



## **Ohio House Ways and Means Committee**

### *Opponent Testimony* *House Bill 280*

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Chairman Roemer, Vice Chairman Lorenz, Ranking Member Troy, and members of the Ohio House Ways and Means Committee – thank you for allowing me to testify in opposition to House Bill 280.

The City of Cleveland appreciates the intent of the sponsors as they pursue expanding the use of the Lead Abatement Tax Credit and ensuring municipalities that implement a lead safe certificate program do not make the process of compliance overly burdensome for their property owners and taxpayers. However, while appreciating the intent of the bill, we have major concerns about the legislation's actual impact on lead safety in Ohio.

We can all agree that lead poisoning is undermining the future of children. In parts of Cleveland, 30 percent of children have elevated blood lead levels. Across the city, our average rate of elevated tests in 2022 was 17.4% -- double or more than the comparable rates in peer cities across the Midwest. The highest concentration of lead poisoning occurs in Cleveland's most disinvested neighborhoods and disproportionately affects children of color. In 2023, Cleveland's Department of Public Health investigated the source of lead poisoning for 316 children with blood lead levels greater than 10 mcg/dl and 1,359 children with blood lead levels between 3.5 and 9.9 mcg/dl.

Lead poisoning is a public health crisis, and we know that bold action to address it is essential.

In 2019, the City of Cleveland passed an ambitious ordinance designed to ensure the safety of Cleveland's residents, and more specifically, Cleveland's children. Since March of 2021, Cleveland has administered a full-scale regulatory program of lead hazard identification, reduction and remediation in rental units constructed prior to 1978. The Cleveland Lead-Safe Ordinance requires that all rental properties have to engage in a program of control of lead hazards to apply as "lead safe" and receive a 2-year certificate (implementing interim controls of lead) or a 20-year exemption (abatement of lead) from the City based on an inspected for lead hazards and a passing lead clearance exam. This process involves collaboration between the city, the Lead Safe Cleveland Coalition, and private lead workers hired by property owners to conduct the required inspections and clearance examination.

The City of Cleveland is seeking continuous compliance from every property entered in the City's rental registry, which is approximately 94,800 units. As of April 19, 2024, 22,307 of those units have received lead safe certificates or an exemption, which is the equivalent of 5,494 structures. Like any pollution

control program, the processing time of applications varies depending on the quality of the inspection performed. We are currently processing applications on a 26-day average (reduced from a 32-day average in November 2023).

In addition to our regulatory program the City of Cleveland works in partnership with community organizations through the Lead Safe Cleveland Coalition to provide a robust incentive and grant program for property owners to control lead hazards, including those who are not regulated by our program. We are aware that processing times for grants and incentives were backed up in the initial compliance roll-out but are quickly becoming more expeditious as additional partners have been added to speed the distribution of incentives. We are now seeing reduced processing and distribution times on those funds, which are separate funds and incentives than the state's tax credit for lead abatement.

Just as the state is struggling to get the word out about the lead safe tax credits, the City of Cleveland in partnership with the Lead Safe Cleveland Coalition is working to building awareness of the lead safe ordinance and the generous incentive programs offered to property owners. With over 100,000 suspected rental properties in the City of Cleveland, we realize that achieving full compliance is a marathon and not a sprint. In response to recent statistics that only 12% of single-family and 9% of two-family rentals have obtained lead safe compliance compared to 44% for 10+ unit buildings, the City of Cleveland is starting a new 1-3 family lead safe compliance unit to assist small landlords by: providing a lead risk assessment as part of a rental healthy home inspection process; forestall prosecution for non-compliance while actively participating in the program; provide guidance and assistance with filling out applications, forms, and any other required submission; resolve certificate or exemption disputes; and assist in getting units ready to pass a clearance exam, which will be handled by outside contractors of the landlord's choosing.

As our program continues to gain momentum, we are gravely concerned about HB 280 and the effect it would have on our efforts and on statewide lead safe efforts, if passed. We have outlined a number of our concerns.

**The proposed bill requires that cities issue or deny lead safe certificates within 30 days of receiving an application.** In theory, this is a reasonable time frame, and we generally meet or exceed it. However, many applications, especially for 20-year exemptions or for larger multi-unit buildings are complex, and frequently have missing information. Our lead team often has interactions with the inspectors to provide clarification or request additional information—a process that can exceed 30 days at times. If HB 280 were to pass, the planned work of our new 1-3 family lead-safe compliance unit would be thwarted, limiting the city's ability to work with smaller landlords to provide the assistance needed to get their properties to a lead safe standard. Instead, the city would simply have to deny these certificates within 30 days, subjecting the owners to further enforcement action.

The proposed legislation removes the City's enforcement discretion of its own regulatory program. As a new program with a workforce being developed to address the need for professional lead hazard identification, assessment, and control, Cleveland has taken the approach of working with lead paint inspectors, risk assessors, clearance technicians, and now, small landlords rather than engaging in a system of outright denials to ensure that our certification process is as rigorous as the lead poisoning crisis demands.

Forcing cities to approve or deny applications within 30 days will likely result in more denials of applications as opposed to the collaboration that currently exists to cure deficiencies. Losing Local Government Funds due to the processing times of lead safe certificates is punitive and will render local regulatory programs inoperable. In effect, this bill will prolong the lead poisoning crisis in Ohio by leaving local governments to either rubber stamp certificates or get out of the complex regulatory work required by the pervasiveness of lead in our housing stock.

**The bill also states that any person who is denied a certification may resubmit an application by resubmitting lead test results up to 180 days after the county, township, or municipal corporation denies the certification.** This provision effectively eliminates a city's ability to adequately enforce the lead safe ordinance and would allow a clearance technician to repeatedly submit failing exams without consequence. The City of Cleveland receives many incomplete, inaccurate, or failing exams. This ability to "stop the clock" on prosecutions will result in poor outcomes for children, as meaningful enforcement of lead safe ordinances will be thwarted. Children in these homes would remain vulnerable to lead poisoning.

Instead of demanding 30-day processing times and an infinite 180-day revolving door of denial and resubmission to allow owners to get through the lead safe certification process, we need the state's support in further developing the workforce of lead workers and ensuring the work product of those professionals meets the rigorous standards to receive a 20-year exemption. The legislation, as proposed, undercuts our regulatory program, the work of our new 1-3 family lead safe compliance unit, and workforce development initiatives rather than achieving the lead safe rental housing our kids and families deserve.

**HB 280 allows a clearance technician or lead risk assessor to conduct interim controls and to charge a fee for the performance of the interim controls.** We are aware that committee members may be considering an amendment to this language to potentially change the words "interim controls" to "pre-cleaning". However, even if amended, this language remains problematic. As the legislation is currently written, the provision surrounding interim controls is particularly alarming, since this appears to be contrary to HUD's guidance on the subject, which considers it a conflict for the same contractor conducting the clearance exam to perform the interim controls. This undermines the integrity of the clearance exam, is a conflict of interest, and creates the risk that homes receiving the lead clearance may not actually be lead safe. Notably, we do not object to a clearance technician, lead inspector, or lead risk assessor being paid for conducting interim controls if they have proper licensure to do so; however, the same technician, inspector or assessor should not be permitted to then provide clearance, inspection, or assessment for the purpose of receipt of a lead safe certificate or exemption. As currently written, HB 280 would codify a conflict of interest for those professionals. In addition, the legislation appears to open the door to a conflict with licensure requirements regarding whom can perform interim controls. Even if the language in the bill is amended to exchange the term "interim controls" for "pre-cleaning", we simply cannot support the test taker being the test evaluator.

**The bill requires 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 under the law**

**governing lead abatement.** This provision is vague and may support the inefficient use of multiple inspection report formats. For example, the City of Cleveland receives lead clearance exams in formats that depend on the individual inspector. Without a provision in the bill to reflect a local government's right to require the provision of necessary information from property owners in a form prescribed by the local regulations, the City cannot direct inspectors to provide consistent and uniform reports, and the different formats cause lengthy delays in processing. Cities need the ability to require consistent, uniform standards.

**The proposed language allowing up to \$10,000 of lead tax credits to be assigned to a lead clearance contractor** poses some concerns. Without a commitment to detailed consumer disclosures, property owners may not be fully informed about the tax credit or have a clear understanding of what is actually being charged when asked to sign away their interest, potentially allowing the contractor to charge higher fees without the full awareness of a property owner. While the City does not object to the concept of assignment, and we appreciate the recognition of the assignment as a consumer transaction, we ask that the legislation also require clear and detailed consumer disclosures about the nature of the tax credit and what the assignment of that tax credit means for the transaction. Otherwise, a consumer may not understand that a contractor is potentially charging higher fees for their work than they would without the assignment.

In summary, enforcing a lead safe ordinance is complicated and requires significant public-private collaboration. Adding additional constraints to that process would make this already challenging process even more difficult. This could have a chilling effect on other communities considering similar ordinances. It is essential that we encourage all municipal efforts to combat lead poisoning and minimize barriers for doing so.

The City of Cleveland respectfully urges the House Ways and Means Committee to consider the grave concerns of cities and stakeholders, and to oppose passage of HB 280.