Ohio Legislative Service Commission

Bill Analysis Helena Volzer, Jeff Grim, and Amanda George

H.B. 512

131st General Assembly
(As Introduced)

Rep. Ginter

BILL SUMMARY

Lead and copper sampling and disclosure requirements

- Requires the Director of Environmental Protection to adopt rules governing community and nontransient noncommunity water systems, including rules requiring such systems to sample and conduct tests for lead and copper and provide collected 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, as applicable, and report the results of the analysis 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 are in excess of either the lead threshold for individual taps or the lead action level.

- Requires the Director, beginning ten business days from the date that the Director received laboratory results, to provide certain notices if the owner or operator of a community or nontransient noncommunity water system fails to provide those notices.

- Establishes administrative penalties applicable to the 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 such maps to the Director once every five years.

- Requires the Director to provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling mapping requirements and corrosion control requirements established in rule.

- Requires the Director to post information on the Environmental Protection Agency's website about other sources of funding that are available 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.

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 current law.

- Expands the list of plumbing supplies and materials to which the above prohibition applies to include plumbing fittings and plumbing fixtures.

- Generally prohibits a person from doing any of the following:

  --Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture 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 that are used exclusively for nonpotable services.

- Revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .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 current law.

- Establishes a formula for calculating the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture.

Lead Plumbing Fixture Replacement Assistance Grant Program

- Establishes a grant program to be administered by the Facilities Construction Commission to provide funding to eligible schools for the replacement of specified plumbing found to be the cause of lead above the federal level for lead in drinking water.

- Appropriates $10 million for the biennium ending June 30, 2018 for purposes of the grant program.

- Authorizes an eligible school to be reimbursed for a maximum of $15,000 per building.

- Authorizes the Commission, in consultation with the Environmental Protection Agency and the Ohio Water Development Authority, to develop guidelines for the administration, phasing, and distribution of the grants.

Drinking Water Assistance Fund

- Revises in part two of the purposes for which the existing Water Supply Revolving Loan Account in the Drinking Water Assistance Fund may be used as follows:

  --Adds to the existing purpose of making loans to specified water systems a condition that each recipient of a loan must make periodic payments of principal and interest on the dates and in the amounts approved by the Director; and

  --Adds to the existing purpose of purchasing or refinancing at or below market rates interest debt obligations by certain political entities that, if any debt obligations provide financial assistance for any of the purposes allowed under current law, the repayment period generally may extend up to 45 years.

Water Pollution Control Loan Fund

- Expands the uses of the existing Water Pollution Control Loan Fund by adding eight categories of projects and activities that may receive assistance from the Fund.

- Adds state agencies to the types of entities that may receive money from the Fund for the construction of publicly owned wastewater treatment works.

- Revises requirements governing the administration of the Fund.
- Requires all loans made from the Fund to be fully amortized not later than 30 years after project completion rather than not later than 20 years as under current 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 the awarding of 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 operation, maintenance, and replacement expenses of the project by eliminating the stipulation that the user charge system be a proportional system.

TABLE OF CONTENTS

CONTENT AND OPERATION

Lead and copper sampling and disclosure requirements

Rules

The bill requires the Director of Environmental Protection, not later than 120 days after the bill's effective date, to adopt rules in accordance with the Administrative Procedure Act governing community and nontransient noncommunity water systems, including rules requiring such systems to sample and conduct tests for lead and copper

and provide collected samples to a certified laboratory for analysis. Under current 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] 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 rules applicable to such systems also must 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, does both of the following:

--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;

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[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. R.C. 6109.01(A), not in the bill.

[2] R.C. 6109.01(E) and (K).

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

--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 bill; and

(11) Establish administrative penalties for violations of the bill's requirements regarding the provision of certain notices that apply to the owner or operator of a system (see "**Administrative penalties**," below).[3]

Laboratory requirements

The bill requires a laboratory that receives lead or copper tap water samples to complete a lead or copper analysis of the sample, as applicable, not later than 30 business days after receipt of the sample. The laboratory must report the results of the analysis to the community or nontransient noncommunity water system and the

[3] R.C. 6109.121(A).

Director not later than the end of the next business day following the day the analysis of the sample is completed.[4]

Actions required upon receipt of laboratory results

The bill requires community or nontransient noncommunity water systems to take certain actions upon the receipt of laboratory results or verification of such 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	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. Not later than five business days after the 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.	Same. Not later than five business days after the 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.
If laboratory results show that a sample from an individual tap is above the applicable lead threshold established in rules	Not later than two business days after the 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 applicable local board of health. Include in the community water system's annual consumer confidence report the lead or copper results, an explanation of	Same. Immediately remove from service all fixtures identified as contributing to elevated lead levels.

[4] R.C. 6109.121(B).

[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
	the associated public health risks, what actions consumers of the system can take to reduce health risks, and the actions the system is taking to reduce public exposure.	
If laboratory results show that the community or nontransient noncommunity water system exceeds the lead action level established in rules	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.	Same.
	Not later than five business days after the 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 bill (see below).	No provision.
	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.	Same.
	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 date on which laboratory results	Same.

Event triggering notice or action requirement	Requirements applicable to a community water system	Requirements applicable to a nontransient noncommunity water system
	were received by the owner or operator indicating that the system exceeded the lead action level.	

The bill 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 bill requires the Director to adopt rules establishing administrative penalties applicable 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 receipt of 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 is in excess of 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 amount of people served by the system, as specified below.[7]

[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
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
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 bill, 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 or contain buildings served by the system with 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:

--Submit a copy of the applicable map to the Department of Health and the Department of Job and Family Services; and

--Submit a report to the Director containing the applicable map and a list of sampling locations that satisfy the criteria of a Tier I Site established in rules, including contact information for the owner and occupant of each sampling site.[8]

The owner or operator must fulfill all of the above mapping requirements not later than six months from the bill'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 bill requires the Director to 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

[8] R.C. 6109.121(F).

[9] R.C. 6109.121(G).

requirements established in rules. In addition, the Director must post information on the Environmental Protection Agency's website about other sources of funding that are available to assist communities with lead service line identification and replacement and schools with fountain and water-service fixture replacement.[10]

Under the bill, 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]

Lead contamination of drinking water from plumbing

The bill 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 or fixture, 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. Current law instead requires pipes, pipe fittings, solder, and flux that are 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 bill retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.[12]

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

(1) Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture 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.[13]

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[10] R.C. 6109.121(H).

[11] R.C. 6109.121(I).

[12] R.C. 6109.10(B)(1) and (D)(1).

[13] R.C. 6109.10(B)(2), (3), and (4) and (D)(2) and (3).

The bill exempts the following from all of the above 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, service saddles, or water distribution main gate valves that are at least two inches in diameter.[14]

In addition, the bill revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .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 current law. It retains current law specifying that solders and flux are lead free if they contain not more than .2% lead.[15]

The weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture must 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 bill'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.[16]

Lead Plumbing Fixture Replacement Assistance Grant Program

The bill establishes the Lead Plumbing Fixture Replacement Assistance Grant Program and appropriates $10 million for the biennium ending June 30, 2018 for purposes of the Program. The Program is to be administered by the Facilities Construction Commission to provide funding to eligible public and chartered nonpublic schools for the reimbursement of the cost of the replacement of drinking fountains, water coolers, plumbing fixtures, and limited connected piping that are found to be a cause of lead above the federal action level in drinking water. The

[14] R.C. 6109.10(D)(4).

[15] R.C. 6109.10(A)(1).

[16] R.C. 6109.10(A)(2).

Commission also may reimburse eligible chartered nonpublic schools for the cost of the drinking water assessments (see below). For purposes of the Program, an eligible school is a traditional public school, community school, or chartered nonpublic school that is housed in a building constructed before 1990.

An eligible public school may request to have its buildings assessed for lead content in drinking water through the Ohio Water Development Authority Assessment Program. An eligible chartered nonpublic school may request to have its buildings assessed for lead content in drinking water through a firm that uses the same protocols as those used by the Ohio Water Development Authority. An eligible chartered nonpublic school may apply to the Commission for reimbursement of the cost of an assessment that follows the Authority testing protocols.

If the assessment finds that a drinking fountain, water cooler, plumbing fixture, or limited connected piping is found to be a cause of lead above the federal action level in drinking water, the Authority must review the results and notify the Commission of the results and the number of fountains, coolers, fixtures, and piping that need to be replaced. An eligible school may then apply to the Commission for reimbursement for the material cost of the replacement of fountains, coolers, fixtures, and piping. An eligible school may be reimbursed for a maximum of $15,000 per building. The Commission, in consultation with the Environmental Protection Agency and the Authority may develop guidelines for the administration, phasing, and distribution of the grants.[17]

Drinking Water Assistance Fund

The bill revises in part two of the uses of the existing Water Supply Revolving Loan Account in the Drinking Water Assistance Fund. Under current law, the Account is used for various purposes. One of these purposes is to make loans to community water systems and nonprofit noncommunity public water systems subject to specified conditions. The bill adds a condition that each recipient of a loan must make periodic payments of principal and interest on the dates and in the amounts approved by the Director.[18]

Under current law, another purpose of the Account is to purchase or refinance at or below market rates interest debt obligations by municipal corporations, other political subdivisions, and interstate agencies having territory in Ohio. The bill adds that if any debt obligations are purchased or refinanced to provide financial assistance

[17] Section 3.

[18] R.C. 6109.22(I)(1)(c).

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

(1) For the 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;

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

(8) To any qualified nonprofit entity, as determined by the Director of Environmental Protection, to provide 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

[19] R.C. 6109.22(I)(2).

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

The bill also revises requirements governing the administration of money credited to the Fund. First, under current law, money in the Fund may be used to pay the reasonable costs of administering the Fund. The bill adds that money also may be used for conducting activities under the law governing the Fund. The bill 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. Instead, the bill specifies 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 bill, all loans made from the Fund must be fully amortized not later than 30 years after project completion rather than not later than 20 years as under current law. In addition, the bill, to the extent allowed under the Federal Water Pollution Control Act, authorizes the repayment period of debt obligations that are purchased or refinanced for Fund purposes to extend up to 45 years. However, the bill specifies that the repayment period may not exceed the expected useful life of any facilities financed by the obligations. The bill also allows money credited to the Fund to be used for principal forgiveness assistance under the Federal Water Pollution Control Act.[22]

The bill 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 revises the requirement that, before providing such financial assistance, the Director must first determine that the applicant will implement a user charge system to pay the operation, maintenance, and replacement expenses of

[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 project by eliminating the stipulation that the user charge system be a proportional system.[23]

Finally, for purposes of the statute governing the Fund, the bill 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]

HISTORY

ACTION	DATE
Introduced	04-07-16

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[23] R.C. 6111.036(K)(1) and (2).

[24] R.C. 6111.036(R).