



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

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

Date: March 25, 2015

Status: As Passed by the House

Sponsor: Sens. Gardner and Peterson

Local Impact Statement Procedure Required: No

Contents: Revises various laws relative to agriculture, natural resources, and environmental protection

State Fiscal Highlights

- **Application of fertilizer, manure, and sewage sludge.** The bill prohibits: (1) the application of fertilizer and manure in the western basin of Lake Erie on frozen ground, saturated soil, and during certain weather conditions, and (2) the surface application of sewage sludge generally. The Department of Agriculture (AGR) and the Department of Natural Resources (DNR) will incur new oversight costs as a consequence of the fertilizer and manure prohibition. The Ohio Environmental Protection Agency (Ohio EPA) should incur no additional costs, as it currently enforces the sewage sludge prohibition through its administrative rules.
- **Penalties.** The oversight costs AGR and DNR incur would be offset to a certain degree by civil penalties collected from violators. Presumably, the proceeds from any potential penalties imposed would be deposited into the Pesticide Program Fund (Fund 6690) used by AGR and the Soil and Water Districts Assistance Fund (Fund 5BV0) used by DNR.
- **Certification of manure applicators.** The bill requires a person that applies manure obtained from a permitted concentrated animal feeding facility on more than 50 acres to either have a livestock manager certification or to be certified by AGR to apply the manure. Consequently, AGR may incur additional administrative costs to certify manure applicators. The administrative costs incurred would at least be partially offset by license fees that would be deposited into the GRF or Fund 6690.
- **Dredged material prohibition.** 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) are uncertain.

- **Harmful algae monitoring and response.** The costs for the Ohio EPA to develop and implement the required actions and protocols for publicly owned treatment works and public water systems are uncertain.

Local Fiscal Highlights

- **Phosphorous monitoring of publicly owned treatment works.** The annual cost for approximately 210 publicly owned treatment works to begin required monthly monitoring will total around \$75,600 statewide. Publicly owned water treatment systems not subject to this monthly monitoring requirement are required to complete and submit a study evaluating their ability to meet that standard. The presumably one-time cost for any given system to produce the required study is uncertain.
 - **Harmful algae monitoring and response.** The costs for publicly owned treatment works and public water systems to implement any required actions and protocols are uncertain.
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Detailed Fiscal Analysis

Prohibition against application of 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 specified conditions. Specifically, the prohibition would apply in the following situations: (1) when the soil is snow-covered or frozen, (2) when the top two inches of soil are saturated from precipitation, or (3) when the weather forecast calls for greater than 50% chance of precipitation exceeding one inch in a 12-hour period for fertilizer application and a greater than 50% chance of precipitation exceeding one-half inch in a 24-hour period for manure application. However, small agricultural operations are exempt from the manure prohibition for two years and medium agricultural operations are exempt from the manure prohibitions for one year after the effective date of the bill.

The bill requires the Director of Agriculture to administer the fertilizer provisions and the Chief of the Division of Soil and Water Resources within DNR to administer the manure provisions. Both departments will be responsible for investigating complaints and enforcing the prohibitions when necessary, leading to new oversight and enforcement costs. Additionally, the Division of Soil and Water Resources may incur additional costs for providing technical assistance or information to small or medium agricultural operations if they request this assistance during the exemption period. However, the costs that both departments incur will at least be partially offset by civil penalties collected from violators. Receipts would likely be deposited into the Pesticide Program Fund (Fund 6690) used by AGR and the Soil and Water Districts Assistance Fund (Fund 5BV0) used by DNR.

Prohibition on sewage sludge application

The bill prohibits the surface application of sewage sludge, a prohibition that the Ohio EPA currently enforces by administrative rule. Thus, the Ohio EPA should incur no additional costs, as this provision simply codifies current practice.

Certification of manure applicators

The bill prohibits a person, for the purpose of the cultivation, primarily for sale, of plants on more than 50 acres, from applying manure obtained from a concentrated animal feeding facility that has been issued a permit under the Concentrated Animal Feeding Facilities Law unless that person has been issued a livestock manager certification or has been certified to apply the manure by AGR. The bill requires that AGR administer the manure certification in the same manner as the certification of fertilizer applicators that was created by S.B. 150 of the 130th General Assembly. The prohibition may result in additional people seeking either livestock manager certifications or manure certifications. This could result in additional administrative expenses for AGR. However, these costs will at least be partially offset by certification fees. The livestock manager certification fee is \$50 which is deposited into the GRF. Expenses associated with this certification are funded by GRF appropriation item 700418, Livestock Regulation Program. The manure certification fee will be \$30 and deposited into Fund 6690.

Healthy Lake Erie Funding – DNR earmark

The bill amends earmarking language under the Department of Natural Resources' budget for FY 2014-FY 2015 that specifies the use of GRF appropriation item 725505, Healthy Lake Erie Fund. Currently, this appropriation item is to 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. The FY 2015 appropriation for this line item is \$500,000. As of February 2015, DNR had distributed just under \$450,000 in grants and local assistance under this GRF line item. This leaves approximately \$50,000 that would be distributed in accordance with the revised uses permitted under the bill.

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.

Phosphorous monitoring of publicly owned treatment works

The bill requires certain publicly owned treatment works to begin monthly monitoring of total and dissolved phosphorous by December 1, 2016. Approximately 210 treatment works will be subject to this monthly monitoring requirement. The cost for each treatment work is expected to be less than \$30 per month, which means the estimated cost statewide to comply with this provision will be around \$75,600 per year (\$30/month x 12 months x 210 treatment works). Treatment works already test for total phosphorous and are not expected to incur any significant cost beyond testing to comply with the requirement to test for "dissolved" phosphorous.

Additionally, the bill requires publicly owned treatment works that are not subject to the phosphorous limits in the bill to complete and submit to the Director of Environmental Protection, not later than December 1, 2017, a study that evaluates the technical and financial capability of the facility to take certain actions to reduce the final effluent discharge of phosphorous. The presumably one-time cost for any given system to produce the required study is uncertain.

Strategic plan for harmful algae monitoring and response

The bill requires the Director of Environmental Protection to serve as coordinator of harmful algae management and response. As coordinator, the Director 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 to implement actions that protect against cyanobacteria in the western basin and public water supplies, and manage wastewater to limit nutrient loading into the western basin.
- Develop and implement protocols and actions that include (a) analytical protocols for monitoring of cyanobacteria at water intake structures of public water systems, testing for cyanobacteria in Lake Erie, and establishing public health advisory levels and public notification protocols if trigger levels of cyanotoxin are detected, (b) provisions on training, testing, and treatment and other support regarding cyanobacteria identification, sampling, treatment techniques, algaecide application, public notification, and source water protection for employees of publicly owned treatment works and public water systems, and (c) protocols requiring public water systems to notify the Ohio EPA in certain situations.

The costs for the state, publicly owned treatment works, and public water systems to implement these required actions and protocols are uncertain.

Legislative reports

The bill also requires the preparation of two legislative reports. The first one of these reports deals with land application of manure and fertilizer. Under the bill, the committees of the General Assembly that are primarily responsible for agriculture and natural resources matters are required to jointly assess the results of the implementation of the bill's prohibitions against the application of manure and fertilizer in the western Lake Erie basin on frozen ground, on saturated soil, and during certain weather conditions not later than three years after the bill's effective date. The bill also requires the committees of the General Assembly that are primarily responsible for environmental matters, not later than January 1, 2023, to jointly assess the results of the implementation of the bill's prohibition against depositing dredged material in the Maumee basin that resulted from harbor or navigation maintenance activities. Each committee is required to jointly issue a report to the Governor containing their findings and any recommendations based on the respective assessment. Neither chamber of the General Assembly is likely to incur significant costs, if any, for preparing these reports.

Legislative intent

Finally, the bill specifies the intent of the General Assembly that legislation transferring the administration and enforcement of the Agricultural Pollution Abatement Program from DNR to AGR be enacted not later than July 1, 2015.