



Ohio Legislative Service Commission

Final Analysis

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Sub. H.B. 512

131st General Assembly
(As Passed by the General Assembly)

- Reps.** Ginter, Landis, Amstutz, Anielski, Antonio, Baker, Barnes, Blessing, Brown, Burkley, Derickson, Dever, Dovilla, Driehaus, Duffey, Green, Grossman, Hall, Hambley, T. Johnson, Lepore-Hagan, Manning, McClain, M. O'Brien, Reineke, Retherford, Rezabek, Rogers, Schaffer, Scherer, Schuring, Slaby, K. Smith, R. Smith, Sprague, Sweeney, Terhar, Thompson, Young, Rosenberger
- Sens.** Uecker, Hite, Jones, Balderson, Beagle, Cafaro, Coley, Eklund, Gardner, Hackett, Hughes, LaRose, Lehner, Manning, Obhof, Oelslager, Patton, Peterson, Sawyer, Schiavoni, Skindell, Tavares, Thomas, Williams, Yuko

Effective date: September 9, 2016

ACT SUMMARY

Lead and copper sampling and disclosure

- Requires the Director of Environmental Protection to adopt rules requiring community and nontransient noncommunity water systems to sample and conduct tests for lead and copper and to provide samples to a certified laboratory for analysis.
- Requires a laboratory that receives lead or copper tap water samples to complete a lead or copper analysis of the sample and report the results to the community or nontransient noncommunity water system and the Director.
- Imposes various notification and action requirements upon the owner or operator of a community or nontransient noncommunity water system when laboratory results show an exceedance of either the lead threshold for individual taps or the lead action level for the system.
- Requires the Director, beginning ten business days after receiving laboratory results, to provide certain notices if the owner or operator of a community or nontransient noncommunity water system fails to provide those notices as required by the act.

- Establishes administrative penalties for an owner or operator of a community or nontransient noncommunity water system that fails to provide specified notices.
- Requires a community or nontransient noncommunity water system to map parts of the system likely to contain lead pipes and submit the maps to the Director every five years.
- Requires the Director to provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for fulfilling mapping requirements and corrosion control requirements established in rule.
- Requires the Director to post information online about other sources of funding to assist communities with lead service line identification and replacement and schools with fountain and water-service fixture replacement.
- Allows the Director to require the owner or operator of a nontransient noncommunity water system that is a school or child day-care center to collect additional tap water samples in buildings identified in the map submitted to the Director.

Training for public water system operators

- Requires the training program for public water system operators to address identification of lead in drinking water, sampling protocols, corrosion treatment, and the act's lead and copper testing requirements.

Lead contamination of drinking water from plumbing

- Prohibits using certain plumbing supplies and materials that are not lead free in the installation or repair of a public water system or of any plumbing in a facility providing water for human consumption, rather than requiring certain plumbing supplies and materials in such a system or facility to be lead free as in former law.
- Adds plumbing fittings and plumbing fixtures, including drinking water fountains, to the plumbing supplies and materials to which the above prohibition applies.
- Generally prohibits a person from doing any of the following:
 - Introducing into commerce any pipe, pipe fitting, plumbing fitting, or plumbing fixture, including a drinking water fountain, that is not lead free;
 - Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies; and



--Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use it in the installation or repair of any plumbing providing water for human consumption.

- Establishes several exemptions from the above prohibitions, including pipes, pipe fittings, or plumbing fittings or fixtures used exclusively for nonpotable services.
- Revises the definition of "lead free" to mean, in part, containing not more than a weighted average of 0.25% lead with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures, rather than not more than 8% lead with respect to pipes or pipe fittings under prior law.
- Establishes a formula for calculating the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture.

Drinking Water Assistance Fund

- Revises, in part, two of the purposes for which the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund may be used as follows:
 - With regard to making loans to water systems, requires each loan recipient to make periodic principal and interest payments on the dates and in the amounts approved by the Director; and
 - With regard to purchasing or refinancing certain public debt obligations, allows the repayment period to be up to 45 years under specified circumstances.

Water Pollution Control Loan Fund

- Adds eight categories of projects and activities that may receive assistance from the Water Pollution Control Loan Fund.
- Adds state agencies to the types of entities that may receive money from the Fund for constructing publicly owned wastewater treatment works.
- Revises requirements governing the Fund's administration.
- Requires all loans made from the Fund to be fully amortized not later than 30 years after project completion, rather than 20 years under former law.
- Generally authorizes the repayment period of debt obligations that are purchased or refinanced for Fund purposes to extend up to 45 years under specified circumstances.



- Allows money credited to the Fund to be used for awarding principal forgiveness assistance under the Federal Water Pollution Control Act.
- Removes the requirement that the Director must first determine that sewerage systems tributary to a publicly owned treatment works are not subject to excessive infiltration and inflow before providing financial assistance from the Fund for a treatment works project.
- Revises the requirement that, before providing financial assistance, the Director must first determine that an applicant will implement a user charge system to pay the project's operation, maintenance, and replacement expenses by eliminating the stipulation that the user charge system be a proportional system.

Ohio Water Development Authority

- Authorizes the Ohio Water Development Authority to contract for expenditures of up to \$50,000 without complying with competitive bidding requirements, rather than \$25,000 under former law.

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CONTENT AND OPERATION

Lead and copper sampling and disclosure

Rules

The act requires the Director of Environmental Protection, by January 7, 2017 (120 days after the act's effective date), to adopt rules, requiring community and nontransient noncommunity water systems to sample and conduct tests for lead and copper and provide collected samples to a certified laboratory for analysis. Under continuing law, a community water system is a public water system that has at least 15 service connections used by year-round residents or that regularly serves at least 25



year-round residents.¹ The act specifies that a nontransient noncommunity water system is a public water system that regularly serves at least 25 of the same persons over six months per year and is not a community water system.² The act requires the rules to do all of the following:

(1) Establish a schedule for lead and copper sampling applicable to the owner or operator of a community or nontransient noncommunity water system that, at a minimum, both:

--Allows the Director to consider the age of the water system, whether corrosion control requirements are met, and other risk factors as determined by the Director, such as aging infrastructure likely to contain lead service lines, when determining if a system must conduct sampling at least once annually; and

--Requires the owner or operator of a system where such risk factors are identified to conduct sampling at least once annually until the risk factors are mitigated.

(2) Authorize the Director to require additional sampling for pH level and other water quality parameters to determine if corrosion control requirements are met;

(3) Authorize the Director to establish corrosion control requirements for a system;

(4) Require the owner or operator of a system to conduct a new or updated corrosion control treatment study and submit a new or updated corrosion control treatment plan not later than 18 months after any of the following events:

--The system changes or adds a source from which water is obtained;

--The system makes a substantial change in water treatment;

--The system operates outside of acceptable ranges for lead, copper, pH, or other corrosion indicators, as determined by the Director; or

¹ A public water system is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if the system has at least 15 service connections or regularly serves at least 25 individuals. A public water system includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, any collection or pretreatment storage facilities not under such control that are used primarily in connection with the system, and any water supply system serving an agricultural labor camp. R.C. 6109.01(A), not in the act.

² R.C. 6109.01(E) and (K).



--Any other event determined by the Director to have the potential to impact the water quality or corrosiveness of water in the system.

(5) Authorize the Director to waive the requirement to conduct a new or updated corrosion control study in appropriate circumstances;

(6) When the owner or operator of a system is required to complete a corrosion control treatment study and submit a plan in accordance with rules, require the owner or operator to complete the study and submit the plan to the Director for approval even if sampling results conducted subsequent to the initiation of the study and plan do not exceed the lead action level established in rules;

(7) Establish a lead threshold for individual taps;

(8) Establish and revise content for public education materials;

(9) When the owner or operator of a system is required to complete a corrosion control treatment study and submit a plan in accordance with rules, require the owner or operator to submit to the Director an interim status report of actions taken to implement the corrosion control study six months and 12 months from the date of initiation of the corrosion control study requirement;

(10) Authorize the Director to develop procedures and requirements for the owner or operator of a system to document the provision of notices required to be provided under the act; and

(11) Establish administrative penalties for violations of the act's requirements regarding the provision of notice (see "**Administrative penalties**," below).³

Laboratory requirements

The act requires a laboratory that receives lead or copper tap water samples to complete a lead or copper analysis of the sample not later than 30 business days after receiving the sample. The laboratory must report the results to the community or nontransient noncommunity water system and the Director by the end of the next business day following the day the analysis is completed.⁴

³ R.C. 6109.121(A).

⁴ R.C. 6109.121(B).



Actions required upon receipt of laboratory results

The act requires community or nontransient noncommunity water systems to take certain actions upon receiving laboratory results or verification of the results, as shown in the table below.⁵

Event triggering notice or action requirement	Requirements applicable to a community water system	Requirements applicable to a nontransient noncommunity water system
Receipt of laboratory results	<p>Not later than two business days after receipt of the results, provide notice of the results of each individual tap sample to the owner and persons served at the residence or other structure where the tap was sampled.</p> <p>Not later than five business days after receipt of the laboratory results, certify to the Director that the owner or operator has complied with specified notice and tap water testing requirements (see below) applicable to community water systems.</p>	<p>Same.</p> <p>Not later than five business days after receipt of the laboratory results, certify to the Director that the owner or operator has complied with specified notice requirements applicable to nontransient noncommunity water systems.</p>
If laboratory results show that a sample from an individual tap is above the lead threshold established in rules	<p>Not later than two business days after receipt of the results, provide information on the availability of health screening and blood lead level testing to the owner and persons served at the residence or other structure where the sample was collected and provide notice of the laboratory results to the local board of health.</p> <p>Include in the community water system's annual consumer confidence report the lead or copper results, an explanation of the associated public health risks, what actions consumers of the system can take to reduce health risks, and the actions the</p>	<p>Same.</p> <p>Immediately remove from service all fixtures identified as contributing to elevated lead levels.</p>

⁵ R.C. 6109.121(C) and (D).



Event triggering notice or action requirement	Requirements applicable to a community water system	Requirements applicable to a nontransient noncommunity water system
	system is taking to reduce public exposure.	
If laboratory results show that the water system exceeds the lead action level established in rules	<p>Not later than two business days after receipt of the results, provide notice (in a form specified by the Director) to all of the system's water consumers that the system has exceeded the lead action level.</p> <p>Not later than five business days after receipt of the results, provide information on the availability of tap water testing for lead to all consumers served by the system who are known or likely to have lead service lines, lead pipes, or lead solder as identified in the map required to be completed under the act (see below).</p> <p>Not later than 30 business days after receipt of the results, make an analysis of laboratory results available to all consumers served by the system, comply with public education requirements established in rules that apply when a public water system exceeds the lead action level, and provide information to consumers served by the system about the availability of health screenings and blood lead level testing in the area served by the water system.</p> <p>Subject to rules, perform a corrosion control treatment study and submit a corrosion control treatment plan to the Director not later than 18 months after the laboratory results were received by the owner or operator indicating that the system exceeded the lead action level.</p>	<p>Same.</p> <p>No provision.</p> <p>Same.</p> <p>Same.</p>



The act requires the Director, beginning ten business days from the date the Director received laboratory results, to provide the following notices if the owner or operator of a community or nontransient noncommunity water system fails to do so:

(1) Notice of the results of each individual tap sample to the owner and persons served at the residence or other structure where the tap was sampled; or

(2) Notice to all of the system's water consumers that the system has exceeded the lead action level.⁶

Administrative penalties

As indicated above, the act requires the Director to adopt rules establishing administrative penalties that apply to the owner or operator of a community or nontransient noncommunity water system for violations of both of the following:

(1) The requirement to provide, not later than two business days after receiving laboratory results, notice of the results of each individual tap sample to the owner and persons served at the residence or other structure where the tap was sampled;

(2) The requirement that if laboratory results show the system exceeds the lead action level, to provide, not later than two business days after the receipt of results, notice to all of the system's water consumers that the system exceeds the lead action level in the form specified by the Director.

The rules must also set the amounts of the administrative penalties according to the number of people served by the system, as specified in the chart below.⁷

Number of people served by the system	Violation of requirement number one, above	Violation of requirement number two, above
25 to 3,300	\$25 per day for each day that the system failed to provide the notice	\$250 per day for each day that the system failed to provide the notice
3,301 to 10,000	\$50 per day for each day that the system failed to provide the notice	\$500 per day for each day that the system failed to provide the notice
10,001 to 25,000	\$75 per day for each day that the system failed to provide the notice	\$750 per day for each day that the system failed to provide the notice

⁶ R.C. 6109.121(E).

⁷ R.C. 6109.121(A)(12).



Number of people served by the system	Violation of requirement number one, above	Violation of requirement number two, above
More than 25,000	\$100 per day for each day that the system failed to provide the notice	\$1,000 per day for each day that the system failed to provide the notice

Water system map

Under the act, an owner or operator of a community water system must identify and map areas of the system that are known or are likely to contain lead service lines and identify characteristics of buildings served by the system that may contain lead piping, solder, or fixtures. An owner or operator of a nontransient noncommunity water system must identify and map areas of the system with lead piping, solder, or fixtures in buildings served by the system. In addition, an owner or operator of both types of water systems must do all of the following:

(1) Submit a copy of the map to the Department of Health and the Department of Job and Family Services; and

(2) Submit a report to the Director containing the map and a list of sampling locations that are Tier I Sites used to collect samples as required by rules, including contact information for the owner and occupant of each sampling site.⁸

The owner or operator must fulfill the mapping requirements by March 9, 2017 (six months from the act's effective date), and update and resubmit the maps once every five years, beginning five years after the date of the initial submission.⁹

The Director must provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the mapping requirements and corrosion control requirements established in rules. In addition, the Director must post information on the Environmental Protection Agency's website about other funding sources available to assist communities with lead service line identification and replacement and schools with fountain and water-service fixture replacement.¹⁰

⁸ R.C. 6109.121(F).

⁹ R.C. 6109.121(G).

¹⁰ R.C. 6109.121(H).

The Director may require the owner or operator of a nontransient noncommunity water system that is a school or child day-care center to collect additional tap water samples in buildings identified in the map submitted to the Director.¹¹

Training for public water system operators

The act requires training for public water system operators to include training regarding the identification of lead in drinking water, sampling protocols, corrosion treatment, and the various other lead and copper requirements established by the act.¹²

Lead contamination of drinking water from plumbing

The act revises the statute governing the prevention of lead contamination of drinking water from plumbing. It first prohibits any person from using any pipe, pipe fitting, plumbing fitting, plumbing fixture, including a drinking water fountain, solder, or flux that is not lead free, in the installation or repair of a public water system or of any plumbing in a residential or nonresidential facility providing water for human consumption. Former law instead required pipes, pipe fittings, solder, and flux used in a public water system or in plumbing for residential or nonresidential facilities providing water for human consumption that are connected to a public water system to be lead free. The act retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.¹³

The act also prohibits a person from doing any of the following:

(1) Introducing into commerce any pipe, pipe fitting, plumbing fitting, or plumbing fixture, including a drinking water fountain, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(2) Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies, except for the selling of plumbing supplies by manufacturers of those supplies; and

(3) Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.¹⁴

¹¹ R.C. 6109.121(I).

¹² Section 3.

¹³ R.C. 6109.10(B)(1) and (D)(1).

¹⁴ R.C. 6109.10(B)(2), (3), and (4) and (D)(2) and (3).



The act exempts the following from all of these prohibitions:

(1) Pipes, pipe fittings, or plumbing fittings or fixtures, including backflow preventers, that are used exclusively for nonpotable services; and

(2) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, fire hydrants, service saddles, or water distribution main gate valves that are at least two inches in diameter.¹⁵

In addition, the act revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of 0.25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in former law. Continuing law specifies that solders and flux are lead free if they contain not more than 0.2% lead.¹⁶

The act requires the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture to be calculated by using the following formula: for each wetted component, the percentage of lead in the component must be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to determine the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component must be added together, and the sum of the weighted percentages must constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components must be used to determine whether the wetted surfaces are lead free pursuant to the act's revised definition of "lead free." For purposes of the lead contents of materials that are provided as a range, the maximum content of the range must be used.¹⁷

Drinking Water Assistance Fund

The act revises, in part, two of the uses of the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund. Under continuing law, the Account is used for various purposes. One purpose is to make loans to community water systems and nonprofit noncommunity public water systems subject to specified conditions. The act adds a condition that each loan recipient must make periodic payments of principal

¹⁵ R.C. 6109.10(D)(4).

¹⁶ R.C. 6109.10(A)(1).

¹⁷ R.C. 6109.10(A)(2).



and interest on the dates and in the amounts approved by the Director of Environmental Protection.¹⁸

Under continuing law, another purpose of the Account is to purchase or refinance interest debt obligations incurred by municipal corporations, other political subdivisions, and interstate agencies having territory in Ohio. The act adds that if any debt obligations are purchased or refinanced to provide financial assistance for any of the purposes allowed under continuing law, the repayment period may extend up to 45 years. However, the repayment period must not exceed the expected useful life of any facilities that are financed by the obligations.¹⁹

Water Pollution Control Loan Fund

The act adds state agencies to the types of entities that may receive money from the Water Pollution Control Loan Fund for construction of publicly owned wastewater treatment works. The act also expands the uses of the Fund by allowing its use as follows:

(1) For construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(2) For measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(3) For measures to reduce the demand for publicly owned wastewater treatment works capacity through water conservation, efficiency, or reuse by any municipal corporation, other political subdivision, state agency, or interstate agency having territory in Ohio;

(4) For the development and implementation of watershed projects meeting applicable criteria established in the Federal Water Pollution Control Act;

(5) For measures to reduce the energy consumption needs of publicly owned wastewater treatment works by any municipal corporation, other political subdivision, state agency, or interstate agency having territory in Ohio;

(6) For reusing or recycling wastewater, stormwater, or subsurface drainage water;

¹⁸ R.C. 6109.22(I)(1)(c).

¹⁹ R.C. 6109.22(I)(2).



(7) For measures to increase the security of publicly owned wastewater treatment works; and

(8) To assist any qualified nonprofit entity, as determined by the Director of Environmental Protection, in providing assistance to owners and operators of small and medium publicly owned wastewater treatment works for either of the following:

--To plan, develop, and obtain financing for eligible projects, including planning, design, and associated preconstruction activities; or

--To assist such treatment works in achieving compliance with the Federal Water Pollution Control Act.²⁰

The act revises requirements governing the administration of money credited to the Fund. First, under continuing law, money in the Fund may be used to pay the reasonable costs of administering the Fund. The act adds that money also may be used for conducting activities under the law governing the Fund. The act also alters the stipulation that cumulative expenditures from the Fund for administrative costs must be capped at 4% of the total amount of the capitalization grants received. The act does so by specifying that the reasonable costs of administering the Fund and conducting Fund-related activities cannot exceed one of the following amounts, whichever is greater, plus the amount of any fees collected by the state for that purpose regardless of the source:

--4% of the total amount of the capitalization grants received;

--\$400,000 per year; or

--0.2% per year of the current valuation of the Fund.²¹

Secondly, under the act, all loans made from the Fund must be fully amortized not later than 30 years after project completion, rather than 20 years under former law. In addition, the act authorizes the repayment period of debt obligations that are purchased or refinanced for Fund purposes to extend up to 45 years. However, the repayment period may not exceed the expected useful life of any facilities financed by the obligations. The act also allows money credited to the Fund to be used for principal forgiveness assistance under the Federal Water Pollution Control Act.²²

²⁰ R.C. 6111.036(A)(4) through (11).

²¹ R.C. 6111.036(H)(7).

²² R.C. 6111.036(H)(1), (2), and (8).



The act removes the requirement that the Director must first determine that sewerage systems tributary to a publicly owned treatment works are not subject to excessive infiltration and inflow before providing financial assistance from the Fund for a treatment works project. It also revises the requirement that, before providing the financial assistance, the Director first must determine that the applicant will implement a user charge system to pay the project's operation, maintenance, and replacement expenses by eliminating the stipulation that the user charge system be a proportional system.²³

Finally, for purposes of the statute governing the Fund, the act expands the definition of "Federal Water Pollution Control Act" to include applicable portions of the American Recovery and Reinvestment Act of 2009 and the Water Resources Reform and Development Act of 2014.²⁴

Ohio Water Development Authority

The act authorizes the Ohio Water Development Authority to contract for expenditures of up to \$50,000 before complying with competitive bidding requirements. Under former law, the Authority could contract for expenditures of up to \$25,000 before necessitating compliance with competitive bidding requirements.²⁵

HISTORY

ACTION	DATE
Introduced	04-07-16
Reported, H. Energy & Natural Resources	05-11-16
Passed House (96-0)	05-11-16
Reported, S. Energy & Natural Resources	05-25-16
Passed Senate (33-0)	05-25-16

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²³ R.C. 6111.036(K)(1) and (2).

²⁴ R.C. 6111.036(R).

²⁵ R.C. 6121.04(L)(1).

