



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 352 of the 128th G.A.

Date: February 2, 2010

Status: As Introduced

Sponsor: Rep. Bolon

Local Impact Statement Procedure Required: Yes

Contents: Requires that certain public water systems built before 1999 comply with the Safe Drinking Water Law

State Fiscal Highlights

STATE FUND

FY 2010 – FUTURE YEARS

Attorney General – GRF and other funds

Revenues - 0 -

Expenditures Potential increase for instituting civil actions

Environmental Protection Agency – Drinking Water Protection Fund (Fund 4K50)

Revenues Potential gain in penalty revenues

Expenditures Potential minimal increase in rulemaking costs and for bringing forth any civil actions

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The Division of Drinking and Ground Waters within the Ohio Environmental Protection Agency (EPA) could incur new costs for ensuring that public water systems built before 1999 comply with the safe drinking water laws under the bill. These new costs would be paid from the Safe Drinking Water Fund (Fund 4K50), which consists of water system licensing fees, plan approval fees, and penalty revenues.
- The Attorney General could incur new expenses and costs for prosecuting operators of public water systems covered by the bill, both from the GRF and other funds. Because the bill applies to older water systems that are more likely to be out of compliance, the Attorney General is likely to handle a greater number of such cases under the bill. These cases would be handled by the Attorney General's Environmental Enforcement Division.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010 – FUTURE YEARS

Public water systems of various political subdivisions

Revenues - 0 -

Expenditures Potential increase in costs to demonstrate compliance with Safe Drinking Water laws

County Civil and Criminal Courts

Revenues Potential gain in court cost revenues

Expenditures Potential increase in caseload costs

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Community and nontransient noncommunity water systems built before 1999 would incur additional costs to produce documentation that demonstrates compliance with the technical, managerial, and financial capability requirements established by the EPA. This would include most such systems statewide.
- Civil actions brought forth against violators of the bill would be heard in civil or, in some instances, criminal courts. This could increase costs for county civil and criminal courts. Some of this expense would be offset by court cost revenue assessed.

Detailed Fiscal Analysis

Overview

Current law requires certain public water systems built after October 1, 1999, to demonstrate the technical, managerial, and financial capability of the system to comply with the Safe Drinking Water Law. This covers both "community water systems" and "nontransient noncommunity systems." Community water systems are those that serve at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents, such as cities, mobile home parks, and nursing homes. Nontransient noncommunity systems include those that serve at least 25 of the same persons over six months per year, such as schools, hospitals, and factories. The bill requires that systems serving these populations that were built before 1999 also comply with the Safe Drinking Water Law and related rules enforced by the Division of Drinking and Ground Waters within the Ohio Environmental Protection Agency (EPA).

New state costs for state oversight of pre-1999 systems

On the state level, the EPA's Division of Drinking and Ground Waters could incur new costs for assuring that pre-1999 community and nontransient noncommunity water systems comply with the Safe Drinking Water Law. The Division is funded by water system licensing fees, plan approval fees, and penalty revenues. According to the EPA's *Public Water Systems Annual Compliance Report for Calendar Year 2007*, there are just over 2,200 community and nontransient noncommunity systems in Ohio. The table below shows these types of water systems and the source of water supplying them.

Ohio's Public Water Systems, Calendar Year 2007			
Category	Surface Water	Ground Water	Total
Community	296	1,000	1,296
Nontransient Noncommunity	9	909	918
Transient Noncommunity	24	3,102	3,126
Total	329	5,011	5,340

Of this total, it is not clear how many community and nontransient noncommunity systems are pre-1999, but the number is likely substantial. This is because most existing public water systems were built before 1999. Indeed, the EPA indicates that approximately five new systems are added annually.

New local water system costs

Compliance

Any public water systems built before 1999 could incur new costs in order to comply with the bill. These additional expenses would vary, depending on the current status of the public water system. Systems that are poorly maintained could incur higher costs to comply with the bill. According to the EPA's *Public Water Systems*

Annual Compliance Report mentioned above, community and nontransient noncommunity systems served approximately 10.6 million residents.

Penalties

Current law assesses a civil penalty of not more than \$25,000 for each violation, to be credited to the Drinking Water Protection Fund (Fund 4K50). Each day of noncompliance is a separate violation. The bill also adds criminal penalties for specified violations. The first is a misdemeanor penalty that applies to whoever *recklessly* violates those provisions, subject to a fine of \$25,000 or one year imprisonment, or both. Each day of violation constitutes a separate offense. The second penalty applies to anyone who *knowingly* violates those provisions and requires a fine of at least \$10,000 but not more than \$25,000, or two-to-four years' imprisonment, or both, with each day of violation a separate offense. Finally, the bill requires the Attorney General, upon written request by the Director, to bring an action for injunction or another appropriate civil action or criminal prosecution against any person who is violating or threatening to violate those provisions. The Attorney General's Environmental Enforcement Division would ultimately be responsible for any such actions.

The total cost implications of these penalty enhancements will ultimately depend on how many additional cases result from the bill. Fund 4K50 collected \$17,480 in civil penalties in FY 2009. Since the systems being added under the bill are generally older, the EPA could see more violations or higher fines. Since 1999, EPA has handled 46 cases that would be affected under the bill, 35 of which were from falsification of records.