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Bill Analysis

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Primary Sponsor: Sen. Lang

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SUMMARY

Lead abatement regulations

- States that any county, township, or municipal corporation that requires a person to obtain a certification that indicates that a property is safe from lead hazards for rental registration must:
 - Issue or deny that certification within 30 days of receiving a certification application; and
 - If a certification is denied, notify the person who is denied certification of the denial and of the specific components that were determined to include an unsafe lead hazard.
- If denied, allows a person to reapply for the specific components of the property that were previously determined to include an unsafe lead hazard.
- Provides for a temporary 10% or 20% reduction in local government funds (LGF) for a county, township, or municipal corporation that repeatedly misses the 30-day certification deadline or the requirement to include specific components in a denial.
- Prior to a lead clearance examination, allows a clearance technician, lead inspector, or lead risk assessor to conduct pre-cleaning at a residential unit, child care facility, or school, and allows those individuals to charge a fee for the performance of the pre-cleaning.
- Requires the Director of Health to adopt rules that specify a certification process for authorizing the use of software in lead abatement and lead testing conducted by persons and laboratories licensed by the Director of Health.
- Exempts any regulatory restrictions contained in the rules from regulatory restriction reduction requirements in current law.

Lead abatement tax credit

- Changes the lead abatement tax credit from a nonrefundable to a refundable credit.
- Allows the right to apply for and receive a credit to be assigned to a lead abatement specialist that completes a project.
- Allows pass-through entities to apply for and receive the credit, which is currently limited to individual taxpayers in most circumstances.
- Increases the total credits that may be awarded each fiscal year by the amount of any LGF penalty imposed under the bill.

DETAILED ANALYSIS

Lead abatement regulation

Background

Under continuing law, when the Director of Health or an authorized board of health becomes aware that a child under six years old has lead poisoning, the Director or board must investigate to find the source of the lead poisoning. In conducting the investigation, the Director or board may enter the residential unit, child care facility, or school (hereafter building) that the Director or board reasonably suspects to be the source of the lead poisoning. When the Director or board determines that a building is a possible source of the child's lead poisoning, the Director or board must conduct a risk assessment of that property.

If the results of a risk assessment indicate that one or more lead hazards identified in a building are contributing to a child's lead poisoning, the Director or authorized board immediately must issue an order to have each lead hazard in the property controlled. The Director or board may order occupants of a building to vacate the premises until the building passes a clearance examination. The owner or manager of a building may choose the method of controlling each lead hazard.

A building remains subject to a lead hazard control order until the building passes a clearance examination. After the building passes the clearance examination, the Director or board of health that issued the order must provide the owner and manager of the building 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.¹ A clearance examination is an examination to determine whether the lead hazards in a building have been sufficiently controlled. A clearance examination includes a visual assessment, collection, and analysis of environmental samples.²

¹ R.C. 3742.35 to 3742.38, not in the bill; R.C. 3742.39.

² R.C. 3742.01(C).

Certification of lead safe property and LGF penalty

Under the bill, any county, township, or municipal corporation that requires a person to obtain a certification that indicates that a property is safe from lead hazards for rental registration must issue or deny that certification within 30 days after the receipt of an application for the certification. If a certification is denied, the county, township, or municipal corporation must notify the person who is denied the certification of the denial and of the specific components of the property that were determined to include an unsafe lead hazard. Any person who is denied a certification may resubmit an application for certification by resubmitting lead test results for the specific components of the property that were previously determined to include an unsafe lead hazard. The person may resubmit the application up to 180 days after certification denial.

Repeated failure by a county, township, or municipal corporation to meet either the 30 day certification deadline or the requirement that a denial state the specific lead hazard components of the property may result in loss of some local government funds (LGF) the state would otherwise pay to the local government. The bill applies an LGF penalty if a local government has a lead certification requirement in place and the Tax Commissioner receives and verifies, in a single fiscal year, at least 50 notices describing individual instances where the local government missed the 30-day deadline or denial notification requirement. The penalty is 10% of the amount of LGF the local government would otherwise receive monthly, and it applies until the last month of the fiscal year. If the Commissioner receives at least 500 notices in a single fiscal year, the penalty doubles to 20% of the local government's LGF for the remainder of the year.

Any LGF payments withheld as a result of this penalty are to be deposited to the GRF.³

Pre-cleaning of lead

The bill clarifies that, prior to a clearance examination (discussed above), a clearance technician, lead inspector, or lead risk assessor may conduct pre-cleaning in a building. The bill then authorizes the clearance technician, lead inspector, or lead risk assessor to charge a fee for the performance of pre-cleaning.⁴ Pre-cleaning consists of cleaning techniques conducted pursuant to regulations or guidelines established by the United States Department of Housing and Urban Development to capture and eliminate lead contaminants prior to testing for possible lead contamination at a residential unit, child care facility, or school. Pre-cleaning includes wet wiping, mopping, or vacuuming.⁵

Lead abatement and testing software

The bill requires the Director of Health to adopt rules in accordance with the Administrative Procedure Act that specify a certification process for authorizing the use of

³ R.C. 3742.47 and 5747.504, with conforming changes in R.C. 5747.50, 5747.502, 5747.51, and 5747.53.

⁴ R.C. 3742.39(B).

⁵ R.C. 3742.01(CC).

software in lead abatement and lead testing conducted by persons and laboratories licensed by the Director under the law governing lead abatement.⁶ The bill exempts the rules from continuing law requirements concerning reductions in regulatory restrictions. Currently, the Director must take actions to reduce regulatory restrictions, including, by June 30, 2025, reducing the amount of regulatory restrictions contained in an inventory created in 2019 in accordance with a statutory schedule. A regulatory restriction is any part of an administrative rule that requires or prohibits an action.⁷

Lead abatement tax credit

Continuing law authorizes an income tax credit for eligible lead abatement costs, i.e., those incurred to hire a lead abatement specialist to perform inspections and remediation of certain residential property and related relocation costs. The maximum amount of credit that may be claimed for the abatement of a single dwelling is \$10,000. The bill makes several modifications to this credit.

Refundable credit

The bill converts the credit to a refundable credit. Under current law, the credit is nonrefundable and any unclaimed balance may be carried forward for seven years.⁸

Tax credits allow taxpayers to reduce their tax bills on a dollar-for-dollar basis, and they may be refundable or nonrefundable. A nonrefundable credit can reduce a tax bill to zero, but no further, though unused amounts may be carried forward and used in later years if authorized by law. A refundable credit can also reduce a tax bill to zero, but if there is any unused amount of the credit remaining, it is refunded to the taxpayer in cash. So, if a taxpayer has a \$50 tax liability and a \$100 credit, the credit will reduce the liability to \$0 whether it is refundable or nonrefundable, but if it is refundable, the taxpayer will get an additional \$50 refund.

Assigning credits

Under current law, only the taxpayer that incurs lead abatement costs can apply for and claim the credit. The bill allows lead abatement specialists who complete lead abatement projects to apply for and claim the credit if the person who hires them assigns the right in exchange for a discount on the project. The credit that may be assigned is the amount of the discount provided in exchange for the assignment, up to \$10,000. The person who hires the specialist retains the right to apply for and claim a credit for any amount by which the discount is less than \$10,000. This ensures compliance with the \$10,000 per-dwelling credit limit discussed above.

Assignment of the right to claim a credit is a consumer transaction for purposes of the state's Consumer Sales Practices Act. As a result, a lead abatement specialist who violates that

⁶ R.C. 3742.03(I).

⁷ R.C. 3742.03(I), by reference to R.C. 121.95 to 121.953, not in the bill.

⁸ R.C. 3742.50, 5747.26(B), and 5747.98.

law when seeking or securing an assignment may face liability under the law, e.g., actual and punitive damages or enforcement action by the Attorney General. And, a lead abatement specialist applying for a credit on the basis of an assignment must include the customer's approval of the assignment with the application, state the amount of the lead abatement costs charged, and the amount of the discount provided in exchange for the assignment.⁹

Claims by pass-through entities

The credit may be claimed only against the income tax. Under current law, the credit can be claimed for eligible lead abatement costs paid by persons subject to that tax, i.e., individuals, trusts, and estates. As a practical result, current law essentially limits the credit lead abatement costs paid by individual property owners.¹⁰

The bill adds lead abatement costs paid by a pass-through entity (PTE) to the costs the credit may be claimed against. A PTE is an entity that is disregarded for income tax purposes, so its tax liability passes through to its owners, who pay income tax based on their share of the PTE's income. Because a PTE does not directly pay the income tax, the bill also allows the right to claim the credit to be passed through to the PTE's owners.

The bill also allows a PTE that employs or is owned by a lead abatement specialist to apply for credit it has been assigned (see "**Assigning credits**," above). So, under the bill, if a PTE, such as a limited liability company, incurs lead abatement costs on an eligible dwelling (see "**Eligible dwellings**," below), or employs or is owned by a lead abatement specialist and is assigned the right to claim a credit, the entity's direct or indirect investors may claim their proportionate share of the credit.¹¹

Eligible dwellings

The lead abatement tax credit applies to "residential units" constructed before 1978. The bill specifically includes a single unit in a multi-unit building as a residential unit. Under continuing law, a residential unit includes any dwelling or any part of a building being used as an individual's private residence, including residential rental units.¹²

Total-credit cap

Under current law, no more than \$5 million of lead abatement tax credits may be awarded per fiscal year. The bill increases the cap by the amount of any amounts withheld from LGF under the bill's new provisions (see "**Certification of lead safe property and LGF penalty**," above).¹³

⁹ R.C. 3742.50(B), (C), and (E).

¹⁰ R.C. 5747.01(N) and 5747.02, not in the bill.

¹¹ R.C. 3742.50(A)(1) and (A)(3) and 5747.26(C), with conforming change in R.C. 5747.08.

¹² R.C. 3742.01(DD), not in the bill, and R.C. 3742.50(A)(2) and (4).

¹³ R.C. 3742.50(C)(3).

HISTORY

Action	Date
Introduced	04-30-24
