Specifies training required to be authorized to perform lead-safe renovations.
- Establishes requirements for approval of lead-safe renovation training programs.
- Provides for the Director of Health to license clearance technicians.
- Establishes prohibitions and procedures for lead abatements and establishes prohibitions for lead-safe renovations.
- Prohibits a person from performing or supervising a lead-safe renovation instead of a lead abatement on a property at which a lead-poisoned child has been identified.
- Permits the Director to issue an immediate cease work order if a license holder's activities endanger the health or well-being of certain persons.
- Establishes essential maintenance practices and preventive treatments required to be implemented by owners of property constructed before January 1, 1950 that is used as a residential unit, child day-care facility, or school.

- Requires that each child at risk of lead poisoning undergo a blood lead screening test.
- Makes changes to the Child Lead Poisoning Prevention Program.
- Creates an advisory council to assist in the development and implementation of the Child Lead Poisoning Prevention Program.
- Establishes requirements for investigation and risk assessment of a residential unit, child day-care facility, or school that may be the source of a child's lead poisoning.
- Provides for the issuance of a lead hazard control order if the results of a risk assessment indicate that a lead hazard on the property is contributing to a child's lead poisoning.
- Establishes the Lead Poisoning Prevention Fund.
- Requires the Public Health Council to adopt rules governing lead abatement personnel licensure, lead poisoning prevention, and lead hazard control.

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CONTENT AND OPERATION

Background

The federal Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, requires the U.S. Department of Housing and Urban Development (HUD) and the U.S. Environmental Protection Agency (EPA) to

adopt regulations addressing control of lead hazards in housing. The act sets forth model training and licensing requirements for persons working to control lead hazards in housing and day care facilities built before 1978. Ohio's current lead abatement law (Revised Code Chapter 3742.), effective July 1, 1994, is based on the act and requires the Ohio Department of Health to administer Ohio's lead training and lead abatement professional licensing programs.

Effective October 1, 1998, the EPA authorized Ohio to operate its lead program. This authorization allows Ohio, rather than the EPA, to operate the lead program. As a condition of authorization, the EPA requires that Ohio operate the program so that it is as protective of health and the environment as an EPA operated program would be if it were based on the model federal regulations.

Limiting lead abatement

(secs. 3742.01, 3742.02, and 3742.05)

Under current law, only persons licensed to do so may perform lead abatement, unless the person is performing lead abatement on all or part of a structure that is the person's private residence. "Lead abatement" under current law, means a set of measures designed and intended to eliminate lead hazards. "Lead hazards" are materials that may cause lead exposure and may endanger an individual's health as determined by rules adopted by the Public Health Council.¹

A person may obtain a license to do lead abatement by meeting, among other things, extensive licensing and training requirements established by the Public Health Council and by successfully completing the licensing examination and any training requirements of the Director of Health.

The bill creates exceptions to the lead abatement requirements with the effect that lead hazards may be addressed in ways other than by lead abatement. Under the bill, the following activities are not lead abatement:

- (1) Lead-safe renovations performed and supervised by a lead-safe renovator (see discussion below);
- (2) Essential maintenance practices and preventive treatments performed on certain property constructed before January 1, 1950 (see discussion below);

¹ *The Public Health Council consists of seven members appointed by the Governor. It is responsible for adopting rules in a number of public health areas, but has no executive or administrative duties.*

(3) Implementation of interim controls, a set of measures designed to reduce temporarily human exposure or likely human exposure to lead hazards, such as specialized cleaning, repairs, painting, temporary containment, ongoing lead hazard maintenance activities, and the establishment and operation of management and resident education programs;

(4) Activities performed by a property owner on a residential unit that is a free standing single-family home used as the property owner's private residence, and in which no child under six years of age who has lead poisoning resides.²

The bill also eliminates the exception from meeting licensure requirements for a person who does lead abatement on the person's own residence. Exception (4), however, appears to maintain much of the effect of that exception, however, unless the residence is not a single-family home or a lead-poisoned child under age six lives there. In either of those cases, the activities are lead abatement, and licensure is required for any person performing them.

Lead-safe renovation

(secs. 3742.01, 3742.02, 3742.04, 3742.051, and 3742.06)

The bill defines "lead-safe renovation" as a general improvement of all or part of an existing residential unit, child day-care facility, or school in which permanent elimination of a lead hazard is incidental rather than the single purpose of the improvement.³ Lead-safe renovation includes the removal or modification of surfaces or components painted with lead-based paint, the removal of large structures, and window replacement. Lead-safe renovation does not include a privately funded general improvement of all or part of an existing residential unit that is privately owned and in which no child under six years of age who has lead poisoning resides. The bill also provides that a lead-safe renovation may not be

² "Residential unit" is defined by the bill as a dwelling or any part of a building being used as an individual's private residence.

"Lead poisoning" is defined by the bill to mean the level of lead in human blood that is hazardous to human health, as specified by the Public Health Council in rules.

³ Under the bill, a "child day-care facility" means any area of a child day-care center, type A family day-care home, type B family day-care home, type C family day-care home, preschool program, or school child program in which child day-care is provided to children less than six years of age. "School" means a public or nonpublic school in which children less than six years of age receive education.

"Permanent" is defined by the bill as having an expected design life of 20 years.

performed or supervised in lieu of a lead abatement on a property at which a lead-poisoned child under six years of age resides.

Lead-safe renovation may only be performed or supervised by a lead-safe renovator--a person who has successfully completed a training program, of one day or less, in lead-safe renovation approved by the Department of Health. The bill also provides that lead-safe renovators may not be subject to licensure or certification. The Director of Health is required to examine records and reports submitted by lead-safe renovators in relation to the licensing provisions for persons involved in lead abatement to determine whether Ohio's lead abatement laws are being complied with (see **COMMENT 1**).

Requirements for approval of lead-safe renovation training programs

(secs. 3742.03, 3742.47, and 3742.49)

The bill provides that the rules establishing requirements for lead-safe renovation training programs may not require that they exceed one day in length. A person seeking approval of a training program in lead-safe renovation must apply for approval to the Director of Health. The application must be made on a form prescribed by the Director and must include a reasonable nonrefundable fee not exceeding the expenses incurred in conducting the approval of training programs. The Director is required to approve a training program if it meets the following requirements and any requirements established by rule of the Public Health Council:

- (1) Administers an examination established by rule of the Public Health Council at the end of the training program to each person who completes the training;
- (2) Grades each examination not later than one week after its completion and determines whether the person who took the examination received a passing score;
- (3) Not later than one week after the examination is completed provides written proof of course completion to each person who completes the program and passes the examination.

The rules required by the bill to be adopted by the Public Health Council with respect to the training program are procedures for approving a training program, requirements a program must meet to receive approval, the examination to be administered by an approved program, and the examination's passing score.

Lead clearance technician licensing

(secs. 3742.01, 3742.04, 3742.05, 3742.08, 3742.10, and 3742.15)

The Director of Health has responsibility under existing law to issue lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, and lead abatement worker licenses and to discipline license holders when appropriate. The bill expands the Director's duties to include issuing clearance technician licenses.

A clearance technician performs clearance examinations, which are defined by the bill as an examination conducted following a lead abatement or lead-safe renovation to determine whether the lead hazards in a residential unit, child day-care facility, or school have been sufficiently controlled according to standards established by the Public Health Council in rules. A clearance examination includes a visual assessment, collection, and analysis of environmental samples. Clearance examinations may also be performed by licensed lead inspectors or lead risk assessors.

As part of the Director's new duties, the Director must conduct, specify requirements by rules, or approve training programs for licensure of clearance technicians and maintain a list of licensed clearance technicians. In addition, the bill requires that an applicant for any of the licenses issued under the lead abatement personnel law provide the applicant's social security number to the Director.

The bill requires that the Director establish a program to monitor and audit the quality of work of lead inspectors, lead risk assessors, lead abatement project designers, lead abatement contractors, lead abatement workers, and clearance technicians. The bill permits the Director after receiving a complaint from any person about a clearance technician, to investigate the complaint and take appropriate action.⁴ The Director's authority to examine records and reports submitted by lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, and lead abatement workers in relation to those professions licensing provisions to determine whether Ohio's lead abatement laws are being complied with is expanded to include records and reports submitted by clearance technicians.

⁴ *The complainant's name must be kept confidential and not be released without the complainant's consent.*

Performance of lead abatement activities

Additional duties of lead abatement contractors

(secs. 3742.06 and 3742.07)

Lead abatement contractors have a number of duties under existing law. For example, a lead abatement contractor is prohibited from providing lead testing services or professional advice regarding lead abatement unless that service or advice is provided by a licensed lead inspector or lead risk assessor who is employed by the lead abatement contractor. The bill requires that the lead abatement contractor primarily responsible for a lead abatement project ensure that all persons involved follow the worker protection standards established by the United States Occupations Safety and Health Administration.

Additional requirements for lead-safe renovators

(secs. 3742.06 and 3742.07)

The bill provides that no lead-safe renovator may use the services of an environmental lead analytical laboratory that has not been approved by the Director of Health. During a lead-safe renovation, the lead-safe renovator primarily responsible for the renovation shall ensure that all persons involved in the renovation follow the worker protection standards established by the United States Occupations Safety and Health Administration.

Immunity from civil liability

(sec. 3742.17)

Current law provides immunity from civil liability for injury or damage that results from acts or omissions of persons licensed to engage in lead abatement, lead inspection, lead risk assessment, or other activity under the lead abatement law unless they are negligent. The bill expands that immunity to persons licensed to perform clearance examinations. Similarly, the bill expands existing immunity for persons who contract with lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, or lead abatement workers to include persons who contract with clearance technicians. As under current law, immunity from liability does not apply to acts or omissions that the person knew or could reasonably have been expected to know were not in accordance with generally accepted practices or with procedures established by state or federal law. The bill's immunity provisions govern all claims for lead-related injuries to individuals or property arising for lead-safe renovation and clearance examinations (see **COMMENT 2**).

Prohibitions

(sec. 3742.02)

Current law establishes a number of prohibitions with respect to violations of Ohio law and administrative rules governing lead poisoning prevention and lead hazard control, including interference with an inspection for lead poisoning conducted by the Director of Health or a board of health.⁵ The bill generally maintains those existing prohibitions except that it changes the inspection to an investigation. The bill also prohibits any person from doing any of the following:

(1) Effective one year after the bill's effective date, performing a clearance examination without a valid clearance technician license, unless the person holds a valid lead inspector license or valid lead risk assessor license;

(2) Effective one year after the bill's effective date, performing or supervising a lead-safe renovation without having successfully completed a training program approved by the Director of Health or without complying with federal regulations;

(3) Performing lead training for the purpose of lead hazard control without valid approval from the Director of Health;

(4) Performing interim controls without complying with federal regulations.

Rulemaking--licensing of lead abatement personnel and performance of lead abatement activities

(sec. 3742.03)

Current law requires that the Public Health Council adopt rules governing the administration and enforcement of the law governing the licensing of lead abatement personnel and the performance of lead abatement activities. The bill expands the Council's rulemaking authority to include the new category of clearance technician licensure the bill creates and the new activity of clearance examinations permitted by the bill. The bill also requires the Public Health Council to adopt rules that specify environmental sampling techniques for use in collecting samples of dust, in addition to the existing authority to specify

⁵ *The bill defines a "board of health" as a board of health of a city or general health district or the authority having the duties of a board of health in a city as authorized under the Revised Code.*

environmental sampling techniques for use in collecting samples of air, water, paint, and other materials.

Enforcement--licensing of lead abatement personnel and performance of lead hazard control activities

Cease work orders

(sec. 3742.161)

Under the bill, the Director is authorized to issue an immediate cease work order to a license holder if the Director determines that the license holder is violating the terms or conditions of the license in a manner that endangers or materially impairs the health or well-being of an occupant of a residential unit, child day-care facility, or school or a person employed to perform a lead abatement.

Civil penalties

(secs. 3742.18 and 3742.19)

Under current law, the Attorney General may file a civil action against a person who violates the law governing the licensing of lead abatement personnel and the performance of lead hazard control activities. On finding a violation, the court must assess a civil penalty of not more than \$1,000, with each day the violation continues constituting a separate violation. The bill changes the name of the Lead Program Fund to the Lead Abatement Personnel Licensing Fund and requires that all civil penalties be deposited into the state treasury to the credit of the Fund.

Criminal penalties

(secs. 3742.19 and 3742.99)

Under current law, at the request of the Director of Health, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer may commence a criminal action against a person who violates any provision of the lead abatement law. On conviction, a violator is subject to (1) a fine of not more than \$1,000 or imprisonment for not more than six months, or both, for a first offense, and (2) a fine of at least \$1,000 but not more than \$5,000 or imprisonment for at least six months, but not more than three years, or both, for a second or subsequent offense. Each day of violation is a separate offense. The bill limits violations for which a criminal action can be commenced to the prohibitions described above, the duties of a lead abatement contractor primarily responsible for a project, and the provisions governing lead abatement and lead-safe

renovation. It also permits a board of health to request that an action be commenced. The bill requires the fines to be placed in the Lead Abatement Personnel Licensing Fund (described above).

Control of lead hazards on property constructed before 1950

Essential maintenance practices

(secs. 3742.41 and 3742.43)

Within two years of the bill's effective date, the owner of a property constructed before January 1, 1950 that is used as a residential unit, child day-care facility, or school must do, or have the property manager do, all of the following essential maintenance practices for the control of lead hazards:

- (1) Use only safe work practices to prevent the spread of lead-contaminated dust;
- (2) Perform visual examinations for deteriorated paint, underlying damage, and other conditions that may cause exposure to lead;
- (3) Promptly and safely repair deteriorated paint or other building components that may cause exposure to lead and eliminate the cause of the deterioration;
- (4) Ask tenants in a residential unit, and parents, guardians, and custodians of children in a child day-care facility or school to report concerns about potential lead hazards by posting notices in conspicuous locations;
- (5) Perform specialized cleaning to control lead-contaminated dust;
- (6) Cover any bare soil on the property, except soil proven not to be lead-contaminated;
- (7) Maintain an affidavit of essential maintenance practices for at least three years that document all essential maintenance practices;
- (8) Successfully complete a training program of one day or one day or less in lead-safe renovation approved by the Director of Health.

Essential maintenance practices do not include a requirement for dust clearance testing.

The areas of a residential unit, child day-care facility, or school subject to these requirements include (1) the interior and exterior surfaces and all common areas of the unit, facility, or school, (2) every attached or unattached structure



located within the same lot line as the unit, facility, or school that the owner or manager considers to be associated with the operation of the unit, facility, or school, including garages, play equipment, and fences, and (3) the lot or land that the unit, facility, or school occupies. An owner who violates the requirements is subject to judicial relief and liability provisions.

A person who implements the essential maintenance practices must do all of the following in the area of the residential unit, child day-care facility, or school in which the practices are being performed:

- Allow only persons performing the essential maintenance practice access to the area;
- Cover the area with six mil polyethylene plastic or its equivalent;
- Protect workers;
- Protect occupants' belongings by covering or removing them from the area;
- Wet down all painted surfaces before disturbing the surfaces;
- Wet down debris before sweeping or vacuuming.

Presumption that no lead hazard exists on completion of preventive treatments

(sec. 3742.42)

A property constructed before January 1, 1950, that is used as a residential unit, child day-care facility, or school is presumed not to contain a lead hazard and not be the source of the lead poisoning of an individual who resides in the unit or receives child day-care or education at the facility or school if the owner or manager of the unit, facility, or school successfully completes the following preventive treatments:

(1) Follows the essential maintenance practices specified in the bill;

(2) Covers all horizontal surfaces within the unit, facility, or school that are rough, pitted, or porous with a smooth cleanable covering or coating, such as metal coil stock, plastic, polyurethane, carpet, or linoleum.

The owner or manager of a residential unit, child day-care facility, or school has successfully completed these preventive treatments if the unit, facility,

or school passes a clearance examination. The presumption established by the bill is rebuttable only on a showing of clear and convincing evidence to the contrary.

Specialized cleaning methods

(sec. 3742.45)

Under the bill, specialized cleaning methods used as essential maintenance practices or preventive treatments to control lead-contaminated dust may include any of the following:

- (1) Cleaning potentially lead-contaminated surfaces with a detergent;
- (2) Vacuuming potentially lead-contaminated surfaces with a HEPA vacuum;⁶
- (3) Covering potentially lead-contaminated soil.

A person who uses or provides for others to use specialized cleaning methods as an essential maintenance practice or preventive treatment must ensure that the cleaning is performed as follows:

- The exterior of a residence or common areas of the building with more than one residential unit must undergo specialized cleaning at least annually, including hallways, stairways, laundry rooms, recreational rooms, playgrounds, boundary fences, and other portions of the building and its surroundings that are generally accessible to all residents.
- The interior of a residential unit that is vacated by its occupants must undergo specialized cleaning before it may be reoccupied.
- A child day-care facility or school must undergo specialized cleaning at least annually at a time when children are not present at the facility or school.
- A residential unit, child day-care facility, or school must undergo specialized cleaning on the completion of any maintenance or repair work that disturbs lead-contaminated dust.

⁶ "HEPA" is defined in the bill as the designation given to a product, device, or system that has been equipped with a high-efficiency particulate air filter, which is a filter capable of removing particles of 0.3 microns or larger from air at 99.97% or greater efficiency.

Who may perform essential maintenance practices and preventive treatments

(secs. 3742.44 and 3742.46)

In general, the bill does not require that essential maintenance practices and preventive treatments be performed by an individual licensed as a lead abatement contractor, lead abatement worker, or lead-safe renovator.⁷ The bill permits only a licensed person to engage in the following activities when performing essential maintenance practices or preventive treatments:

- (1) Machine sanding or grinding performed with a HEPA local vacuum exhaust tool;
- (2) Abrasive blasting or sandblasting performed with a HEPA local vacuum exhaust tool;
- (3) Contained hydroblasting or high-pressure washing.

A person who performs or supervises essential maintenance practices or preventive treatments must have successfully completed a training program of one day or less in lead-safe renovation approved by the Department of Health unless the person is a licensed lead abatement contractor or lead abatement worker.

Unsafe work practices

(sec. 3742.44)

The bill specifies certain activities as unsafe work practices due to the likelihood that engaging in the activities will create lead hazards and prohibits any person from engaging in those practices when implementing essential maintenance practices or preventive treatments. Unsafe work practices include the following:

- Open flame burning or torching;
- Machine sanding or grinding without a HEPA local vacuum exhaust tool;
- Abrasive blasting or sandblasting without a HEPA local vacuum exhaust tool;

⁷ *The bill does not provide for the licensure of lead-safe renovators. The reference to lead-safe renovators may be an error.*

- Use of a heat gun operating above one thousand one hundred degrees fahrenheit;
- Charring paint;
- Dry sanding;
- Dry scraping, except when done in conjunction with a heat gun operating at no more than one thousand one hundred degrees fahrenheit, within one foot of an electrical outlet, or to treat defective paint spots totaling not more than two square feet in an interior room or space or twenty square feet on an exterior surface.
- Uncontained hydroblasting or high-pressure washing;
- Paint stripping in a poorly ventilated space using a volatile stripper that is considered a hazardous substance or hazardous chemical under federal regulations in the type of work being performed.

Exception to essential maintenance practices requirement

(sec. 3742.41)

The requirement that a person perform essential maintenance practices does not apply to the following persons:

- (1) The owner of a freestanding single-family home occupied by the owner;
- (2) The owner or manager of a residential unit designated and used exclusively by senior citizens or disabled adults and only as a residence;
- (3) The owner or manager of a one-room residential unit designed for single-occupancy and used exclusively by an adult and only as a residence.

Enforcement by the state

(sec. 3742.50)

The bill authorizes the Attorney General, at the request of the Director of Health, to file a civil suit against a person who fails to implement essential maintenance practices for the control of lead hazards as required by the bill. The lawsuit must be filed in a court of competent jurisdiction in the county in which the violation occurred or is about to occur.

The court must grant injunctive and other equitable relief on a showing that the person has violated or is about to violate the bill's requirements concerning essential maintenance practices. On a finding of a violation, the court must assess a civil penalty of not more than \$1,000. Each day a violation continues is a separate violation unless the court determines that the person is making a good faith effort to end the violation. All civil penalties must be deposited into the state treasury to the credit of the Lead Poisoning Prevention Fund.

Mandatory lead screening testing

(sec. 3701.61)

The bill requires that each child at risk of lead poisoning undergo a blood lead screening test to determine whether the child has lead poisoning. The Public Health Council is required to adopt rules in accordance with the Administrative Procedure Act (Chapter 119. of the Revised Code) to specify which children are at risk of lead poisoning and when the at-risk children must undergo the test. The rules must be consistent with the guidelines established by the Centers for Disease Control and Prevention in the Public Health Service of the U.S. Department of Health and Human Services. The bill specifies that neither it nor rules adopted under it affect the coverage of lead blood screening tests by any publicly funded health program, including Medicaid. The bill also provides that the blood screening requirement established by the bill and rules do not apply to a child if a parent of the child objects to the test on the grounds that the test conflicts with the parent's religious tenets and practices.

Child Lead Poisoning Prevention Program

(secs. 3742.04 and 3742.31)

Under current law, the Department of Health is required to establish, promote, and maintain a child lead poisoning prevention program that provides statewide coordination of screening, diagnosis, and treatment services for children under age six in accordance with rules adopted by the Public Health Council. The Director is to collect and disseminate information relating to lead poisoning and lead abatement and is required to submit a report of the child lead poisoning program to the Governor and General Assembly each March.

The bill changes the Child Lead Poisoning Prevention Program to include as part of the program both of the following:

(1) Collection of the social security numbers of all children screened, diagnosed, or treated as part of the program's case management system;

(2) Disclosure to the Office of Ohio Health Plans in the Department of Job and Family Services on at least an annual basis the identity and lead screening test results of each child screened because the child was determined at risk of lead poisoning.⁸

The bill also changes the duty of the Director of Health regarding the collection and dissemination of information regarding lead abatement by instead requiring the Director to collect and disseminate information regarding controlling lead hazards.

The Director is required to operate the Child Lead Poisoning Prevention Program in accordance with rules adopted by the Public Health Council. The bill authorizes the Director to enter into an inter-agency agreement with one or more other state agencies to perform one or more of the program's duties, but the Director must supervise and direct an agency's performance of such a duty.

The bill's requirements replace current law that requires the Director to conduct research and disseminate information on the number, extent, and general location of lead contaminated structures and to update the information when the Director receives reports of lead inspections and assessments and permits the Director to conduct or to cooperate with other state agencies to conduct programs of public education on the nature and consequences of lead hazards and on the need for lead-hazard reduction activities.

Advisory Council

(sec. 3742.32)

The bill requires the Director of Health to appoint an advisory council to assist in the development and implementation of the Child Lead Poisoning Prevention Program. The advisory council's membership must include individuals with expertise or personal interest in preventing childhood lead poisoning. The advisory council must (1) give the Director advice regarding the policies the Program should emphasize, preferred methods of financing the Program, and any other matter relevant to the Program's operation and (2) submit a report of the state's activities to the Governor, President of the Senate, and Speaker of the House of Representatives by March 1 of each year. The bill excepts the council from the statute under which the authority for a newly created government entity ceases (sunsets) after a number of years.

⁸ *The Office administers several programs that provide health care coverage to low income individuals and families, including the Medicaid Program and the State Children's Health Insurance Program.*

Property where child lead poisoning is suspected

Enforcement authority

(sec. 3742.34)

The Director of Health has authority under continuing law to enforce its provisions concerning property where child lead poisoning is suspected, but the Director may delegate that authority to a board of health if the Director determines that the board can satisfactorily enforce the law. The Director may revoke that delegation at any time by written notice to the board.

Investigations

(secs. 3742.02, 3742.16, and 3742.35)

Current law permits the Director of Health or his authorized representative to request that the occupant, owner, or manager of a structure permit the Director or representative to enter and inspect a structure where the Director suspects, due to a child's elevated blood lead levels, that lead poisoning has occurred. If entry is refused, the Director may petition the common pleas court of the county in which the structure is located for an order of inspection.

The bill provides that when the Director or a board of health authorized to enforce the law governing lead abatement becomes aware that an individual under six years of age has lead poisoning, the Director or board is required to conduct an investigation to determine the source of the lead poisoning. The Director or board is *permitted* to conduct an investigation when the Director or board becomes aware that an individual six years of age or older has lead poisoning. The Director or board must conduct the investigation in accordance with rules adopted by the Public Health Council. The bill prohibits a person from interfering with an investigation and permits the Director to discipline the holder of a lead abatement personnel license who does so.

In conducting the investigation, the Director or board may request permission to enter the residential unit, child day-care facility, or school that the Director or board reasonably suspects to be the source of the lead poisoning. If the property is occupied, the Director or board must ask the occupant for permission. If not occupied, the Director or board must ask the property owner or manager. If permission is refused, the Director or board may petition a court of competent jurisdiction for an order to inspect the property. The bill maintains a provision that permits the Director and board to review records and reports of a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project

designer, or lead abatement worker and expands it to include the records and reports of a lead-safe renovator, or clearance technician.

Risk assessments to determine lead--poisoning source

(secs. 3742.36 and 3742.071)

When the Director of Health or an authorized board of health determines pursuant to an investigation that a residential unit, child day-care facility, or school is a possible source of a child's lead poisoning, the Director or board is required to conduct a risk assessment of that property in accordance with rules adopted by the Public Health Council. A lead risk assessor must certify in writing the precise results of a lead risk assessment and options for reducing identified lead hazards.

Lead hazard control orders

(secs. 3742.37, 3742.38, 3742.39, and 3742.40)

If the results of the risk assessment indicate that one or more lead hazards are contributing to a child's lead poisoning, the Director or board must immediately issue an order to have each lead hazard in the property controlled. The areas that may be subject to the lead hazard control order include:

- The interior and exterior surfaces and all common areas of the unit, facility, or school;
- Every attached or unattached structure located within the same lot line as the unit, facility, or school, including garages, play equipment, and fences;
- The lot or land that the unit, facility, or school occupies.

A lead hazard control order issued under this section must be in writing and in the form the Director prescribes. The Director or board is to specify in the order each lead hazard to be controlled and the date by which the unit, facility, or school must pass a clearance examination demonstrating that each lead hazard has been sufficiently controlled. The Director or board may include in the order a requirement that occupants of the unit, facility, or school whose health may be threatened vacate the unit, facility, or school until it passes the clearance examination.

The Director or board must have the order delivered to the owner and manager of the unit, facility, or school. If the order applies to a residence, the Director or board must have a copy of the order delivered to the occupants of each unit or require that the owner or manager of the building deliver a copy of the

order to the occupants of each unit. If the order applies to a child day-care facility or school, the Director or board must have a copy of the order delivered to the parent, guardian, or custodian of each child under six years of age who receives child day care or education at the facility or school or require the owner or manager of the facility or school to have a copy of the order so delivered.

Compliance with lead hazard control order. The owner and manager of a residential unit, child day-care facility, or school that is subject to a lead hazard control order is required to cooperate with the Director or board that issued the order in controlling each lead hazard specified in the order. The owner or manager must choose a method of controlling each lead hazard that enables the residential unit, child day-care facility, or school to pass a clearance examination. The method chosen may be the owner or manager's personal preference, a proposal made by a person under contract with the owner or manager, or a recommendation that the Director or board may provide. The owner or manager is to inform the Director or board of the method that the owner or manager chooses to control each lead hazard.

Duration of lead hazard control order. A residential unit, child day-care facility, or school remains subject to a lead hazard control order until it passes a clearance examination. After the unit, facility, or school passes the clearance examination, the Director or board that issued the order must provide the owner and manager of the unit, facility, or school with information on methods of maintaining control of each lead hazard specified in the order. In the case of a residential unit in which an individual who is not the owner or manager resides, the Director or board also must provide the information to the individual residing in the unit.

Failure or refusal to comply with lead hazard control order. If the owner and manager of a residential unit, child day-care facility, or school fails or refuses for any reason to comply with a lead hazard control order, the Director or board must issue an order prohibiting the owner and manager from using the unit, facility, or school as a residential unit, child day-care facility, or school until it passes a clearance examination. On receipt of the order, the owner or manager is required to take appropriate measures to notify each occupant, in the case of a residential unit, and the parent, guardian, or custodian of each child attending the facility or school, in the case of a child day-care facility or school, that the unit, facility, or school must be vacated until it passes a clearance examination.

The Director or board must post a sign at the unit, facility, or school that warns the public that the unit, facility, or school has a lead hazard. The sign must include a declaration that the unit, facility, or school is unsafe for human occupation, especially children under six years of age and pregnant women. The Director or board are to ensure that the sign remains posted at the unit, facility, or

school and that it is not used as a residential unit, child day-care facility, or school until it passes a clearance examination.

Lead Poisoning Prevention Fund

(sec. 3742.52)

The bill creates the Lead Poisoning Prevention Fund, which includes any money appropriated to the Department of Health for the administration and enforcement of the law and rules governing the control of lead hazards and all civil penalties awarded to the Department or a board of health. Grants, contributions, and other money collected by the Department for the purpose of preventing lead poisoning must be deposited in the state treasury to the credit of the Fund.

Money in the Fund may be used only for the purposes of the Child Lead Poisoning Prevention Program, including providing financial assistance to individuals who are unable to pay for (1) costs associated with obtaining lead tests and lead poisoning treatment for children under six years of age who are uninsured, underinsured, ineligible for Medicaid or another government health program, and do not have access to another source of funds to cover the tests and any indicated treatment and (2) costs associated with having essential maintenance practices, preventive treatments, or lead abatement performed.

Rulemaking authority for the Child Lead Poisoning Prevention Program and lead hazard control

(sec. 3742.49)

The bill requires the Public Health Council to adopt rules establishing all of the following:

- (1) Procedures necessary for the development and operation of the Child Lead Poisoning Prevention Program;
- (2) Standards and procedures for conducting investigations and risk assessments;
- (3) Standards and procedures for issuing lead hazard control orders, including standards and procedures for determining appropriate deadlines for complying with lead hazard control orders;
- (4) The level of lead in human blood that is hazardous to human health, consistent with the guidelines issued by the Centers for Disease Control and Prevention;



(5) The level of lead in paint, dust, and soil that is hazardous to human health;

(6) Standards and procedures to be followed when implementing essential maintenance practices or preventive treatments for the control of lead hazards based on information from the United States Environmental Protection Agency, Department of Housing and Urban Development, Occupational Safety and Health Administration, or other agencies with recommendations or guidelines regarding implementation of essential maintenance practices or preventive treatments;

(7) Standards that must be met to pass a clearance examination.

The bill requires that the Public Health Council establish procedures for revising its rules to ensure that child lead poisoning prevention activities conducted pursuant to the bill continue to meet the requirements necessary to obtain any federal funding available for those activities.

Employment of lead inspectors, lead risk assessors, or clearance technicians

(sec. 3742.14)

Under current law, any property owner or manager may employ a lead inspector or lead risk assessor to conduct an inspection or assessment of a structure and provide a copy of the report to the Director of Health. The Director is required to include the information in the record of the property. The bill permits an owner or manager to employ a lead inspector to conduct a lead inspection, a lead risk assessor to conduct a lead risk assessment, or a clearance technician, lead inspector, or lead risk assessor to conduct a clearance examination of the property and provide a copy of the report to the Director, who must include the information in the property record.

Ohio School Facilities Commission to consider lead safety

(sec. 3318.031)

Current law requires the Ohio School Facilities Commission to consider student and staff safety when reviewing design plans for classroom facility construction projects and is empowered to require changes in design plans it believes advance or improve student and staff safety in the proposed facility after consulting with appropriate education and law enforcement personnel. The bill requires that the Commission also consider the health of students and staff in reviewing design plans and permits it to require changes that improve student and staff health as a condition of approval after consulting with health officials. To carry out its duties, the bill requires the Commission to review and if necessary amend any construction and design standards used in its project approval process

including standards for lead safety in classroom facilities constructed before 1978 in which services are provided to children under six years of age.

Charter schools

(sec. 3314.03)

The bill requires that a contract between a sponsor and the governing authority of a charter school specify how the school will comply with the law governing lead poisoning prevention and lead hazard control.⁹

Historic preservation

(sec. 3742.48)

The Director of Health, in consultation with the State Historic Preservation Officer appointed by the Governor, must develop recommendations for controlling lead hazards that consider the historic nature of the property in which the hazards are located. The Director is required to provide periodic notification of the recommendations to anyone licensed under the lead hazard control law. All lead hazard control orders must inform the recipient of the recommendations, but no one may use the recommendations as justification for refusing to comply with a lead hazard control order.

Encapsulants

(secs. 3742.03 and 3742.04)

The bill changes the term "lead abatement systems or products" throughout the lead hazard control law to "encapsulants."

Replacing "structures" as places in which lead abatement activities are to occur

(secs. 3742.01, 3742.02, 3742.06, 3742.07, 3742.14, 3742.35, 3742.36, 3742.37, 3742.41, 3742.42, 3742.48, 3742.50, and 3742.51)

Under current law, lead abatement activities are to be conducted to eliminate lead hazards in structures. "Structures" are any house, apartment, or building, used as an individual's private residence or commonly used as a place of education or child day-care center for children under six years of age, including all of the following:

⁹ *Sponsors of charter schools include local boards of education and the State Board of Education.*

- (1) The interior and exterior surfaces and all common areas of the structure;
- (2) Every attached or unattached structure located within the same lot line, including garages, play equipment, and fences;
- (3) The lot or land occupied by the structure.

The bill eliminates references to structures and deals instead with activities to eliminate lead hazards in (1) "residential units," "child day-care facilities," and "schools," or (2) "property."¹⁰

Changes to definitions

(sec. 3742.01)

Lead abatement

Under current law, "lead abatement" means a set of measures, including the following, designed and intended to eliminate lead hazards: (1) removal, encapsulation, or enclosure of lead hazards, (2) replacement of lead-contaminated surfaces or fixtures, (3) removal or covering of lead-contaminated soil, and (4) preparation, cleanup, disposal, and post abatement activities associated with the abatement.

Under the bill "lead abatement" means a measure or set of measures designed for the single purpose of permanently eliminating lead hazards. It includes all of the following: (1) removal of lead-based paint and lead-contaminated dust, (2) permanent enclosure or encapsulation of lead-based paint, (3) replacement of surfaces or fixtures painted with lead-based paint, (4) removal or permanent covering of lead contaminated soil, and (5) preparation, cleanup, and disposal activities associated with lead abatement. Certain activities, discussed above, are not to be considered lead abatement (see "**Limiting lead abatement**").

Lead hazard

Under current law, "lead hazard" means material that may cause lead exposure and may endanger an individual's health as determined by the Public Health Council's rules and includes lead-based paint, lead-contaminated dust, lead-contaminated soil, and lead-contaminated water pipes. The bill changes the

¹⁰ The bill does not define "property." See footnote 2 for the definition of "residential unit." See footnote 3 for definitions of "school" and "private day-care facility."

definition by providing that lead hazard means material that "is likely to" cause lead exposure and endanger health.

Lead inspection

"Lead inspection" is defined in current law as a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the result. The inspection must use a sampling or testing technique approved by the Public Health Council. A licensed lead inspector or laboratory approved by the Director of Health must certify in writing the precise results of the inspection. The bill amends the definition to remove the requirement for "the provision of a report explaining the result" of the inspection.

Lead risk assessment

Under current law, a "lead risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in structures, including information gathering regarding the age and history of the structure and occupancy by children under age six, visual inspection, limited wipe sampling or other environmental sampling techniques, other activity as may be appropriate, and provision of a report explaining the results of the investigation. In addition to the changes described above regarding the replacement of the term "structure" with "residential unit," "child day-care facility," and "school" and the requirement of certification of precise results of a lead risk assessment, the bill changes the definition as follows: (1) makes the investigation focus on "lead hazards" instead of "lead-based paint hazards," and (2) makes the information gathering focus on the "age and painting history" instead of the "age and history" of the residential unit, child day-care facility, or school.

Lead risk assessor

"Lead risk assessor" is defined in current law as a person who is responsible for developing a written inspection, risk assessment and analysis plan; conducting inspections for lead-based paint in a structure; taking post abatement soil and dust clearance samples and evaluating the results, interpreting results of inspections and risk assessments; identifying hazard control strategies to reduce or eliminate lead exposures; and completing a risk assessment report. In addition to the changes described above regarding the replacement of the term "structure" with "residential unit," "child day-care facility," and "school," the bill amends the definition to change conducting inspections for lead-based paint hazards to inspections for "lead hazards." The bill also eliminates the provision for "taking post abatement soil and dust clearance samples and evaluating the results."

Replacement

Under current law, "replacement" means a lead abatement activity that entails removing components such as windows, doors, and trim that have lead-based paint on their surfaces and installing new or de-lead components free of lead-based paint. The bill changes the definition by replacing "lead-based paint" with "lead hazards" and eliminating the language "new or de-lead."

Encapsulation

"Encapsulation" is defined in current law as a method of abatement that involves the coating and sealing of surfaces with durable surface coating specifically formulated to be elastic, able to withstand sharp and blunt impacts, long-lasting, and resilient, while also resistant to cracking, peeling, algae, fungus, and ultraviolet light, so as to prevent any part of lead-containing paint from becoming part of house dust or otherwise accessible to children. The bill would make this definition applicable to lead-safe renovations, as well as to lead abatement.

COMMENT

1. The bill requires the Director of Health to examine records and reports submitted by lead-safe renovators. The bill, however, does not require lead-safe renovators to provide the Director any reports or records.

2. The bill specifies that its immunity provisions govern all claims for lead-related injuries arising from lead-safe renovation. But, the bill provides no immunity to persons performing lead-safe renovations.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-10-01	pp. 414-415
Reported, H. Health & Family Services	02-27-02	pp. 1473-1474

H0248-RH.124/jc

