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## Bill Analysis

**Version:** As Introduced

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### SUMMARY

#### Lead Service Line Replacement Program

- Requires the Director of Environmental Protection to establish a Lead Service Line Replacement Program to replace all lead service lines in Ohio.
- Requires the Director to adopt rules to implement the program, including rules establishing all of the following:
  - A requirement that the owner or operator of a public water system (system owner) identify and oversee the removal of all lead service lines connected to the system;
  - Requirements and procedures for the submission of lead service line replacement plans by a system owner;
  - Procedures that a system owner must follow, under certain circumstances, to require a customer to pay all or part of the costs of replacing the customer's line;
  - Procedures for a system owner to financially contribute to replacing the lead service line of a customer who is of low or moderate income.
- Requires the Director to oversee lead service line replacement plans and provide customer service support to those participating in the program.
- Requires the Director to verify the accuracy of inventories submitted as part of lead service line replacement plans.
- Requires the Director to establish and maintain a public database on the Environmental Protection Agency's (OEPA) website that public water systems and the public may use to track lead service line replacement.

- Requires the Director to establish a training and certification program for system owners and contractors and plumbers hired by system owners regarding best practices for lead service line replacement.
- Requires system owners to submit a lead service line replacement plan to OEPA, which must include:
  - Information regarding whether there are lead services lines connected to the public water system; and
  - A water distribution system material inventory of all service lines.
- Authorizes the Director to use the Drinking Water Assistance Fund to make loans to public water systems to replace lead service lines.

### **Entry onto private or public property**

- Authorizes a system owner or the owner's authorized agent to enter onto private or public property to replace lead service lines.
- Specifies that if consent to entry is refused by a property owner, a system owner may enter to replace lead service lines so long as the property owner receives written notice 14 days prior to entry.

### **Prevailing wages**

- Makes an owner or operator of a public water system undertaking a project to remove or replace a lead service line pursuant to the Lead Service Line Replacement Program subject to the Prevailing Wage Law.

### **Replacement, reimbursement, and cost recovery provisions**

- Permits the owner or operator of a public water system to replace nonlead service lines of other composition when ordered or mandated to do so.
- Permits the owner or operator of a public water system to reimburse a customer who replaces lead service lines, or nonlead service lines of other composition that were ordered or mandated to be replaced, on the customer's property if the customer submits a reimbursement request within 12 months after completion of the replacement.
- Allows the owner or operator of a public water system to recover the following costs through water service rates:
  - Replacing lead service lines;
  - Determining and verifying the composition of lead status unknown service lines;
  - Replacing nonlead service lines of a composition that was mandated or ordered to be replaced;

- Reimbursing a customer who replaces lead service lines or nonlead service lines of a composition that was mandated or ordered to be replaced on the customer's property.
- Provides that the nonlead service line replacement, customer reimbursement for service line replacement, and cost recovery provisions do not grant authority to a water-works company that is a public utility subject to Public Utilities Commission (PUCO) regulation.

## **Designation**

- Entitles the act as the "Lead Line Replacement Act."

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# **DETAILED ANALYSIS**

## **Lead Service Line Replacement Program**

### **Overview**

The bill requires the Director of Environmental Protection to establish a Lead Service Line Replacement Program. The purpose of the program is to replace all lead service lines in Ohio within 15 years after the bill's effective date. A lead service line is any public or private service line that contains lead that is connected to a public water system, including any lead pigtail or lead gooseneck. A public water system generally consists of a system that provides water for human consumption that has at least 15 service connections or regularly serves at least 25 individuals.

The primary mechanism for implementing lead service line replacement under the bill is the lead service line replacement plan, which each public water system must establish and implement. Plans must include various elements, including inventories of lead service lines.

Additionally, the bill permits public water systems that are not water-works companies regulated by the Public Utilities Commission (PUCO) to replace certain nonlead service lines, to reimburse customers for replacing lead and non-lead service lines on the customer's property, and to recover all lead and nonlead service line replacement and reimbursement costs from customers.<sup>1</sup>

### **Director's duties**

In implementing the program, the Director must do the following:

- Oversee the implementation of lead service line replacement plans (explained below) created and submitted by the owner or operator of a public water system (system owner); and

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<sup>1</sup> R.C. 6109.01, 6109.09, 6109.091, 6109.092, and 6109.096 through 6109.0910.

- Provide customer service support to those participating or attempting to participate in the program.
- Collaborate with local authorities to identify grant programs that can provide resources to public water systems to fund lead service line replacement;
- Post information on the Environmental Protection Agency's (OEPA) website about funding sources that are available to assist public water systems with lead service line identification and replacement;
- Establish a publicly available database on OEPA's website, using the data submitted in lead service line replacement plans and any other available mapping information that public water systems and the public may use to track and identify lead service line replacement;
- Establish a training and certification program for system owners and for contractors and plumbers hired by system owners regarding best practices for lead service line replacement;
- Verify the accuracy of inventories submitted as part of lead service line replacement plans; and
- Take any other actions that the Director determines necessary to administer and implement the program.<sup>2</sup>

The Director also must, within one year of the bill's effective date, adopt rules to establish standards and procedures for administering and implementing the program. The rules must establish:

- A requirement that the system owner identify and oversee the removal of all lead service lines connected to the system within 15 years of the bill's effective date;
- Requirements and procedures for submitting lead service line replacement plans;
- Procedures for prioritizing the order in which lead services lines are to be replaced;
- Procedures for identifying grant money that is available to public water systems for lead service line replacement and notifying public water systems of the grants;
- Procedures that a public water system may follow, under certain circumstances, to require a customer to pay all or part of the costs of the customer's lead service line replacement via a payment plan;
  - The rules must take into account the customer's ability to pay, and provide payment exemptions for low or moderate income customers.

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<sup>2</sup> R.C. 6109.09 and 6109.092(D) through (F).

- Procedures for a system owner to financially contribute to lead service line replacement for low or moderate income customers;
- A requirement that the system owner must not disconnect a customer's water service due to inability to pay for lead service line replacement;
- Requirements and procedures that address the interplay between the bill's cost recovery provisions (see below) and the bill's provisions governing assistance to low or moderate income customers;
- A requirement that any person who removes a lead service line must remove the entire line (the rules must allow for partial removal during public health or safety emergencies with a 45-day grace period for full removal);
- Procedures for a system owner to provide a customer with educational resources regarding plumbing flushing and use of water filters before, during, and after lead service line replacement;
- Procedures customers should follow when flushing service lines and premises plumbing of particulate lead;
- A requirement that the system owner provide water filters and replacement cartridges to a customer before, during, and after lead service line replacement work;
- Procedures for determining and verifying the composition of lead status unknown service lines;
- Requirements for the training and certification program referenced above under **"Director's duties;"**
- Requirements and procedures necessary for compliance with federal primary drinking water regulations (40 Code of Federal Regulations 141); and
- Any other requirements and procedures necessary for implementing and administering the program.<sup>3</sup>

### **Lead service line replacement plans**

Within three years after the Director adopts rules, a system owner must submit a lead service line replacement plan to OEPA. The system owner must update the plan annually. The plan must include:

- Information regarding whether there are lead services lines connected to the public water system;
- A water distribution system material inventory of all service lines, which identifies the following:

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<sup>3</sup> R.C. 6109.091.

- The number and location of lead service lines, service lines that are likely to have lead, and service lines that contain unknown material;
- The number and location of lines (as described above) that were added to the inventory after the prior year's submission;
- The number and location of lines (as described above) that were replaced before commencing the inventory.
- All lead, galvanized requiring replacement, non-lead, and lead status unknown service lines.
- The number of identified lead service lines to be replaced over the 15 years of the program, including a description and map showing the locations of the lead service lines that will be replaced in each year and a description of how the lead service lines were prioritized; and
- Any other information required by rule.

A system owner must include an initial inventory with the initial plan.<sup>4</sup>

### **Director approval or disapproval of plans**

The Director must review, and approve or disapprove, all lead service line replacement plans that are submitted by a system owner. If the Director determines that a plan fails to meet the applicable requirements, the Director must issue an order requiring the system owner to submit a corrected plan. Additionally, if the Director issues an order to submit a corrected plan, the order must specify which part of the plan must be corrected. If the Director determines that a corrected plan does not meet the applicable requirements, the Director must adopt a plan on the system owner's behalf.

A system owner must properly implement an approved or adopted lead service line plan. A system owner is not eligible for a grant issued by any state agency for replacement unless the owner is properly implementing an approved or adopted plan.<sup>5</sup>

In terms of civil penalties, if a system owner fails to properly implement a plan, the system owner must pay a fine of not more than \$25,000 for each violation (for deposit in the state treasury to the credit of the Drinking Water Protection Fund). The Attorney General must bring an action for the penalty against a violator when requested by the Director.

In terms of criminal penalties, if a system owner recklessly or knowingly fails to properly implement a plan, that constitutes a violation of the Safe Drinking Water Law. If the violation poses a significant threat to or causes significant harm to public health, the system owner is guilty of a felony and is subject to a fine of up to \$25,000 or imprisonment for not more than four years, or both. If the violation does not pose a significant threat to or cause significant

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<sup>4</sup> R.C. 6109.092.

<sup>5</sup> R.C. 6109.093.

harm to public health, the system owner is guilty of a misdemeanor and is subject to a fine of up to \$10,000 or imprisonment for not more than four years, or both. Each day of a violation constitutes a separate offense.<sup>6</sup>

### **Entry onto private or public property**

A system owner, or their authorized representative may enter on private or public property to replace lead service lines. If a property owner fails to give consent to entry, the system owner may enter without the consent of the property owner, so long as written notice is given at least 14 days prior to entering the property.<sup>7</sup>

### **Drinking Water Assistance Fund**

The Director may use the Drinking Water Assistance Fund – specifically, the water supply revolving loan account – to make loans to public water systems to fund the development of lead service line replacement plans and the replacement of lead service lines. Currently, loans can be made from the account only for improvements to community water systems and nonprofit noncommunity public water systems.<sup>8</sup>

### **Prevailing wages**

The bill makes an owner or operator of a public water system undertaking a project to remove or replace a lead service line pursuant to the Lead Service Line Replacement Program subject to the Prevailing Wage Law.<sup>9</sup> Thus, the owner or operator must ensure workers on a lead service line replacement project are paid the “prevailing rate of wages” if the project’s estimated cost exceeds threshold amounts. For construction and reconstruction related to roads and bridges (“horizontal” improvements), the thresholds are adjusted biennially by the Director of Commerce. The current thresholds for horizontal projects are \$98,974 for new construction and \$29,653 for other construction. The threshold is \$250,000 for all other new construction (“vertical” improvements) and \$75,000 for reconstruction.<sup>10</sup>

## **Replacement, reimbursement, and cost recovery provisions**

### **Authority to use replacement, reimbursement, and cost recovery**

The bill grants authority to various entities that operate public water systems to utilize the “**Nonlead service line replacement**,” “**Reimbursement for service line**

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<sup>6</sup> R.C. 6109.31, 6109.33, and 6109.99, not in the bill.

<sup>7</sup> R.C. 6109.095.

<sup>8</sup> R.C. 6109.22.

<sup>9</sup> R.C. 6109.094, and R.C. 4115.03 to 4115.16 and 4115.99, not in the bill.

<sup>10</sup> R.C. 4115.03 and 4115.034, not in the bill, and [Prevailing Wage Threshold Levels](#), which may be accessed through the Department of Commerce – Division of Industrial Compliance’s Wage and Hour Division website, [com.ohio.gov/divisions-and-programs/industrial-compliance/wage-and-hour](http://com.ohio.gov/divisions-and-programs/industrial-compliance/wage-and-hour), under “Guides & Resources.”

**replacement,”** and **“Cost recovery”** provisions regarding the replacement, and the recovery of costs of replacement and replacement reimbursement, of lead and non-lead service lines. Those governmental entities are:

- Townships that have adopted a limited home rule government;
- Villages;
- Municipal corporations;
- Conservancy districts;
- Counties;
- Sanitary districts;
- Regional water and sewer districts;
- Water cooperatives.<sup>11</sup>

However, these provisions do not grant the same authority to a public water system that is a water-works company that is a public utility subject to PUCO regulation. “Water-works company” is defined in current law as an entity engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers in Ohio. A “public utility” is defined in current law as consisting of certain listed entities, including water-works companies. PUCO is given jurisdiction over public utilities meeting the definition given immediately above.<sup>12</sup>

### **Nonlead service line replacement**

The bill permits the owner or operator of a public water system to replace non-lead service lines of other composition when mandated or ordered to replace such lines by law, or a state or federal regulatory agency.<sup>13</sup>

### **Reimbursement for service line replacement**

The owner or operator of a public water system may reimburse a customer who replaces lead service lines or non-lead service lines on the customer’s property if both of the following occur:

1. For lead service lines, the owner or operator confirms that the lead service lines were composed of lead. For non-lead service lines, the owner or operator confirms that the non-lead service lines were of a composition that was mandated or ordered to be replaced by law or a state or federal regulatory agency.

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<sup>11</sup> R.C. 504.201, 735.274, 735.291, 743.041, 6101.531, 6103.021, 6115.531, and 6119.062. Although water cooperatives are not specifically mentioned in the bill, they would qualify as public water systems authorized to use the authority granted for replacement and reimbursement in the bill.

<sup>12</sup> R.C. 6109.096; R.C. 4905.02, 4905.03(G), and 4905.04, not in the bill.

<sup>13</sup> R.C. 6109.097.



2. The customer who replaced the service lines submits the reimbursement request to the owner or operator not later than 12 months after the completion of the service line replacement.<sup>14</sup>

### **Cost recovery**

The owner or operator of a public water system may recover the following costs through rates, rents, charges, or other amounts imposed on water system customers:

- Replacing lead service lines;
- Determining and verifying the composition of lead status unknown service lines;
- Replacing non-lead service lines of a composition that was mandated or ordered to be replaced;
- Reimbursing a customer who replaces lead service lines or non-lead service lines of a composition that was mandated or ordered to be replaced on the customer's property.<sup>15</sup>

### **Home Rule**

The Ohio Constitution grants municipalities the power to acquire, construct, own, lease, and **operate** any public utility that supplies a service to its inhabitants.<sup>16</sup> Courts have found that a municipality has plenary power<sup>17</sup> to operate its utility companies, which would include a public water system.

The bill, in certain provisions, instructs an owner or operator of a public water system – which may include a municipality – on how to spend money, how to replace lines, when to raise rates, etc. Although the state may at times regulate municipalities in the interest of public health,<sup>18</sup> a court may also hold that, given the restrictions the bill places on a municipal water company's operation, the bill violates a municipality's home rule authority. But, a court could also determine that the state is simply extending its current authority to regulate water in the interest of public health.<sup>19</sup>

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<sup>14</sup> R.C. 6109.098 and 6109.099.

<sup>15</sup> R.C. 6109.0910.

<sup>16</sup> Ohio Constitution, Article 18, Section 4. The General Assembly has no power to enact any statute that limits or restricts a municipality's authority to operate its public utilities; as such, a statute that limits the price that a municipality may charge for supplying water is unconstitutional. *State ex rel McCann v. Defiance*, 167 Ohio St. 313, 319, 148 N.E.2d 221 (1958).

<sup>17</sup> *Amherst Builders Ass'n v. Amherst*, 61 Ohio St.2d 345, 347, 402 N.E.2d 1181 (1980).

<sup>18</sup> *Canton v. Whitman*, 44 Ohio St.2d 62, 68, 337 N.E.2d 766 (1975).

<sup>19</sup> "The ownership and operation of a municipal waterworks is not limited by a state requirement that fluorides be added to the water in the interest of public health." *Canton* at 68.

In short, because of inconsistent case law, it is unclear whether a court may find that this bill violates a municipality’s home rule authority to operate a public utility.

### Designation

The bill is entitled the “Lead Line Replacement Act.”<sup>20</sup>

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## HISTORY

Action	Date
Introduced	05-15-24

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<sup>20</sup> Section 3.