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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 280
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. J. Thomas and Demetriou

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill converts the Lead Abatement Tax Credit (LATC) from nonrefundable to refundable and adds the ability for pass-through entities (PTEs), either incurring lead abatement costs on invested property or employing lead abatement specialists, to claim the LATC, likely increasing its utilization.
- A penalty is imposed under the bill on Local Government Fund (LGF) distributions to any county, township, or municipal corporation that requires property owners to certify rental properties as lead-safe but fails to process those certifications in a timely manner.
- Any amount collected through LGF penalties is diverted to the GRF and earmarked for additional LATCs for the next fiscal year, above the continuing \$5 million cap.
- Lead abatement projects conducted by state-licensed specialists are expected to increase in place of some renovation, repair, and painting (RRP) remediation projects performed by contractors certified by the U.S. Environmental Protection Agency (EPA).

Detailed Analysis

The bill converts the LATC (Lead Abatement Tax Credit) from nonrefundable to refundable. Under current law, any unused portion of the nonrefundable tax credit exceeding a taxpayer's aggregate income tax due can be carried forward to apply against the taxpayer's future income tax liabilities for up to seven years. For credits claimed on or after the bill's effective date, this amount would be refunded directly to the taxpayer. Any amounts previously claimed from the nonrefundable credit would still carry forward. The bill also allows a taxpayer to assign the right to apply for an LATC to a PTE (pass-through entity), such as a company who employs a lead abatement specialist, in exchange for a discount up to the costs charged by the specialist, not to exceed the \$10,000 certificate maximum. Under current law, the Director of

Health may issue up to \$5 million of certificates each fiscal year. The bill increases this credit limit by any moneys diverted from Local Government Fund (LGF) payments to local governments with lead-safe ordinances who fail to issue or deny applications for lead-safe certifications of rental properties in a timely manner.

Refundable credit & pass-through entities

A total of 88 LATCs have been claimed since the start of tax year (TY) 2020, the first year in which the credit was available, for a total certificate value of \$450,469.¹ The average LATC amount issued in each of the three most recent tax years ranges from around \$4,000 to \$7,000. Since the establishment of the nonrefundable credit in 2020, the Ohio Department of Health (ODH) has never issued more than 4% of the \$5 million annually available for that purpose in any one year. The LATC's conversion to a refundable credit is expected to increase its utilization.

The ability of a property owner to assign the right to apply for an LATC to an eligible lead abatement specialist, or a PTE employing such a specialist, in exchange for a commensurate discount in the lead abatement costs incurred in connection with an eligible dwelling, is also expected to raise the number of certificates issued. In practice, this is anticipated to reduce upfront costs to eligible property owners, as less initial taxpayer capital would be required for projects receiving a discount. This is also expected to increase utilization.

PTEs invested in property incurring lead abatement costs may also claim the credit under the bill, further expanding its use beyond baseline law. Prior to this, LATCs could only be claimed by an individual taxpayer.

Number of LATC Certificates and Total Value Issued by Tax Year		
Tax Year	Number of Certificates Issued	Total Certificate Value
2020	16	\$109,361
2021	17	\$102,758
2022	48	\$198,850
2023	7*	\$39,500*
Total	88	\$450,469

Source: Ohio Department of Health

*Data as of October 16, 2023: applications are accepted through June 30, 2024

Remediation & abatement projects

Counties, townships, and municipal corporations have the authority to require a property owner to obtain certification that indicates a property is safe from lead hazards before a rental

¹ Data provided by the Ohio Department of Health.

unit is placed into service.² LBO is aware that this authority has recently been exercised by the cities of Cleveland and Toledo. Both ordinances require rental units built before 1978 to be inspected for lead hazards, remediated or abated to pass a lead clearance examination, and the property owner to apply for a lead-safe certification from the city.³ Lead abatement, as opposed to shorter term remediation measures, is a higher standard designed to permanently eliminate lead hazards from a property. Lead abatement is typically not required where remediation measures performed by renovation, repair, and painting (RRP) contractors can be implemented to achieve lead-safe certification.

The EPA requires all RRP projects conducted in rental units built before 1978 that disturb lead-based paint to be performed by lead-safe contractors certified by the EPA.⁴ Neither the ordinance in Toledo nor Cleveland requires the hiring of state-certified lead abatement contractors to complete remediation measures not requiring abatement. As a result, many property owners likely choose remediation measures performed by RRP contractors at an assumed reduced cost. Such measures, however, do not qualify as abatement under the bill or current law. These circumstances could partially explain the relatively low utilization of the LATC.

The LATC only applies to lead abatement costs incurred by a taxpayer from abatement performed by state-licensed specialists, of which there are few in comparison to RRP contractors. Using Toledo as an example, there are 1,952 EPA-certified RRP contractors⁵ with business addresses registered in the city but only 38 active state-licensed lead abatement contractors, with fewer inspectors, assessors, project designers, and workers registered in the same area.⁶ In particular, the ODH licensing database lists only one active lead inspector and no lead project designers for the entire city of Toledo. Thus, if utilization of the LATC significantly increases under the bill, demand for state-licensed lead specialists is anticipated to rise as well.

The bill may also shift some property owners to choose abatement over shorter term remediation measures if other sources of funding for RRP projects are limited. In that case, property owners, particularly landlords in municipalities already enforcing a lead-safe ordinance, may be incentivized to pursue a more permanent abatement solution to a dwelling's lead hazards in order to qualify for the bill's refundable tax credit to fund the project. Lead abatement is defined in Ohio statute as a set of measures designed for the single purpose of permanently eliminating lead hazards, where "permanent" means an expected design life of at least 20 years.⁷ Unless necessary to meet the clearance examination requirements of a local ordinance, abatement is not required, but could be more attractive under the bill.

² R.C. 5321.19.

³ City of Cleveland Code of Ordinances [Chapter 365](#); Toledo Municipal Code [Chapter 1760](#).

⁴ 40 Code of Federal Regulations (C.F.R.) 745, [Subpart E](#).

⁵ EPA-Certified Renovation and Lead Dust Sampling Technician [Firm Database](#). Data as of October 26, 2023.

⁶ Ohio Department of Health Environmental Licensing Search: [Lead Database](#). Data as of October 26, 2023.

⁷ R.C. 3742.01.

Clearance examinations & interim controls

Clearance examinations may be conducted by a state-certified lead inspector, lead risk assessor, or clearance technician. A clearance technician, however, is only licensed to perform clearance examinations on nonabatement lead projects.⁸ Lead inspectors and risk assessors require more training than a clearance technician and are provided greater authority by the state. Neither Cleveland nor Toledo requires a clearance examination be conducted by a lead inspector or lead risk assessor on remediation projects absent abatement. Clearance examinations typically cost property owners several hundred dollars and appear to qualify for the LATC under the bill and continuing law.⁹ The relatively low cost of these examinations, however, in comparison with the costs of remediation measures or abatement, may partially explain reduced taxpayer interest in claiming the LATC merely for this purpose.

The bill explicitly adds the ability for clearance technicians, lead inspectors, and lead risk assessors to conduct, prior to an examination, interim controls to temporarily reduce human exposure to lead hazards. A fee may also be assessed for the performance of these controls. However, as these controls do not appear to qualify as lead abatement costs for the LATC, minimal impact on the credit's utilization from this provision is expected.

Expansion of LATC cap & LGF penalty

Local governments could also see a significant decrease in their LGF payments if they enact, or have enacted, an ordinance or resolution requiring lead-safe certification of rental properties but have not provided for sufficient staffing resources to process those certifications in a timely manner. In that instance, if the Tax Commissioner receives notice of 50 or more certification requests in any fiscal year remaining unprocessed 30 days following their applications' receipt, 10% of LGF payments to the appropriate local authority is diverted to the GRF each month for the rest of the fiscal year and earmarked for additional LATCs (above the \$5 million allowed under continuing law). If the number of unprocessed certifications rises to 500 or more, a total of 20% is diverted.

As an illustrative example, LBO estimates that for Cleveland this would amount to between \$3.2 million and \$6.4 million (for a 10% and 20% reduction, respectively) over the course of FY 2024, for violations occurring the first month of the fiscal year.¹⁰ The same numbers for Toledo are between \$1.0 million and \$2.0 million in FY 2024. LBO is uncertain of the number of counties, townships, and municipal corporations that currently fail to meet the timely processing of certifications required under the bill. However, local governments enacting such ordinances may choose to increase their number of staff in order to avoid the LGF penalty.

Software certification & eligible dwellings

The bill requires the Director of Health to adopt rules specifying a certification process for authorizing the use of software in lead abatement and testing conducted by state-licensed specialists and laboratories. The costs associated with any adopted rules are unknown as the

⁸ Ohio Administrative Code (O.A.C.) 3701-32-12.

⁹ [Lead-Safe Cleveland](#) estimates a clearance examination to cost between \$250 and \$500, and [Lead-Safe Toledo](#) around \$400.

¹⁰ LBO projections based upon [LGF distributions](#) provided by the Ohio Department of Taxation.

specifics of such certification requirements are delegated to the Director, who will establish the requisite guidelines, affecting any potential cost.

Lastly, the definition of “eligible dwelling” is expanded to specifically include a single unit in a multi-unit building. No substantive change in qualifications for the LATC is expected from this provision as under continuing law a single unit in a multi-unit building built before 1978 is already considered a qualifying “residential unit.”