



Ohio Legislative Service Commission

Bill Analysis

Laura Gengo

H.B. 501

128th General Assembly
(As Introduced)

Reps. Harris, Weddington, Murray, Foley, Domenick, Newcomb, Hagan, Skindell

BILL SUMMARY

- Establishes licensing requirements through the Department of Health for lead-safe renovation contractors and lead-safe renovators.
- Specifies that the existing licensing requirements for lead abatement contractors are applicable to businesses, extends the contractor licensing requirements to government entities, and creates a licensing category for individuals who perform services as lead abatement supervisors.
- Modifies the laws regarding lead risk assessors, lead inspectors, clearance technicians, lead-related training programs, and environmental lead analytical laboratories and clinical laboratories.
- Requires that certain portions of preventive treatments be completed by a licensed lead professional when an owner or manager seeks to obtain a legal presumption that the owner or manager's property is not the source of an individual's lead poisoning.
- Permits funds to be transferred from the Lead Abatement Personnel Licensing Fund to the Lead Poisoning Prevention Fund.
- Requires the Director of Health to fulfill certain duties with respect to the bill's provisions.
- Requires the Public Health Council to adopt rules necessary for the bill's implementation.

TABLE OF CONTENTS

OVERVIEW	3
LICENSURE AND REGULATION OF LEAD PROFESSIONALS	4
Lead-safe renovation--current law	4
Lead-safe renovation training programs	4
Federal EPA regulations applicable to renovation	5
Lead-safe renovation--the bill	5
What is renovation?	5
Lead-safe renovation contractors.....	6
Lead-safe renovators	9
Lead abatement--current law	10
Lead abatement--the bill	11
Lead abatement contractors	11
Lead abatement supervisors.....	13
Other lead professionals	14
Lead risk assessors	14
Lead inspectors.....	15
Clearance technicians.....	15
Training programs	16
Environmental lead analytical and clinical laboratories.....	16
Additional provisions applicable to lead professionals.....	17
LEGAL PRESUMPTION ACHIEVED BY COMPLETION OF PREVENTIVE REATMENTS	17
Preventive treatments	17
Current law.....	17
The bill	18
Essential maintenance practices	18
Current law.....	18
The bill	19
Unsafe work practices.....	20
Current law.....	20
The bill	21
LEAD ABATEMENT PERSONNEL LICENSING FUND	22
Current law.....	22
The bill	22
DIRECTOR OF HEALTH	22
Director's duties under the bill.....	22
PUBLIC HEALTH COUNCIL	23
Rules.....	23
CONFORMING CHANGES	24



CONTENT AND OPERATION

OVERVIEW

Current law establishes various mechanisms for lead poisoning¹ prevention and controlling lead hazards (see **COMMENT**).² One of these mechanisms provides for the licensure and regulation of all of the following by the Department of Health:

- Lead abatement contractors, project designers, and workers;
- Lead risk assessors;
- Lead inspectors;
- Clearance technicians;
- Lead-related training programs;
- Environmental lead analytical laboratories and clinical laboratories used by lead abatement professionals.

The bill expands the types of professionals currently regulated by the Department by requiring individuals or entities performing renovation to obtain a license as a lead-safe renovation contractor or lead-safe renovator. The bill also modifies existing law with respect to lead abatement contractors and professionals, particularly by specifying that the contractor licensing requirements are applicable to businesses extending the contractor licensing requirements to government entities and creating a licensing category applicable to individuals who provide services as lead abatement supervisors.

Certain terms are used frequently throughout the bill and are defined as follows:

- **Business entity:** a partnership, firm, association, corporation, limited liability company, sole proprietorship, or other business concern (R.C. 3742.01(B));

¹ Under current law, "lead poisoning" means the level of lead in human blood that is hazardous to human health, as specified in rules adopted by the Public Health Council (R.C. 3742.01). The rules specify this level as ten micrograms per deciliter or greater (Ohio Administrative Code 3701-30-01(N)).

² Under current law, "lead hazard" means material that is likely to cause lead exposure and endanger an individual's health as determined by the Public Health Council in rules. "Lead hazard" includes lead-based paint, lead-contaminated dust, lead-contaminated soil, and lead-contaminated water pipes. (R.C. 3742.01.)

- **Government entity:** the state or any of its political subdivisions or any agency or instrumentality of either (R.C. 3742.01(J));
- **Residential unit:** a dwelling or any part of a building being used as an individual's private residence (R.C. 3742.01(II));
- **Child care facility:** each area of either of the following in which child care³ is provided to children under six years of age: (1) a child day-care center, type A family day-care home, or type B family day-care home, or (2) a preschool program or school child program (R.C. 3742.01(C));
- **School:** a public or nonpublic school in which children under six years of age receive education (R.C. 3742.01(JJ)).

LICENSURE AND REGULATION OF LEAD PROFESSIONALS

Lead-safe renovation--current law

(R.C. 3742.01(Y) and (Z), 3742.47, 3742.48, and 3742.50(A)(8) and (9))

Under current law, an individual is not required to obtain a license solely to supervise or perform general improvement of all or part of an existing structure. However, if a person desires to do so and represent to the public that the person is a lead-safe renovator, the person must successfully complete a Department-approved lead-safe renovation training program. Current law does not further define the activities considered to be renovation.

Lead-safe renovation training programs

Current law requires a person seeking approval of a lead-safe renovation training program to apply for approval to the Director of Health and pay a nonrefundable application fee. The Director must approve the training program if the applicant demonstrates to the Director's satisfaction that the training program meets certain requirements. For example, the program cannot exceed six hours and must include an examination.

³ Under current law, "child care" means administering to the needs of infants, toddlers, preschool children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24-hour day in a place or residence other than a child's own home (R.C. 5104.01(K)).

Federal EPA regulations applicable to renovation

(40 C.F.R. Part 745.)

On April 22, 2008, the United States Environmental Protection Agency (EPA) issued regulations establishing a Renovation, Repair, and Painting (RRP) Program. These regulations are commonly referred to as the RRP rule. As of April 22, 2010, firms and contractors performing renovation, repair, and painting projects for compensation that disturb lead-based paint in homes, child care facilities, and schools built before 1978 are required by the RRP rule to be certified and follow specific work practices to prevent lead contamination. Under the RRP rule, firms must also employ certified contractors. The RRP rule does not apply to a homeowner performing renovation, repair, or painting work in his or her home.

The EPA has the authority to authorize the states to administer their own RRP programs that would operate in lieu of the EPA regulations. Ohio is not currently authorized to administer its own program.⁴

Lead-safe renovation--the bill

The bill repeals current law governing the approval of lead-safe renovation training programs and the law specifies that renovation does not require a license. Instead, the bill requires a business or government entity to obtain a lead-safe renovation contractor license, or an individual to obtain a lead-safe renovator license, from the Director of Health in order to perform renovation for compensation.

Unlike the federal RRP rule, the bill does not restrict the locations in which an individual or entity must hold a license to perform renovation. Thus, regardless of the locations specified under the RRP rule (homes, child care facilities, and schools built before 1978), all individuals or entities performing, or seeking to perform, renovation for compensation in Ohio must hold a license under the bill.

What is renovation?

(R.C. 3742.01(GG))

The bill defines "renovation" as the modification, for compensation, of any existing structure or portion thereof resulting in the disturbance of painted surfaces. The term includes all of the following:

⁴ The following states have EPA-authorized RRP programs: Wisconsin, Iowa, North Carolina, Mississippi, Kansas, Rhode Island, Utah, and Oregon (EPA, *Renovation, Repair, and Painting (RRP)*, available at <<http://www.epa.gov/lead/pubs/renovation.htm>>).

--Removal, modification, or repair of painted surfaces or painted components such as doors and windows;

--Surface preparation activities such as sanding, scraping, or related activities that may generate paint dust;

--Surface restoration;

--Removal of building components such as walls, ceilings, plumbing, and windows;

--Weatherization projects such as cutting holes in painted surfaces to blow in insulation or to gain access to attics or planing thresholds to install weather stripping;

--Interim controls that disturb painted surfaces;⁵

--Converting a building, or part of a building, into a child-occupied facility.

The bill specifies that "renovation" does not include (1) activities performed as part of a lead abatement project, or (2) minor repair and maintenance activities.⁶ Also, since the definition specifies that renovation must be "for compensation," the bill's licensure requirements do not apply to any individual, business entity, or government entity performing renovation without being compensated.

Lead-safe renovation contractors

(R.C. 3742.01(CC), 3742.02(A)(7), 3742.03(A)(3), (D)(2), and (E)(1)(c), 3742.05(A) and (B), 3742.071, 3742.15, 3742.16, 3742.17, 3742.18, and 3742.99)

The bill requires a business entity or government entity to obtain a lead-safe renovation contractor license from the Director of Health in order to engage in renovation. The bill specifies that licensure as a lead-safe renovation contractor does not apply to an employee of a lead-safe renovation contractor. Generally, the bill requires the entity to obtain the license from the Director in the same manner as other

⁵ Under current law, "interim controls" means a set of measures designed to reduce temporarily human exposure or likely human exposure to lead hazards. Interim controls include specialized cleaning, repairs, painting, temporary containment, ongoing lead hazard maintenance activities, and the establishment and operation of management and resident education programs (R.C. 3742.01(M)). The bill specifically prohibits an individual, business entity, or government entity from performing interim controls without complying with standards established by the United States Department of Housing and Urban Development, regardless of where the controls are performed (R.C. 3742.02(A)(10)).

⁶ The bill does not define "minor repair and maintenance activities."

currently licensed professionals and makes the entity otherwise subject to the existing law under which other similar professionals are currently regulated by the Department.

Application for licensure

An applicant seeking licensure as a lead-safe renovation contractor must submit an application to the Director, meet certain licensure and training requirements established by the Public Health Council in rule, pay a licensure fee established by the Council,⁷ provide the applicant's social security number,⁸ and provide any information the Director requires to demonstrate the applicant's compliance with the law governing lead professionals. The bill exempts a lead-safe renovation contractor (that is, a business or government entity) from the requirement under current law to complete a licensing examination.

Licensure

If a business or government entity meets all of the licensure requirements, the Director must issue a lead-safe renovation contractor license to the business or government entity. The license is valid for two years. When undertaking renovation activities, a licensed lead-safe renovation contractor must follow renovation procedures established by the Public Health Council in rules.

License renewal

The license may be renewed if the licensee continues to meet all of the initial licensure requirements, pays a license renewal fee, demonstrates compliance with Public Health Council rules regarding procedures to prevent public exposure to lead hazards and for worker protection during renovation projects, and meets record-keeping and reporting requirements.

Complaints

The bill permits any individual to file a complaint with the Director concerning a lead-safe renovation contractor in the same manner as complaints are to be filed under current law. A complaint filed with the Director is confidential and is not to be released without the complainant's written consent. The bill extends the Director's existing

⁷ The bill exempts an elementary or secondary public or private school from paying the lead-safe renovation contractor licensure fee.

⁸ The bill does not exempt a business or government entity applying for licensure as a lead-safe contractor from the requirement to provide a social security number. An amendment may be necessary to clarify this provision.

authority to investigate complaints, and take appropriate action regarding the complaint, to the investigation of complaints against a lead-safe renovation contractor.

Disciplinary action

In the same manner that the Director is permitted under current law to refuse to issue or renew, suspend, or revoke a license, the bill permits the Director to take any of those actions against a lead-renovation contractor. The Director may take any of those actions for the following reasons:

- (1) A violation of any provision of the law governing lead professionals;
- (2) Failure to pay the licensure or renewal fees;
- (3) Material misrepresentation in a license application;
- (4) Interference with an investigation being conducted to determine the source of a child's lead poisoning;
- (5) Failure to meet the licensing requirements established in Public Health Council rules;
- (6) Employment or use of an unlicensed lead-safe renovation contractor or lead-safe renovator (see "**Lead-safe renovators**" below).

Cease work order

The bill also extends the existing authority of the Director to issue an immediate cease work order for violating the law governing lead professionals to a business or government entity violating the law governing lead-safe renovation. More specifically, the order may be issued if the Director determines that the violation is in a manner that endangers or materially impairs the health or well-being of either of the following: (1) an occupant of a residential unit, child care facility, or school, or (2) an individual employed to perform lead renovation activities.

Civil and criminal penalties for unauthorized renovation activities

The bill prohibits any business or government entity from holding itself out as a lead-safe renovation contractor without a valid license issued by the Director. In a manner similar to the existing laws regulating lead abatement, the bill establishes civil and criminal penalties for violating this prohibition.

With respect to civil penalties, the bill permits the Ohio Attorney General to commence a civil action, at the request of the Director. If the court determines a violation has occurred, or is about to occur, the court must assess a civil penalty of not

more than \$1,000. Each day a violation continues is a separate violation. All civil penalties collected by the court must be deposited into the state treasury to the credit of the Lead Abatement Personnel Licensing Fund (see "**LEAD ABATEMENT PERSONNEL LICENSING FUND**" below).

With respect to the imposition of criminal penalties, the bill specifies that a criminal action may be commenced by a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, at the request of the Director or a board of health,⁹ against an individual or business entity. The action may be commenced for violating the prohibition on unauthorized lead-safe renovation or any directly related rule or order. Upon conviction, the individual or business entity is subject to either of the following:

(1) For a first offense, a fine of not more than \$1,000 or imprisonment for not more than six months, or both;

(2) For a second or subsequent offense, 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, with each day of violation constituting a separate offense.

Immunity from civil liability

In the same manner as other currently licensed professionals, the bill establishes an immunity from civil liability for injury that results from acts or omissions of a licensed lead-safe renovation contractor, unless the acts or omissions are negligent. Similarly, immunity from civil liability extends to persons who contract with a licensed lead-safe renovation contractor, unless the person knew or could reasonably have been expected to know that an act or omission was not in accordance with generally accepted practices or with procedures established by law at the time the activity took place. The bill specifies that the immunity provisions govern all claims for lead-related injuries arising from renovation. It also specifies that the provisions govern all claims for lead-related injuries arising from the activities for which a license is required.

Lead-safe renovators

(R.C. 3742.01(DD), 3742.02(A)(8), 3742.03(A)(3), (D)(2), and (E)(1)(c), 3742.05(A) and (B), 3742.071, 3742.15, 3742.16, 3742.17, 3742.18, and 3742.99)

The bill requires an individual to obtain a lead-safe renovator license from the Director of Health in order to engage in the following activities: (1) being responsible

⁹ Under current law, "board of health" means the board of health of a city or general health district or the authority having the duties of a board of health (R.C. 3742.01(A)).

for the on-site supervision or performance¹⁰ of a renovation project, and (2) preparing specifications, plans, or documents for a renovation project. Generally, the bill requires an individual to obtain a license from the Director in the same manner as other currently licensed professionals, prohibits an individual from acting as a lead-safe renovator without a valid license, and makes the individual otherwise subject to the existing law under which other similar professionals are currently regulated by the Department of Health.¹¹

Lead abatement--current law

(R.C. 3742.01(K))

Current law defines "lead abatement" as a measure or set of measures designed for the single purpose of permanently¹² eliminating lead hazards and includes all of the following:

- Removal of lead-based paint and lead-contaminated dust;¹³
- Permanent enclosure¹⁴ or encapsulation¹⁵ of lead-based paint;

¹⁰ The intent of this provision is unclear. Unlike the specification that licensure as a lead-safe renovation *contractor* does not apply to an employee of a contractor, this provision does not specify whether only supervisors, or both supervisors and general employees, are to obtain a lead-safe renovator license. An amendment may be necessary to clarify this provision.

¹¹ See "**Lead-safe renovation contractors**" above for details regarding regulation such as application, licensure, license renewal, complaints against a licensee, disciplinary action, and immunity from civil liability.

¹² "Permanent" means an expected design life of at least 20 years (R.C. 3742.01(FF)).

¹³ "Lead-contaminated dust" means dust that contains an area or mass concentration of lead at or in excess of the level that is hazardous to human health as established in Public Health Council rules (R.C. 3742.01(U)).

¹⁴ "Enclosure" means the resurfacing or covering of surfaces with durable materials such as wallboard or paneling, and the sealing or caulking of edges and joints, so as to prevent or control chalking, flaking, peeling, scaling, or loose lead-containing substances from becoming part of house dust or otherwise accessible to children (R.C. 3742.01(H)).

¹⁵ "Encapsulation" means 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 (R.C. 3742.01(G)).

--Replacement of surfaces or fixtures painted with lead-based paint;¹⁶

--Removal or permanent covering of lead-contaminated soil;¹⁷

--Preparation, cleanup, and disposal activities associated with lead abatement.

Current law specifies that lead abatement *does not* include any of the following:

--Preventive treatments performed in order to obtain a presumption that a property is not the source of an individual's lead poisoning;

--Implementation of interim controls;

--Activities performed by a property owner on a residential unit that is a freestanding 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.

Lead abatement--the bill

Lead abatement contractors

(R.C. 3742.01(O), 3742.02(B)(1), 3742.03(A)(1), (D)(1), and (E)(1)(a), 3742.05(A) and (B), 3742.06, 3742.07(A) and (C), 3742.071, 3742.15, 3742.16, 3742.17, 3742.18, and 3742.99)

Current law establishes licensure and regulatory processes for lead abatement contractors. A lead abatement contractor license authorizes the holder to engage in lead abatement and employ or supervise one or more lead abatement workers, including on-site supervision of lead abatement projects, or preparation of specifications, plans, or documents for a lead abatement project.

The bill modifies who is required to obtain a lead abatement contractor license by requiring a business or government entity, to obtain the license if it is seeking to engage in lead abatement and employ or supervise one or more lead abatement supervisors. The bill specifies that a lead abatement contractor does not include (1) an employee of a lead abatement contractor, or (2) a general contractor that subcontracts a lead abatement activity to a lead abatement contractor.

¹⁶ "Replacement" means an activity that entails removing components such as windows, doors, and trim that have lead hazards on their surfaces and installing components free of lead hazards (R.C. 3742.01(HH)).

¹⁷ "Lead-contaminated soil" means soil that contains lead at or in excess of the level that is hazardous to human health as established in Public Health Council rules (R.C. 3742.01(V)).

While the bill generally retains current law with respect to the regulation of lead abatement contractors, it makes the following changes specific to a business or government entity obtaining the lead abatement contractor license:

--Exempts a lead abatement contractor from the requirement under current law to complete a licensing examination;

--Prohibits a lead abatement contractor from performing lead abatement without the on-site supervision of a licensed lead abatement supervisor.

Required pre-abatement activities

Current law requires a lead abatement contractor primarily responsible for a lead abatement project on a residential unit, child care facility, or school to prepare a written respiratory protection plan that meets requirements established by the Public Health Council in rule and make the plan available to the Department of Health and all lead abatement workers at the project site. The lead abatement contractor must prepare the plan and make it available to the Department prior to engaging in any lead abatement on the residential unit, child care facility, or school.

Instead of requiring a contractor to complete only a respiratory protection plan, the bill requires a lead abatement contractor to complete a more comprehensive pre-abatement plan that meets requirements established by the Public Health Council in rule and includes all of the following:

(1) Protection measures and management procedures that will be taken to protect lead abatement personnel and other individuals at the project site from exposure to lead hazards;

(2) The respiratory protection plan required under current law (the bill specifies that the respiratory plan must be developed in accordance with standards established by the federal Occupational Safety and Health Administration (OSHA));

(3) A hazard communication plan developed in accordance OSHA standards.

The bill requires the lead abatement contractor to make portions of the pre-abatement plan available as follows:

--**To the Department:** the portion of the plan regarding protection measures and management procedures that will be taken to protect individuals at the project site who are not lead abatement personnel;

--**To all lead abatement supervisors and workers at the project site:** the portion of the plan regarding the protection measures and management procedures that will be taken to protect lead abatement personnel available.

Current law also requires the lead abatement contractor to do all of the following prior to engaging in any lead abatement on the residential unit, child care facility, or school:

(1) Ensure that each lead abatement worker who is, or will be, involved in a lead abatement project has been examined by a licensed physician within the preceding calendar year and has been declared by the physician to be physically capable of working while wearing a respirator;

(2) Ensure that each employee or agent who will come in contact with lead hazards or will be responsible for a lead abatement project receives a license and appropriate training before engaging in a lead abatement project;

(3) At least ten days prior to the commencement of the project, notify the Department in writing of the date the project will commence.

The bill repeals the requirement regarding physician examinations described in (1), above, but generally retains the licensure and notification requirements described in (2) and (3). With respect to the licensure and training requirement in (2), the bill specifies that the requirement applies to those employees or agents coming into contact with lead hazards *at the project site*. Also, the bill repeals the portion of the requirement in (3) that the notification be provided to the Department ten days prior to the commencement of the project.

Lead abatement supervisors

(R.C. 3742.01(R), 3742.02(B)(3) and (4), 3742.03(A)(1), (D)(1), and (E)(1)(a), 3742.05(A) and (B), 3742.071, 3742.15, 3742.16, 3742.17, 3742.18, and 3742.99)

To correspond with the bill's provisions specifying that a license as a lead abatement contractor is to be held by a business or government entity, the bill creates a lead abatement supervisor license that is similar to the current lead abatement contractor license that may be held by an individual. The bill requires an individual to obtain the license from the Director of Health in order to engage in the following activities: (1) being responsible for the on-site supervision or performance of lead abatement projects, and (2) preparing pre-abatement plans, occupant protection plans, compliance plans, and abatement reports. Generally, the bill requires an individual to obtain the license from the Director in the same manner as other currently licensed professionals, prohibits an individual from acting as a lead abatement supervisor or

performing lead abatement with respect to abatement being performed on a residential unit, child care facility, or school without a valid license, and makes the individual otherwise subject to the existing law under which other similar professionals are currently regulated by the Department.

Other lead professionals¹⁸

Lead risk assessors

(R.C. 3742.01(BB), 3742.02(A)(4) and (6), and 3742.071(A) and (B))

Under current law, a lead risk assessor is an individual who is responsible for (1) developing a written inspection, risk assessment, and analysis plan, (2) conducting inspections for lead hazards in a residential unit, child care facility, or school, (3) interpreting results of inspections and risk assessments, (4) identifying hazard control strategies to reduce or eliminate lead exposures, and (5) completing a risk assessment report.¹⁹ A lead risk assessor is also authorized under current law to conduct a clearance examination in connection with a lead abatement project (see "**Clearance technicians**" below).

Current law prohibits an individual without a valid lead risk assessor license from performing a lead risk assessment, or providing professional advice regarding lead abatement, when a residential unit, child care facility, or school is involved. The bill removes the limitation on the locations at which the assessment or advice is provided. The practical effect is that the risk assessor licensing requirements apply regardless of where the services are provided, rather than only when provided at residential units, child care facilities, or schools.

¹⁸ The bill does not change current law with respect to the licensure and regulation of lead abatement project designers and lead abatement workers. A lead abatement project designer is an individual authorized to design lead abatement projects and prepare a pre-abatement plan for all designed projects (R.C. 3742.01(Q)). A lead abatement worker is an individual who is responsible in a nonsupervisory capacity for the performance of lead abatement (R.C. 3742.01(O)).

¹⁹ Under current law, "risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead hazards in a residential unit, child care facility, or school, including (1) information gathering from the unit, facility, or school's current owner's knowledge regarding the age and painting history of the unit, facility, or school and occupancy by children under six years of age, (2) visual inspection, (3) limited wipe sampling or other environmental sampling techniques, and (4) any other activity as may be appropriate (R.C. 3742.01(AA)). To correspond with the bill's provisions regarding unauthorized risk assessments, the bill repeals the reference to "residential unit, child care facility, or school" in this definition.

Lead inspectors

(R.C. 3742.01(X) and (Y), 3742.02(A)(3) and (6), and 3742.071(B))

Under current law, a lead inspector is an individual who conducts a lead inspection, which is defined as a surface-by-surface investigation to determine the presence of lead-based paint.²⁰ A lead inspector also (1) provides professional advice regarding the lead inspection or prepares a report explaining the results of the inspection, and (2) is authorized to conduct a clearance examination in connection with a lead abatement project (see "**Clearance technicians**" below).

Current law prohibits an individual from performing a lead inspection on a residential unit, child care facility, or school without a valid lead inspector license. The bill removes the limitation on the location at which the lead inspection is performed. The practical effect is that the lead inspector licensing requirement applies wherever a lead inspection is conducted.

Clearance technicians

(R.C. 3742.01(D) and (E), 3742.02(A)(6), and 3742.071(B))

Under current law, a clearance technician means a person, other than a licensed lead inspector or licensed lead risk assessor, who performs a clearance examination when the examination is in connection with activities other than a lead abatement project.²¹

Except for a licensed lead risk assessor or lead inspector, current law prohibits an individual from performing a clearance examination on a residential unit, child care facility, or school without a valid clearance technician license. The bill removes the limitation on the location at which the clearance examination is performed. Thus, a

²⁰ Under current law, "lead-based paint" means any paint or other similar surface-coating substance containing lead at or in excess of the level that is hazardous to human health as established in Public Health Council rules (R.C. 3742.01(T)).

During an inspection, the lead inspector is required by current law to use a sampling or testing technique approved by the Public Health Council in rules. A licensed lead inspector or approved laboratory must certify in writing the precise results of the inspection. (R.C. 3742.01(T).)

²¹ Under current law, "clearance examination" means an examination to determine whether the lead hazards in a residential unit, child care facility, or school have been sufficiently controlled and includes a visual assessment, collection, and analysis of environmental samples (R.C. 3742.01(D)). To comply with the bill's provisions regarding unauthorized clearance examinations, the bill repeals the reference to "residential unit, child care facility, or school" in this definition.

clearance technician license is required regardless of where the clearance examination is performed.

Training programs

(R.C. 3742.02(A)(9) and 3742.08)

Currently, the Director of Health is required to conduct, specify requirements by rule, or approve training programs for the licensure of lead professionals. Current law also prohibits an individual from performing lead training for the licensing of a lead professional associated with a residential unit, child care facility, or school without being approved by the Director.

The bill removes the limitation on the location. It also specifies that no individual, business entity, or government entity is to perform such training without valid evidence of the Director's approval.

Environmental lead analytical and clinical laboratories

(R.C. 3742.02(C) and 3742.09)

Under current law, a person desiring approval from the Director of Health for an environmental lead analytical laboratory²² or a clinical laboratory²³ to perform lead testing must submit an application for approval to the Director. The bill instead specifies that an "individual, business entity, or government entity seeking" such approval may apply to the Director.

Prohibition relating to environmental lead analytical laboratories

Current law prohibits licensed lead professionals from using the services of an environmental lead analytical laboratory that is not approved by the Director. The bill applies this prohibition to the additional professionals and entities subject to licensure under the bill (i.e., lead-safe renovation contractors, lead-safe renovators, and lead abatement supervisors).

²² An "environmental lead analytical laboratory" is a facility that analyzes air, dust, soil, water, paint, film, or other substances, other than substances derived from the human body, for the presence and concentration of lead (R.C. 3742.01(I)).

²³ A "clinical laboratory" is a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of substances derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, or in the assessment or impairment of the health of human beings. "Clinical laboratory" does not include a facility that only collects or prepares specimens, or serves as a mailing service, and does not perform testing. (R.C. 3742.01(F).)

Additional provisions applicable to lead professionals

In addition to the above-described provision regarding licensure and regulation of lead professionals, the bill does all of the following:

--Permits a business or government entity to apply for, and obtain, more than one lead-related license (R.C. 3742.05(A)(2));

--Permits a business or government entity that is certified, licensed, or otherwise approved under federal law or the law of another state to perform functions substantially similar to those of a lead professional or entity regulated under Ohio law (including the bill) to apply for, and be granted, a valid Ohio license (R.C. 3742.05(C));

--Permits an individual, business entity, or government entity licensed pursuant to the bill's provisions to propose to the owner or manager of a residential unit, child care facility, or school, methods of controlling lead hazards that enables the property to pass a clearance examination (R.C. 3742.38);

--Repeals a provision that requires Public Health Council rules regarding training requirements for lead professionals to include a minimum number of classroom hours of training (R.C. 3742.03(B)(1)).

LEGAL PRESUMPTION ACHIEVED BY COMPLETION OF PREVENTIVE TREATMENTS

Preventive treatments

(R.C. 3742.41)

Current law

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

(1) Follows the essential maintenance practices specified below for the control of lead hazards;

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

Current law provides that the owner or manager of a residential unit, child care facility, or school has successfully completed these preventive treatments if the unit, facility, or school passes a clearance examination. The legal presumption established under current law that is based on the successful completion of preventive treatments is rebuttable only on a showing of clear and convincing evidence to the contrary.

The bill

The bill expands the types of residential units, child care facilities, or schools that may obtain the legal presumption to include those that were built on or after January 1, 1950, but before January 1, 1978.

Essential maintenance practices

(R.C. 3742.42 and 3742.43)

Current law

In completing the essential maintenance practices portion of the preventive treatments that must be completed for a property to be legally presumed under current law not to be the source of an individual's lead poisoning, the owner or manager of a residential unit, child care facility, or school must do all of the following:

- (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 care facility or school, to report concerns about potential lead hazards by providing written notices to the tenants or parents, guardians, and custodians or 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 a record of essential maintenance practices for at least three years that documents all essential maintenance practices;

(8) Successfully complete a training program in essential maintenance practices approved by the Director of Health.

The areas of a residential unit, child care facility, or school subject to these requirements include (1) the interior 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.

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

- Allow only persons performing the essential maintenance practices access to the area;
- Cover the area with six mil polyethylene plastic or its equivalent;
- Protect workers in a manner consistent with the federal worker protection standards that must be met under the act by a lead abatement contractor;
- 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.

The bill

The bill requires that the owner or manager ensure that the following portions of the essential maintenance practices be performed by a licensed individual, business entity, or government entity (rather than permitting the owner or manager to personally perform these portions):

--Repairing deteriorated paint or other building components that may cause exposure to lead and eliminating the cause of the deterioration;

--Performing specialized cleaning to control lead-contaminated dust;

--Covering any bare soil on the property, except soil proven not to be lead-contaminated;

--All other activities necessary for carrying out the purposes of the essential maintenance practices portion of preventive treatments that are otherwise required by law to be conducted by a licensed individual, business entity, or government entity.

The bill continues to require the owner or manager to personally perform visual examinations, ask that potential lead hazards be reported by tenants, parents, guardians, or custodians, and maintain records of essential maintenance practices for at least three years. The bill repeals the provisions regarding the use of safe work practices and completing an essential maintenance practice training program, as these no longer apply to an owner or manager as a result of the changes made by the bill.

Essential maintenance practices training program

The bill repeals the law that establishes the essential maintenance practices training program, as the relevant portions of the practices are to be conducted by a licensed individual, business entity, or government entity (see "**Lead-safe renovation training program**" above).

Unsafe work practices

(R.C. 3742.01(K) and (L) and 3742.44)

Current law

Current law 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 the essential maintenance practices portion of the preventive treatments that must be completed for a property to be legally presumed under the act not to be the source of an individual's lead poisoning. Unsafe work practices include the following:

- Open flame burning or torching;
- Machine sanding or grinding without a HEPA local vacuum exhaust tool;²⁴
- Abrasive blasting or sandblasting without a HEPA local vacuum exhaust tool;
- Use of a heat gun operating above 1,100 degrees Fahrenheit;

²⁴ Under current law, "HEPA" is specified as the designation given to a product, device, or system that has been equipped with a high-efficiency particulate air filter (R.C. 3742.01(K)).

- Charring paint;
- Dry sanding;
- Dry scraping, except when done in conjunction with a heat gun operating at not more than 1,100 degrees Fahrenheit, within one foot of an electrical outlet, and to treat defective paint spots totaling not more than two square feet in an interior room or space or 20 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.

Current law also specifies particular activities that may be performed when a person implements essential maintenance practices, but only if the person is licensed as a lead abatement professional or has been trained under current law in the performance of essential maintenance practices. These activities are:

- (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.

The bill

Since the bill requires that a licensed individual, business entity, or government entity perform certain portions of the essential maintenance practices, the bill applies the prohibition against engaging in unsafe work practices to the licensed individuals, rather than to any person engaging in those activities.

With respect to the unsafe work practices involving machine sanding or grinding, or abrasive blasting or sandblasting, without a "HEPA local vacuum exhaust tool," the bill clarifies that these activities must not be done without a "HEPA vacuum exhaust tool." The bill defines HEPA vacuum as a vacuum cleaner that is designed with a HEPA filter as the last filtration stage and designed so that all air drawn into the vacuum cleaner is expelled through the HEPA filter with no air leaking past the filter. A HEPA filter is a high-efficiency particulate air filter capable of capturing particles of 0.3 microns at 99.97% or greater efficiency.

LEAD ABATEMENT PERSONNEL LICENSING FUND

Current law

(R.C. 3742.19(A))

Current law requires that any money in the Lead Abatement Personnel Licensing Fund be used solely for the administration and enforcement of the law governing the regulation of lead professionals and any rules adopted pursuant to that law.²⁵

The bill

(R.C. 3742.19(B))

If the Director determines that the amount in the Lead Abatement Personnel Licensing Fund exceeds the amount necessary to cover the anticipated expenses of administration and enforcement of the law governing the regulation of lead professionals for a six-month period in the fiscal year in which the determination is made, the bill permits the Director of Health to request that the Director of Budget and Management transfer all or part of the excess amount to the existing Lead Poisoning Prevention Fund. If the Director of Budget and Management agrees with the determination made by the Director, the bill requires the Director of Budget and Management to transfer all or part of the excess amount.²⁶

DIRECTOR OF HEALTH

Director's duties under the bill

(R.C. 3742.04, 3742.10, 3742.35, and 3742.49)

Current law requires the Director to administer and enforce the law governing lead professionals and any rules adopted pursuant to the law. The bill generally expands the authority of the Director to also administer and enforce the additional provisions of law, and any rules adopted pursuant to the law, relating to the Child Lead

²⁵ Except for any licensing examination fee collected and retained by an entity subject to certain contracts, all of the following must be deposited in the state treasury to the credit of the fund: (1) all fees collected with respect to the licensure of lead professionals, (2) any grant, contribution, or other moneys received for the purposes of such licensure, and (3) fines collected for violating certain provisions of law governing lead abatement professionals (R.C. 3742.19(A)).

²⁶ In addition to the moneys that must be included in the Lead Poisoning Prevention Fund, the bill specifies that the fund is to also include any money transferred from the Lead Abatement Personnel Licensing Fund (R.C. 3742.51).

Poisoning Prevention Program and lead hazard control (i.e., the entirety of Chapter 3742. of the Revised Code).

The bill specifically requires the Director to do the following:

- (1) Maintain a list of the professionals to be licensed pursuant to the bill's provisions, in addition to the lists the Director is currently required to maintain;
- (2) Periodically notify all individuals, business entities, or government entities licensed pursuant to the bill's provisions of recommendations for controlling lead hazards while considering the historical nature of a property.

The bill also permits the Director to do all of the following:

- (1) Conduct on-site inspections of any location at which a lead abatement or renovation project is planned, in progress, or completed;
- (2) Conduct an on-site audit of a lead hazard training course or lead-safe renovation training course during the time in which the course is being conducted by a training program;
- (3) Evaluate an individual's, a business entity's, or a government entity's performance of activities pursuant to the law governing lead professionals;
- (4) Evaluate an individual's, a business entity's, or a government entity's compliance with the requirements of the law governing lead professionals and rules adopted pursuant to that law;
- (5) In addition to existing authority to inspect certain records and reports, inspect records and reports, if any, maintained by a lead-safe renovation contractor, lead-safe renovator, lead abatement contractor, or lead abatement supervisor.

PUBLIC HEALTH COUNCIL

Rules

(R.C. 3742.03 and 3742.50)

Current law requires the Public Health Council to adopt rules generally regarding (1) the administration and enforcement of the law governing lead professionals, and (2) lead hazard control activities (i.e., Chapter 3742. of the Revised Code). The bill would require the Public Health Council to amend and adopt rules necessary for the implementation of the bill's provisions, including rules regarding all of the following:

- Requirements for training and licensure of lead professionals;
- Permissible activities for lead professionals;
- Procedures to be followed during lead abatement and renovation projects;
- Record-keeping and reporting requirements;
- Requirements for the pre-abatement plan required by the bill to be prepared by a lead abatement contractor.

The bill requires that the Public Health Council do both of the following when adopting rules:

(1) Adopt rules that are at least as stringent as the regulations established by the federal EPA, United States Department of Housing and Urban Development (HUD), or any other federal agency with jurisdiction over activities pertaining to lead poisoning prevention;

(2) Modify the rules as necessary to ensure that Ohio continues to meet the requirements necessary to obtain any federal funds available for activities pertaining to lead poisoning prevention, including requirements established by the EPA, HUD, or any other federal agency with jurisdiction over such activities.

CONFORMING CHANGES

The bill makes conforming changes in the following sections of existing law for the purposes of the bill's provisions: R.C. 3742.01(C), 3742.02(B)(5), 3742.03(A)(2), 3742.06(E), 3742.071(A), 3742.08(A)(1)(a), 3742.16(B) and (C), 3742.44(B), 3742.45, 3742.46, and 3742.50(B).

COMMENT

Lead (Pb) is a naturally occurring metal found in the earth's crust that is abundant, inexpensive to mine, resistant to corrosion, highly malleable, and has a low melting-point. Because of these properties, lead has historically been appealing for use in the manufacturing of everyday items such as coins, paint, gasoline, piping, batteries, and crystal.

Lead's chemical properties make it poisonous to humans, particularly children. Continued exposure to primary sources of lead contamination such as paint, soil, and dust (resulting from leaded gasoline, industrial emissions, and paint), and drinking water pipes, can lead to various health problems. In adults, lead poisoning has been

linked to increased blood pressure, infertility, nerve disorders, cataracts, muscle or joint pain, and memory problems, and in children, to hyperactivity, slowed development, motor function deficits, and lowered intellect.²⁷

Due to the health risks associated with lead contamination, both the federal government and state governments have taken action, beginning in the early 1970s, to address lead poisoning prevention and establish lead hazard controls, particularly with respect to decreasing blood lead levels in children.²⁸ In Ohio, the first major effort to address lead poisoning was Am. Sub. S.B. 162 of the 120th General Assembly (1993-1994), which made Ohio eligible to receive funds under the federal Residential Lead-Based Paint Hazard Reduction Act of 1992. The most recent lead-related legislation in Ohio, Sub. H.B. 248 of the 124th General Assembly (2001-2002), enacted laws governing blood-lead testing of children and lead-exposure requirements for residential units, child care facilities, and schools.

HISTORY

ACTION	DATE
Introduced	05-05-10

H0501-I-128.docx/jc

²⁷ National Conference of State Legislatures, *Lead Poisoning Prevention, A Guide for Legislators* (1994);

National Institute of Environmental Health Sciences, Environmental Health Topics, *Lead*, available at <<http://www.niehs.nih.gov/health/topics/agents/lead/index.cfm>>; U.S. EPA, *Lead in Paint, Dust, and Soil*, available at <<http://www.epa.gov/lead/index.html>>.

²⁸ According to the Ohio Department of Health, children with blood lead levels greater than or equal to 20 ug/dL (or a persistent 15 ug/dL) are considered to have an elevated blood lead level (O.A.C. 3701-32-01 Appendix).