



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 512 of the 131st G.A.

**Date:** June 25, 2016

**Status:** As Enacted

**Sponsor:** Rep. Ginter

**Local Impact Statement Procedure Required:** Yes

**Contents:** Safe drinking water and water pollution control laws

### State Fiscal Highlights

- It appears that the costs to the Ohio Environmental Protection Agency (Ohio EPA) to adopt and enforce rules related to lead and copper sampling and disclosure requirements, including notification, water system mapping, and corrosion control generally will be covered with existing resources and not require significant additional funding.
- The bill requires the Director of the Ohio EPA to provide financial assistance (below-market interest rate loans) from the Drinking Water Assistance Fund to certain public water systems for the purpose of fulfilling mapping and corrosion control requirements. The number, conditions, and magnitude of the loans that are likely to be awarded annually is unknown. The fund is held in trust by the Ohio Water Development Authority.
- The bill's changes to the Water Pollution Control Fund are likely to result in more public entities, including state agencies, applying for and being awarded below-market interest rate loans for wastewater projects. The number, conditions, and magnitude of the loans that are likely to be awarded annually is unknown. The fund is held in trust by the Ohio Water Development Authority.
- Violations of the bill's (1) prohibitions against using certain plumbing supplies and materials, and (2) various notification and action requirements imposed upon certain public water systems may generate money from civil and administrative penalties, respectively. The money will be deposited into the state's existing Drinking Water Protection Fund (Fund 4K50). The amount of money that may be generated for Fund 4K50 will be intermittent and unpredictable.

## Local Fiscal Highlights

- The bill requires certain public water systems to complete increased drinking water testing, consumer notifications of testing results, possible additional corrosion control treatment studies, and system mapping. The compliance costs for these systems are uncertain. Systems that fail to take certain required notifications and actions will be subject to Ohio EPA-imposed administrative penalties with the amounts set according to the amount of people served by the system.
- The bill requires the Director of the Ohio EPA to provide financial assistance (below-market interest rate loans) from the Drinking Water Assistance Fund to certain public water systems, including those owned or operated by villages, cities, counties, and water districts, for the purpose of fulfilling mapping and corrosion control requirements. The number, conditions, and magnitude of the loans that are likely to be awarded annually is unknown.
- The bill's changes to the Water Pollution Control Fund are likely to result in more local public entities (villages, cities, counties, and sewer districts) applying for and being awarded below-market interest rate loans for wastewater projects. The number, conditions, and magnitude of the loans that are likely to be awarded annually is unknown.
- Prosecution of criminal violations of the bill's lead contamination of drinking water from plumbing prohibitions may create minimal additional work for county and municipal criminal justice systems. The amount of money that may be generated from court costs, fees, and fines collected from violators and deposited in the general fund of the county or municipality with jurisdiction over these matters will be intermittent and unpredictable.

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## Detailed Fiscal Analysis

### Types of water systems

A public water system is defined as a system that provides water for human consumption to at least 15 service connections or serves an average of at least 25 people for at least 60 days each year. Public water systems range in size from large municipalities to schools, churches, and restaurants relying on a single well. The table below summarizes basic information on the three types of public water systems regulated by the Ohio Environmental Protection Agency (Ohio EPA). The bill's requirements affect two of those system types: community water systems and nontransient noncommunity water systems.

Types of Public Water Systems			
Type	Definition	Examples	Number of Systems
<b>Community water systems</b>	Serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents	Cities, mobile home parks, and nursing homes	1,371
<b>Nontransient noncommunity systems</b>	Serves at least 25 of the same persons over six months per year	Certain schools, hospitals, and factories	749
<b>Transient noncommunity systems</b>	Serves at least 25 different persons over 60 days per year	Campgrounds, restaurants, and gas stations	3,055

### Lead and copper sampling and disclosure requirements

The bill requires the Director of the Ohio EPA to adopt rules, not later than 120 days after its effective date, governing community and nontransient noncommunity water systems, including rules requiring such systems to conduct tests for lead and copper and provide collected samples to a certified laboratory for analysis.

Under current rules, these systems are already required to adhere to a regime of lead and copper testing rules. New rules may change the frequency and/or volume of testing and may create additional costs for certain public water systems. A nontransient noncommunity water system may be required by the Ohio EPA to collect additional samples for testing from buildings identified on a newly required system map when that system is a school or child day-care center.

#### Corrosion control

The bill authorizes the Director of the Ohio EPA to establish corrosion control requirements for a community or nontransient noncommunity water system to require the owner or operator of those systems to conduct a new or updated corrosion control treatment study and to submit a new or updated corrosion control treatment plan in certain circumstances. When a corrosion control treatment study is required, such a system must complete the study and submit a plan even if sampling shows that the

system does not exceed the lead action level. Ohio EPA estimates that a corrosion control study can cost from \$5,000 to \$10,000 for a smaller system and tens of thousands of dollars for a larger system. The bill requires the Director of the Ohio EPA to provide financial assistance from the Drinking Water Assistance Fund to these systems for the purpose of fulfilling corrosion control requirements.

Under current rules, small (serving up to 3,300 people) and medium (serving more than 3,300 and up to 50,000 people) systems may not be required to submit a corrosion control treatment study following a test result outside of the acceptable range for lead, copper, pH, or other corrosion indicators, but to begin treatment immediately. The bill requires all community and nontransient noncommunity water systems to submit a study in this case to the Ohio EPA regardless of size and circumstance.

### **Notification requirements and penalties**

A laboratory that receives a lead or copper tap water sample from a community or nontransient noncommunity water system is required to complete an analysis within 30 business days of receiving the sample and notify the system and the Ohio EPA by the end of the next business day following the day the analysis is complete.

The system is required to notify the owner and persons served at the place the sample was taken of the results within two business days and, if results show the system exceeds the limit, the system must notify all consumers within two business days. Not later than five business days after the receipt of the results, the system must notify the Ohio EPA that all of the above notifications have been completed. If the system fails to notify consumers properly, the Ohio EPA is required to notify all of the system's water consumers beginning ten days from the receipt of the results from the testing laboratory.

The bill requires the Director of the Ohio EPA to adopt rules establishing administrative penalties applicable to the owner or operator of a community or nontransient noncommunity water system for certain notification violations to be paid into the state treasury to the credit of the state's existing Drinking Water Protection Fund (Fund 4K50) as follows:

- If a system fails to notify owners and/or residents of individual tap sample results, the system may be assessed an administrative penalty that, depending on the number of people served by the system, is between \$25 and \$100 per day for each day that the system failed to provide the notice.
- If a system fails to notify consumers of test results when the system drinking water is found to exceed allowable lead and/or copper levels, the system may be assessed an administrative penalty that, depending on the number of people served by the system, is between \$250 and \$1,000 per day for each day that the system failed to provide the notice.

## **Water system mapping**

Community water systems are required to identify and map areas of the system that may contain lead service lines or to contain buildings with lead piping, solder, or fixtures. Nontransient noncommunity systems are required to identify and map areas of the system with lead piping, solder, or fixtures in buildings served by the system. The systems must submit a report to the Ohio EPA which includes the map and a list of sampling locations including contact information for the owner and occupant at each sampling site. The systems are required to update and resubmit the map and/or report every five years. System mapping costs are unknown, but the bill does require the Director of the Ohio EPA to provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the mapping requirement.

## **Drinking Water Assistance Fund**

The bill requires the Director of the Ohio EPA to provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling mapping and corrosion control requirements and revises, in part, two of the uses of the existing Water Supply Revolving Loan Account in the fund. The fund includes the Water Supply Revolving Loan Account, the Source Water Assessment and Protection Program, and technical assistance through the Rural Community Assistance Program.

Presumably, as a result of the bill, certain public water systems will apply for and be awarded program loans to assist with the costs of complying with the mapping and corrosion control requirements. The number, conditions, and magnitude of the loans that are likely to be awarded annually is unknown.

As noted, the fund is used in part for the Water Supply Revolving Loan Account Program, which provides financing (below-market interest rate loans) for the planning, design, and/or construction for drinking water infrastructure improvements that achieve and maintain compliance with federal safe drinking water requirements. The standard below-market interest rate is established monthly, and is 1.25% below the general obligation bond index rate. The program also offers a small community interest rate, as well as three different tiers of disadvantaged community rates. Limited principal forgiveness is available through the Disadvantaged Community Loan Program. There are currently no minimum loan amounts; the maximum amount is established each year (for project year 2016 it is \$40 million). Approximately \$150 million can be loaned out each year.

The fund consists of federal grants, revenue bonds, and loan repayments held in trust by the Ohio Water Development Authority (OWDA). It is a trust fund that is not part of the state treasury, and is not subject to the General Assembly's appropriation. The program is jointly administered by the Ohio EPA and OWDA.

## **Water Pollution Control Loan Fund**

The bill: (1) expands the list of allowable purposes of the Water Pollution Control Fund (including principal forgiveness), (2) adds state agencies to the types of entities that may receive money from the fund for the construction of publicly owned wastewater treatment works, (3) revises requirements governing the administration of money in the fund, (4) increases the amortization schedule limit for loans to 30 years from 20 years, (5) authorizes, to the extent allowed by the federal Water Pollution Control Act, the repayment period to extend up to 45 years under specified circumstances, and (6) removes certain determinations that the Director of the Ohio EPA is required to make under current law.

Presumably, as a result of the bill, more public entities, including state agencies, will apply for and be awarded loans for wastewater projects. The number, conditions, and magnitude of the loans that are likely to be awarded annually is unknown.

Under current law, the fund is used to make below-market interest rate loans to public entities (villages, cities, counties, and sewer districts) for planning, design, and construction of wastewater treatment facilities and sewer systems. Also available is a small community interest rate, as well as hardship interest rates of 0% and 1%. There are currently no minimum or maximum loan amounts. Approximately \$500 million is loaned out each year.

The fund consists of federal grants, revenue bonds, and loan repayments held in trust by OWDA. It is a trust fund that is not part of the state treasury, and is not subject to the General Assembly's appropriation. The program is jointly administered by the Ohio EPA and OWDA.

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

The bill: (1) revises current law to prohibit certain plumbing supplies and materials that are not lead free in circumstances providing water for human consumption including sale or introduction into commerce, (2) expands the list of plumbing supplies and materials to which the prohibition applies, (3) establishes exemptions, and (4) revises the definition of "lead free." These provisions more or less bring state law into line with current practices that comply with the federal Safe Drinking Water Act (SDWA).

Under current law, unchanged by the bill, a person violating any of these prohibitions could be subject to a civil and/or criminal penalty, as described in more detail below. The likely number of these violations is expected to be relatively small, as the prohibitions more or less reflect current practices, and to the degree that this is not the case, individuals generally will comply through awareness and regulatory enforcement.

### **Civil penalty**

Under current law and the bill, a person violating any of these prohibitions is required to pay a civil penalty of up to \$25,000 for each violation, to be paid into the state treasury to the credit of the Drinking Water Protection Fund (Fund 4K50). The Attorney General is required, upon request of the Director of the Ohio EPA, to bring a civil action for such a penalty in the appropriate court of common pleas. This may create minimal additional work for the Attorney General and courts of common pleas. The amount of money that may be generated for Fund 4K50 will be intermittent and unpredictable.

### **Criminal penalty**

Under both current law and the bill, a person can be criminally prosecuted as follows:

- For certain reckless violations, the offense is an unclassified misdemeanor, which carries a fine of not more than \$10,000, imprisonment for not more than four years, or both. Each day of violation constitutes a separate offense.
- For certain reckless or knowing violations, the offense is an unclassified felony, which carries a fine of not more than \$25,000, imprisonment for not more than four years, or both. Each day of violation constitutes a separate offense.

Prosecution of criminal violations of these prohibitions may create minimal additional work for county and municipal criminal justice systems. The amount of money that may be generated from court costs, fees, and fines collected from violators and deposited in the general fund of the county or municipality with jurisdiction over these matters will be intermittent and unpredictable. Very few offenders are likely to be sentenced to a prison term in any given year.