



**Sub. S.B. 65**

124th General Assembly

(As Reported and Referred by Rules and Reference)

**Sens. Mumper, Jacobson, Harris, Spada**

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**BILL SUMMARY**

- Creates a specified civil immunity from tort liability for a water supplier that acquires ownership of an existing water system, enters into a written agreement with the Ohio Environmental Protection Agency, and complies with certain conditions in the agreement.
- Creates a specified civil immunity from tort liability for a water supplier that has not been found to be in significant noncompliance with drinking water standards with respect to harm caused by substances for which there are drinking water standards and during a period of time when the water supplied by the water supplier meets all applicable drinking water standards.

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**CONTENT AND OPERATION**

**Tort immunity for acquiring water suppliers**

The bill provides that a water supplier that acquires ownership of an existing water system is not liable in damages in a civil action for injury, death, or loss to person or property (tort action) allegedly caused by the failure of the previous owner of the acquired water system to comply with drinking water standards if the acquiring water supplier does both of the following: (1) enters into a written agreement with the Ohio Environmental Protection Agency (OEPA) to bring the acquired water system into compliance with drinking water standards within a specified period of time, and (2) brings the acquired water system into compliance with drinking water standards within that time period (sec. 6109.35(B)).

**Tort immunity for existing water suppliers**

The bill provides that a water supplier that operates a public water system is not liable in a tort action that allegedly arises from the person's consumption of

water supplied by the water supplier if all of the following apply: (1) during the period of time that the water supplier supplies water to the person, the water supplied by the water supplier meets all applicable drinking water standards, (2) the water supplier has not been found to be in significant noncompliance with drinking water standards, and (3) the injury, death, or loss to person or property is alleged to be caused by a substance for which drinking water standards have been established. (Sec. 6109.35(C).)

### **Non-preemption provision**

The immunities created by the bill do not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which a water supplier may be entitled under circumstances not specifically covered above. Additionally, the immunities in the bill do not create a new cause of action or substantive legal right against a water supplier. Finally, the immunities created by the bill do not create an immunity from civil liability for violations of the Safe Drinking Water Law. (Sec. 6109.35(D).)

### **Definitions**

The bill defines the following terms for its purposes:

(1) "Water supplier" means an entity that is subject to the Safe Drinking Water Law and rules adopted under it and that supplies drinking water through pipes, through tubing, or in a similar manner to consumers within this state.

(2) "Acquiring water supplier" means a water supplier that satisfies both of the following: (a) the water supplier acquires ownership of an existing water supplier, and (b) the water supplier and the acquired existing water supplier do not have any mutual directors, officers, controlling shareholders, or other persons with an ownership interest prior to the acquisition.

(3) "Drinking water standards" means safe drinking water standards established by OEPA under the Safe Drinking Water Law or by the United States Environmental Protection Agency under the Safe Drinking Water Act. (Sec. 6109.35(A).)

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## **COMMENT**

1. "Public water system" means 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. "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 camp. (Sec. 6109.01(A), not in the bill.)

2. The immunities created by the bill do not apply to a public water system that meets all of the following conditions:

(1) The public water system consists only of distribution and storage facilities and does not have any collection and treatment facilities.

(2) The public water system obtains all of its water from, but is not owned or operated by, a public water system.

(3) The public water system does not sell water to any person.

(4) The public water system is not a carrier that conveys passengers in interstate commerce.

Such a system is excluded from the Safe Drinking Water Law, and thus the bill's immunities do not apply. (Sec. 6109.02, not in the bill.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-06-01	p. 190
Reported, S. Judiciary on Civil Justice	06-21-01	p. 687
Passed Senate (32-0)	06-27-01	p. 716
Recommended re-referral to Rules & Reference, H. Energy & Environment	10-16-01	p. 925
Reported & referred to H. Civil & Commercial Law, H. Rules & Reference	10-17-01	p. 948

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