



# Ohio Legislative Service Commission

*Shannon Pleiman and other LSC staff*

---

## Fiscal Note & Local Impact Statement

---

**Bill:** S.B. 1 of the 131st G.A.

**Date:** February 4, 2015

**Status:** As Introduced

**Sponsor:** Sens. Gardner and Peterson

**Local Impact Statement Procedure Required:** No

**Contents:** Revises various laws relative to agriculture, natural resources, and environmental protection, and declares an emergency

### State Fiscal Highlights

#### Department of Agriculture

- The bill transfers oversight of the Agricultural Pollution Abatement Program and the Agricultural Pollution Abatement Fund from the Department of Natural Resources to the Department of Agriculture.
- Expenses for cost-sharing projects under the Agricultural Pollution Abatement Program currently paid from the Soil and Water Districts Assistance Fund (Fund 5BV0) would likely be paid from the Agricultural Pollution Abatement Fund. For the FY 2012-FY 2013 biennium, expenses for cost-sharing projects totaled approximately \$46,000.
- Three employees would likely be shifted from the Department of Natural Resources to the Department of Agriculture as a consequence of the program transfer. Annual personnel costs for the Agricultural Pollution Abatement Program to be covered by the Department of Agriculture could be in the \$300,000 range.
- The bill requires the Department of Agriculture to administer the provisions in the bill that prohibit the application of fertilizer and manure in the western basin of Lake Erie on frozen ground, saturated soil, and during certain weather conditions. The Department of Agriculture will incur new oversight costs as a consequence. These costs would be offset by civil penalties collected from violators. The receipts would presumably be deposited into the Agricultural Pollution Abatement Fund once transferred from the Department of Natural Resources.

#### Environmental Protection Agency

- If Ohio fails to enact the bill's revisions to the statute governing the prevention of lead contamination of drinking water, it becomes ineligible to receive certain federal grant program funds amounting to roughly \$24 million a year, of which over 89%, or \$21.4 million, is distributed to local governments in the form of loans and grants.

- If the Director of Environmental Protection opts to study nutrient loading to Ohio watersheds, the cost incurred over a two-year period is estimated at \$200,000, with required subsequent updates each costing \$30,000.
- The fiscal implications of the bill's provisions related to prohibiting generally the depositing of dredged material in Lake Erie and tributaries (effective July 1, 2020) and establishing the Office of Harmful Algae Management and Response are uncertain.

## **Local Fiscal Highlights**

- **Federal Safe Drinking Water grants.** If Ohio fails to enact the bill's revisions to the statute governing the prevention of lead contamination of drinking water, local governments would lose around \$21.4 million annually that is distributed by the Ohio Environmental Protection Agency to local governments in the form of loans and grants. In addition, local governments would no longer be eligible to apply directly to the U.S. Environmental Protection Agency for infrastructure grants that run in the millions of dollars annually.
- **Local boards of health – sewerage system opt out.** Local boards of health could realize an increase in costs to evaluate household sewage systems of those property owners that opt out of connecting to a sewerage system. However, the bill specifies that the property owner is responsible for costs of the evaluation, so boards might realize a gain in revenue.
- **Local boards of health – nuisance household sewage systems.** Local boards of health may experience an increase in costs to help develop and approve potential incremental repair or replacement plans if a nuisance is found to exist for certain household sewage systems.

---

## Detailed Fiscal Analysis

The bill makes a number of changes to laws pertaining to agriculture and soil and water resources. Many of the changes do not appear to have fiscal effects. The provisions that could or do have a more than minimal fiscal effect are discussed below. For further details, please see the LSC Bill Analysis.

### Revisions to agriculture laws

#### Agricultural Pollution Abatement Program

The Agricultural Pollution Abatement Program, currently overseen by the Department of Natural Resources' (DNR) Division of Soil and Water Resources, establishes standards and conservation practices in farming, silvicultural, and animal feeding operations in order to abate excessive soil erosion or the pollution of waters of the state by soil sediment and animal manure. The program also provides cost-sharing assistance to farmers to develop and implement best management practices which protect streams, creeks, and rivers. Under the bill, the Division would continue its responsibilities concerning soil erosion, but oversight of the program's animal manure functions would be transferred to the Department of Agriculture (AGR).

Under the transfer proposed by the bill, AGR would be responsible for establishing technically feasible and economically reasonable standards and enforcing rules intended to mitigate and prevent agricultural pollution from manure and residual farm products. Additionally, AGR would be responsible for establishing practices for composting dead animals and establishing requirements and procedures governing the review and approval or disapproval of composting plans by supervisors of soil and water conservation districts. AGR would also be responsible for determining eligibility standards for cost-sharing projects and administration of the cost-sharing portion of the program. Transferring oversight of these functions will also result in administrative and personal services costs and expenses under the cost-sharing program being shifted from the Division to AGR.

The most significant cost transferred to AGR would likely stem from personal services. According to AGR, three employees would be transferred from DNR to handle the new responsibilities. AGR estimates that personal services costs, including fringe benefits and other miscellaneous employee expenses, would total approximately \$300,000 per year. Additionally, expenses under the cost-sharing program could be in the several thousands of dollars annually. For the FY 2012-FY 2013 biennium, DNR contributed approximately \$46,000 to cost-sharing programs. Currently, the Division pays cost-sharing project expenses from the Soil and Water Districts Assistance Fund (Fund 5BV0).

Presumably, most of the expenses associated with the transferred responsibilities would be paid from the Agricultural Pollution Abatement Fund. This fund is used to pay costs associated with investigating, mitigating, minimizing, removing, or abating pollution of the waters of the state caused by agricultural pollution or unauthorized release, spill, or discharge of manure or residual farm products that requires emergency action to protect the public health. It is currently used by DNR to carry out these oversight functions, but would be used by AGR under the program transfer in the bill. Revenue from enforcement actions under the Agricultural Pollution Abatement Program, including penalties and judgments from civil actions, would be deposited into the fund to pay administrative and personal services costs as well as for grants under the cost-sharing portion of the program. However, it is uncertain whether enough revenue could be generated from penalties and civil actions to fully support the administrative costs associated with the Agricultural Pollution Abatement Program.

### **Fertilizer and manure on frozen fields**

The bill prohibits, with certain exceptions, the application of fertilizer and manure in the western basin of Lake Erie under the following situations: (1) on snow-covered or frozen soil, (2) when the top inches of soil are saturated from precipitation, or (3) when the weather forecast calls for greater than 50% chance of precipitation exceeding one-half inch in a 24-hour period. The bill requires the Director of AGR to administer the fertilizer provisions and the Chief of the Division of Soil and Water Resources to administer the manure provisions, but transfers the authority to oversee manure application from DNR to AGR on January 1, 2017. Until then, DNR and AGR will investigate complaints and assess civil penalties when necessary. Civil penalties would presumably be deposited into the Agricultural Pollution Abatement Fund.

### **Revisions to soil and water resources laws**

#### **Soil and Water Administration Fund**

The bill creates the Soil and Water Resources Administration Fund for use by the Division of Soil and Water to administer and enforce the Soil and Water Resources Law. The fund is to consist of money credited to it from all fines, penalties, costs, and damages, except court costs, that are collected by either the Chief of the Division of Soil and Water Resources or the Attorney General. Revenue deposited into and costs paid from the fund will depend upon the number and nature of enforcement actions and the number and nature of convictions for violations of the Soil and Water Resources Law.

#### **GRF appropriation item 725505, Healthy Lake Erie Fund**

The bill amends language in Am. Sub. H.B. 59 of the 130th General Assembly specifying the use of GRF appropriation item 725505, Healthy Lake Erie Fund. Current law specifies that this appropriation item be used by the Director of Natural Resources in consultation with the directors of Agriculture and Environmental Protection to implement nonstatutory recommendations of the Agriculture Nutrients and Water Quality Working Group. Instead, the bill requires the appropriation item to be used in

support of conservation measures in the Western Lake Erie Basin and for funding assistance for soil testing, winter cover crops, edge-of-field testing, tributary monitoring, animal waste abatement, and any additional efforts to reduce nutrient runoff. H.B. 59 appropriated \$500,000 to this appropriation item for FY 2015.

### **Withdrawal and consumptive use permits**

The bill modifies the standards by which the Chief of Soil and Water must evaluate an application for a withdrawal and consumptive use permit issued to facilities withdrawing or consuming water from the Lake Erie watershed. In general, these modifications affect consideration that must be given to how the proposed water withdrawals or consumption will impact the quantity and quality of water in the lake. Overall, it does not appear that these changes would result in any significant fiscal effect for the state or political subdivisions. For further details on these changes, please see the LSC Bill Analysis.

### **Lead contamination of drinking water from plumbing**

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing, including certain prohibitions, required actions of the owner or operator of a public water system, and definitions. These revisions reflect changes to state law necessitated by amendments to the federal Safe Drinking Water Act signed into law on January 4, 2011. The state of Ohio and its political subdivisions become ineligible to receive this federal grant funding if it does not comply. Ohio's compliance with these federal amendments is a condition of the Ohio Environmental Protection Agency's (Ohio EPA) primacy agreement with the U.S. Environmental Protection Agency (U.S. EPA) to administer the Safe Drinking Water Act in Ohio, which includes about \$24 million in annual federal grant funding. Of the \$24 million, 11% is retained by the Ohio EPA for technical assistance and administration costs, and 89% is distributed to local governments in the form of grants and loans. Local governments would also become ineligible to apply directly to the U.S. EPA for infrastructure-related grants running in the millions of dollars annually.

### **Study of nutrient loading to Ohio watersheds**

The bill permits the Director of Environmental Protection to conduct a study of nutrient loading to Ohio watersheds, with subsequent updates required biennially. Ohio EPA has estimated the two-year cost of the study at \$200,000. This total includes: (1) \$80,000 for staff allocated to the study, (2) \$70,000 for a contract with a state of Ohio university for development of a spreadsheet tool to estimate the relative contributions from point and nonpoint sources, and (3) \$50,000 to contract with the U.S. Geological Survey for assistance with nutrient modeling. Subsequent updates are expected to cost around \$30,000.

### **Dredging material in Lake Erie and tributaries**

The bill: (1) prohibits, beginning July 1, 2020, the depositing of dredged material that resulted from harbor or navigation maintenance activities in Lake Erie and

tributaries unless authorized by the Director of Environmental Protection, and (2) requires the Director work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material. The fiscal implication of the dredged material prohibition is uncertain. The presumably one-time cost to develop the required dredging plan is uncertain as well.

### **Office of Harmful Algae Management and Response**

The bill establishes the Office of Harmful Algae Management and Response in the Ohio EPA to prepare a strategic plan for monitoring water intake of harmful algae, providing support and training for monitoring intake of harmful algae, promoting emergency response, and potentially expanding to cover other waters of the state. The Director of Environmental Protection is required to consult with the directors of Agriculture, Health, and Natural Resources and representatives of local governments, publicly owned treatment works, and public water systems. The ongoing annual costs for the Ohio EPA to establish the office, as well as the one-time costs to develop the strategic plan, are uncertain.

### **Local health districts**

The bill requires a person that submits plans to install a sewerage system to notify the owner of each parcel of property that is served by a household sewage treatment system and the applicable board of health of the installation if the owner or operator has determined that the parcel of property is reasonably accessible to the sewerage system and may be required to connect to it. The bill allows a property owner to elect out of connecting to a sewerage system if the person notifies the owner or operator of the sewerage system and the applicable board of health that the person is electing not to connect to the specified sewerage system and if the property owner's household sewage treatment system is operating and properly maintained, as determined by the local board of health. The bill requires the board of health to evaluate the household sewage treatment system serving the affected parcel of property to determine if the system operates and is properly maintained. The bill specifies that the owner of the property is responsible for the costs of the evaluation. Thus, a local board of health could experience an increase in costs to evaluate the system, but could also realize a gain in revenue for conducting the evaluation.

If the board of health's evaluation finds that a nuisance exists related to the household sewage treatment system, the person may repair the system within 60 days or may develop an incremental repair or replacement plan with the board of health. Failure to repair, alter, or replace the system to eliminate the nuisance constitutes termination of the authorization granted under the bill for the property owner to elect out of connecting to the sewerage system. Local boards of health may experience an increase in costs to help develop and approve potential incremental repair or replacement plans, if needed.