



# OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 2 of the 132nd G.A.

**Status:** As Reported by House Energy and Natural Resources

**Sponsor:** Sen. Hite

**Local Impact Statement Procedure Required:** No

**Subject:** Revises specified environmental protection laws

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### State Fiscal Highlights

- The bill expands the authority of the Ohio Environmental Protection Agency (Ohio EPA) to take certain actions to abate pollution or contamination at a parcel of property, including where solid wastes or construction and demolition debris are disposed of. The annual cost of taking these actions is uncertain.
- The bill permits the Ohio EPA, in the absence of an agreement for reimbursement, to record the unreimbursed portion of the costs of the activities at the office of the appropriate county recorder. As a result, the state may recover costs that otherwise might have gone uncollected under current law and practice.
- The bill's expansion of the cleanup and remediation activities in which the state is immune from liability may minimize the legal expenses that the state otherwise might incur in the future, as well as the magnitude of any court-ordered settlement or judgment.
- The bill establishes new licensing and enforcement duties for the Ohio EPA with regard to processing facilities under the Construction Demolition and Debris Law. The annual costs of these new regulatory duties, and the amount of related revenue generated, for the Ohio EPA are uncertain.
- The bill adds two members to the Ohio Lake Erie Commission and revises its duties. Any additional costs incurred by the Commission and its affiliated state agencies will be minimal annually.
- The bill provides the Ohio EPA with greater flexibility in the uses of money credited to the Waste Management Fund (Fund 4K30).

## **Local Fiscal Highlights**

- The bill establishes new licensing and enforcement duties for boards of health with regard to processing facilities under the Construction Demolition and Debris Law. The annual costs of these new regulatory duties, and the amount of related revenue generated, for boards of health are uncertain.
- The one-time cost for certain public water systems to create an asset management plan is uncertain.
- Violations of the bill's dredged material and slag prohibitions are expected to occur occasionally and be relatively small in number. Thus, any associated local costs to resolve such cases will be minimal at most annually. The timing and magnitude of any revenue generated from fines, and court costs and fees is indeterminate.

## **Detailed Fiscal Analysis**

### **Evaluation and cleanup of landfill facilities and properties**

Under current law, the Director of the Ohio Environmental Protection Agency (Ohio EPA) is: (1) authorized to conduct investigations at a facility or property where hazardous waste is disposed of, and (2) required, under certain specified circumstances, to initiate appropriate actions or seek any appropriate legal or equitable remedies. The bill adds a facility or property where solid wastes or construction and demolition debris (C&DD) are disposed of. The annual cost of these duties and responsibilities is uncertain.

The bill authorizes the expenditure of money credited to the Environmental Protection Remediation Fund (Fund 5410) for the purpose of closure or post-closure care of a solid waste or C&DD facility or for remediation or pollution abatement activities at those facilities.

The bill permits the Director, in the absence of an agreement for reimbursement, to record the unreimbursed portion of the costs of the activities at the office of the appropriate county recorder. The recorded costs then constitute a lien against the property that is superior in priority to any other lien or mortgage on the property with certain exceptions. As a result, the state may recover costs that otherwise might have gone uncollected under current law and practice.

### **Immunity**

Current law declares that the state is immune from liability for any injury or damage resulting from the operation of a hazardous waste facility by a person other than a state entity or resulting from conditions at a facility that is acquired by the state. The bill adds the following specified activities from which the state is immune: (1) the operation of a solid waste or C&DD facility by a person other than a state entity, and (2) cleanup or remediation conducted pursuant to state law, provided that those activities do not constitute reckless, willful, or wanton misconduct. This expanded

immunity may minimize the legal expenses that the state otherwise might incur in the future, as well as the magnitude of any court-ordered settlement or judgment.

## **Construction and Demolition Debris Law**

The bill requires the Director of the Ohio EPA, under the Construction and Demolition Debris Law, to adopt rules governing new and existing processing facilities and the inspection of and issuance of licenses and permits to install for those facilities. The bill prohibits a person from operating or maintaining a processing facility without an annual license issued by the board of health of the health district in which the facility is located or from the Director (if the health district is not approved).

### **Licensing and permitting of a processing facility**

**Processing license.** The applicant for any annual processing facility is required to submit an application to the board of health or the Director, as appropriate. This includes payment of a nonrefundable fee of \$100. Upon issuance of a license, the licensee is required to pay to the board of health or the Director an annual license fee of \$650.

**Initial processing license.** The owner or operator of an existing processing facility is required to submit to the board of health or the Director, as appropriate, an application for an initial processing facility license. After the initial processing facility license expires, the owner or operator is required to apply for an annual processing facility license.

**Permit to install.** A person establishing a new processing facility is required to obtain a permit to install from the board of health or the Director, as appropriate.

**Continuing education training.** The bill requires the Director, in consultation with boards of health, to establish a certification program for operators of processing facilities, including a continuing education training program for the operators.

The annual costs of these new regulatory duties, and the amount of related revenue generated, for the Ohio EPA and boards of health are uncertain.

## **Waste Management Fund**

The bill revises the uses of money in the Waste Management Fund (Fund 4K30) by eliminating the earmarking of the sources of revenue for specified purposes. This change gives the Ohio EPA greater flexibility in budgeting for: (1) administering and enforcing the laws governing solid, hazardous, and infectious wastes, and C&DD, (2) evaluating ground water related to solid wastes, infectious wastes, and C&DD, and (3) addressing violations of the Air Pollution Control Law and the Water Pollution Control Law at solid, hazardous, and infectious waste facilities, and C&DD facilities.

## **Dredged material and slag**

The bill prohibits a person from using, managing, or placing dredged material in any location unless authorized to do so in accordance with certain laws, rules, and provisions. For purposes of the prohibition, dredged material is material excavated or

dredged from a federal navigation channel during harbor or navigation maintenance activities.

A purposeful violation of the prohibition is a felony, punishable by a fine of not more than \$25,000, imprisonment for not more than four years, or both. A knowing violation of the prohibition is a misdemeanor, punishable by a fine of not more than \$10,000, imprisonment for not more than one year, or both. The Attorney General, upon request of the Director, must prosecute a violation. The court imposing a sentence is permitted to order the violator to reimburse the state agency or a political subdivision for any costs incurred in responding to the violation, but not including the costs of prosecution.

The bill exempts blast furnace slag and steel slag from certain requirements of the Water Pollution Control Law, such as requirements governing permits for discharges into the waters of the state, and prohibits the placement or management of blast furnace slag and steel slag in a manner that results in: (1) an exceedance of water quality standards, (2) primary or secondary contaminant levels for ground water, (3) any discharge prohibited by federal environmental law, or (4) a threat to public health, safety, or the environment. The Director of the Ohio EPA, or an authorized representative, is permitted to enter any private or public property to inspect and investigate conditions or examine records relating to alleged noncompliance.

Violations of the dredged materials, and slag prohibitions are expected to occur occasionally and be relatively small in number. Thus, any associated state and local costs to resolve such cases will be minimal at most annually, including any costs related to prosecution by the Attorney General and sanctioning of violators. The timing and magnitude of any revenue generated from fines, court fees/costs, and cost reimbursements is indeterminate.

### **Ohio Lake Erie Commission**

The bill: (1) adds two members to the Ohio Lake Erie Commission, (2) requires the agencies represented on the Commission to provide administrative services, (3) establishes new duties for the Commission, (4) eliminates some of the duties currently required of the Commission, (5) specifies that Commission members and public advisory council members are eligible for expense reimbursements, and (6) revises the permissible uses of the money in the Lake Erie Protection Fund (Fund 4C00).<sup>1</sup> Any additional costs incurred by the Commission and its affiliated state agencies will be minimal annually.

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<sup>1</sup> Under current law, the Commission consists of 11 members: the directors of Environmental Protection, Natural Resources, Health, Agriculture, Transportation, and Development Services and five members appointed by the Governor.

## **Public water system capability**

The bill requires all public water systems to demonstrate technical, managerial, and financial capability by implementing an asset management program by October 1, 2018. Public water systems are not currently required to have asset management programs, but, according to the Ohio EPA, most well-run water systems already have a program in place. There are 5,175 public water systems, but only 850 of these are publicly owned. The one-time cost to any publicly owned public water system that does not currently have a program in place is uncertain.

## **Receivership of public water systems**

The bill permits the Director of the Ohio EPA to petition a court of common pleas to appoint a receiver to take possession of and operate a public water system when the system serves less than 500 service connections and conditions existing at the system present a threat to public health or welfare. The Ohio EPA expects to only use this authority as a last resort after other measures have failed. Although it could have a fiscal impact on the courts of common pleas and certain public water systems, the number of such systems placed into receivership is expected to be relatively small, and, therefore, the state and local fiscal impact is expected to be minimal at most annually.