



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 490 of the 130th G.A.

Date: April 8, 2014

Status: As Introduced

Sponsor: Reps. Hall and Thompson

Local Impact Statement Procedure Required: No

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

State Fiscal Highlights

Department of Agriculture

- The bill transfers oversight of the Agricultural Pollution Abatement Program from the Department of Natural Resources' Division of Soil and Water Resources to the Department of Agriculture.
- The bill transfers oversight of the Agricultural Pollution Abatement Fund from the Department of Natural Resources to the Department of Agriculture. This fund will be used to cover the Department of Agriculture's costs for overseeing the Agricultural Pollution Abatement Program.
- Expenses for cost-sharing projects under the Agricultural Pollution Abatement Program currently paid from the Soil and Water Districts Assistance Fund (Fund 5BV0) would likely be paid from the Agricultural Pollution Abatement Fund. For the FY 2012-2013 biennium, expenses for cost-sharing projects totaled approximately \$46,000.
- Three employees would likely be shifted from the Department of Natural Resources to the Department of Agriculture as a consequence of the program transfer. Annual personnel costs for the Agricultural Pollution Abatement Program to be covered by the Department of Agriculture could be in the \$300,000 range.

Department of Natural Resources

- The Oil and Gas Well Fund (Fund 5180) could gain minimal new revenues from brine transportation registration fees paid by pipeline operators who apply for a brine transportation registration certificate under the bill.
- The Oil and Gas Well Fund (Fund 5180) could gain new revenues, likely in the tens of thousands of dollars annually, from fees for applications to plug back existing oil and gas wells.
- The Wildlife Fund (Fund 7015) could gain minimal new revenues from fees for incidental taking permits issued to qualified energy facilities.

Environmental Protection Agency

- If Ohio fails to enact the bill's revisions to the statute governing the prevention of lead contamination of drinking water, it becomes ineligible to receive certain federal grant program funds amounting to roughly \$24 million a year, of which over 89%, or \$21.4 million, is distributed to local governments in the form of loans and grants.

Local Fiscal Highlights

- **Oil and Gas Law and Water Pollution Control Law enforcement.** The bill's changes to the enforcement of violations of the Oil and Gas Law and Water Pollution Control Law, including increases to civil and criminal penalties and allowances for the recovery of costs to respond to certain violations, may result in counties gaining additional fine moneys, and political subdivisions more generally collecting court-ordered response cost recoveries.
- **Federal Safe Drinking Water grants.** If Ohio fails to enact the bill's revisions to the statute governing the prevention of lead contamination of drinking water, local governments would lose around \$21.4 million annually that is distributed by the Ohio Environmental Protection Agency to local governments in the form of loans and grants. In addition, local governments would no longer be eligible to apply directly to the U.S. Environmental Protection Agency for infrastructure grants that run in the millions of dollars annually.

Detailed Fiscal Analysis

Agricultural Pollution Abatement Program

The Agricultural Pollution Abatement Program, currently overseen by the Department of Natural Resources' (DNR) Division of Soil and Water Resources, establishes standards and conservation practices in farming, silvicultural, and animal feeding operations in order to abate excessive soil erosion or the pollution of waters of the state by soil sediment and animal manure. The program also provides cost-sharing assistance to farmers to develop and implement best management practices which protect streams, creeks, and rivers. Under the bill, the Division would continue its responsibilities concerning soil erosion, but oversight of the program's animal manure functions would be transferred to the Department of Agriculture (AGR).

Under the transfer proposed by the bill, AGR would be responsible for establishing technically feasible and economically reasonable standards and enforcing rules intended to mitigate and prevent agricultural pollution from manure and residual farm products. Additionally, AGR would be responsible for establishing practices for composting dead animals and establishing requirements and procedures governing the review and approval or disapproval of composting plans by supervisors of soil and water conservation districts. AGR would also be responsible for determining eligibility standards for cost-sharing projects and administration of the cost-sharing portion of the program. Transferring oversight of these functions will also result in administrative and personal services costs and expenses under the cost-sharing program being shifted from the Division to AGR.

The most significant cost transferred to AGR would likely stem from personal services. According to AGR, three employees would be transferred from DNR to handle the new responsibilities under AGR. AGR estimates that personal services costs, including fringe benefits and other miscellaneous employee expenses would total approximately \$300,000 per year. Additionally, expenses under the cost-sharing program could be in the several thousands of dollars annually. For the FY 2012-FY 2013 biennium, DNR contributed approximately \$46,000 to cost-sharing programs. Currently the Division pays cost-sharing project expenses from the Soil and Water Districts Assistance Fund (Fund 5BV0).

Presumably, most of the expenses associated with the transferred responsibilities would likely be paid from the Agricultural Pollution Abatement Fund, which is also transferred from DNR to AGR. This fund is used to pay costs associated with investigating, mitigating, minimizing, removing, or abating pollution of the waters of the state caused by agricultural pollution or unauthorized release, spill, or discharge of manure or residual farm products that requires emergency action to protect the public health. Revenue from enforcement actions under the Agricultural Pollution Abatement Program, including penalties and judgments from civil actions, would be deposited into

the fund to pay administrative and personal services costs as well as for grants under the cost-sharing portion of the program. However, it is uncertain whether enough revenue could be generated from penalties and civil actions to fully support the administrative costs associated with the Agricultural Pollution Abatement Program.

Revisions to oil and gas administration laws

The bill makes a number of changes to administrative processes and procedures carried out by the Division of Oil and Gas Resources Management within the Department of Natural Resources (DNR). Many of these changes do not have any substantial fiscal impact; that is, they will result in only minimal new administrative costs or can be implemented using the Division's existing resources. The provisions that could or do have more than a minimal fiscal effect are discussed here. For further details on these and other such provisions, please see the LSC Bill Analysis.

Brine transportation

Under current law, anyone who wishes to transport brine by vehicle must register with the Division and pay a fee of \$500. The bill would extend this requirement to any manner of brine transportation, not only by vehicle, thereby encompassing pipelines. By including pipelines as a potential mode of brine transportation, the Division could collect brine transportation registration fees from pipeline operators. Actual new revenues to the Oil and Gas Well Fund (Fund 5180) from this fee would depend on the number of pipeline operators that transport brine via pipeline; however, this number is not likely to be very large, so new revenues from this fee are likely to be minimal.

Application fee for permit to plug back an existing well

Under current law, an applicant for a permit to plug back an existing oil or gas well is exempt from having to pay a fee. The bill removes this exemption and subjects such applications to a nonrefundable fee as follows:

1. \$500 for a permit to conduct activities in a township with a population of fewer than 10,000;
2. \$750 for a permit to conduct activities in a township with a population of 10,000 to 14,999; and
3. \$1,000 for a permit to conduct activities in either a township with a population of 15,000 or more or a municipal corporation regardless of population.

According to the 2012 Ohio Oil and Gas Summary published by DNR, the most recent data available, there were 15 wells that were plugged back to a producing formation in that year. Depending on the number of wells that need to be plugged back in the future, as well as the locations of those wells, new revenues to the Oil and Gas Well Fund (Fund 5180) that result from these fees would likely total in the tens of thousands of dollars. Because most wells are currently drilled in areas with lower

populations, it is more likely for either the \$500 or \$750 fees to be charged than the \$1,000 fee.

Civil and criminal penalties for violations of the Oil and Gas Law

The bill increases a range of civil and criminal penalties for certain violations of the Oil and Gas Law. The LSC Bill Analysis contains tables on pages 25 and 26 that show the differences between the penalties in current law and those proposed in the bill. Please see that document for a full breakdown of each penalty that is affected by H.B. 490.

Civil penalties

In addition to increasing a number of civil penalties, the bill also specifies that violators of certain sections of the Oil and Gas Law, or of any term or condition of a permit or order issued under the Oil and Gas Law, are liable for damage or injury caused by the violation and the cost of rectifying the violation and any conditions arising therefrom. As a result of the increased civil penalties and the new liability provisions, the Oil and Gas Well Fund (Fund 5180) could receive some new revenue from these penalties, depending on the number of violations found and the amount of damages for which violators are found to be liable in civil cases. However, assessment of these penalties is likely to be a relatively rare occurrence.

Criminal penalties

The increased criminal fines imposed by the bill could result in revenue gains to Fund 5180, depending on the number of violations and the amount that is actually imposed on each violator by a court, which may be less than the maximum amount allowed by law. In cases involving violations of compliance agreements and requirements regarding brine transportation, the counties where the violations occurred could also gain some fine revenue. While prison sentences for Oil and Gas Law violations are likely to be rare, the Department of Rehabilitation and Correction or local jails could incur new costs if any violators are sentenced to incarceration under the new penalties authorized in the bill. Finally, if the state or local governments incur costs to respond to violations of the Oil and Gas Law, they would be able to recover these costs if a court requires a violator to reimburse those costs in addition to any other penalty the violator may be required to pay.

Repeal of certain EPCRA reporting requirements pertaining to oil and gas facilities

The bill repeals certain provisions that require the owner of an oil or gas well to submit certain information to the Division of Oil and Gas Resources Management under the Emergency Planning and Community Right-to-Know Act (EPCRA) and regulations adopted under it. This includes the removal of a requirement that an owner or operator of an oil or gas facility submit a fee to the Emergency Response Commission when reporting inventories of certain hazardous materials and chemicals, and the requirement that the Chief of the Division of Oil and Gas Resources Management adopt

rules governing the creation and administration of a database of information required under EPCRA.

As a result of these changes, the Emergency Planning and Community Right-to-Know Fund (Fund 6790), used by the Ohio Environmental Protection Agency, would likely lose revenue from the fees currently charged to oil and gas facility owners or operators for hazardous materials reporting. Additionally, any costs to the Oil and Gas Well Fund (Fund 5180) that DNR's Division of Oil and Gas would have incurred to implement a database or promulgate rules under these provisions will no longer be incurred.

Incidental taking permits for wild animals

The bill authorizes the Chief of DNR's Division of Wildlife to establish a fee in administrative rules for a permit to a person operating an energy facility whose operation may result in the incidental taking (defined as the killing or injuring by chance or without intention) of a wild animal. The bill narrows the definition of "energy facility" for the purposes of this permit to certain wind turbines and associated facilities.

The Wildlife Fund (Fund 7015) could gain new revenues from this fee. However, the amount of any new income would depend on the number of permits issued and the amount of the fee established in rules. It is not likely that revenues from this fee would be substantial because of the limited number of facilities that would be eligible to apply.

Sale, use, or transfer of DNR property

Current law requires DNR to obtain the approval of both the Governor and the Attorney General for certain types of property transactions, regardless of the dollar amount of the transaction. The bill would require this approval only for transactions in an amount of \$1 million or more. This could have the effect of reducing administrative costs to DNR's Office of Real Estate for smaller, more routine property transactions.

Environmental Protection Agency

Lead contamination of drinking water from plumbing

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing, including certain prohibitions, required actions of the owner or operator of a public water system, and definitions. These revisions reflect changes to state law necessitated by amendments to the federal Safe Drinking Water Act signed into law on January 4, 2011. The state of Ohio and its political subdivisions become ineligible to receive this federal grant funding if it does not comply. Ohio's compliance with these federal amendments is a condition of the Ohio Environmental Protection Agency's (Ohio EPA) primacy agreement with the U.S. Environmental Protection Agency (U.S. EPA) to administer the Safe Drinking Water Act in Ohio, which includes about \$24 million in annual federal grant funding. Of the \$24 million, 11% is retained by the Ohio EPA for technical assistance and administration costs, and 89% is distributed to local governments in the form of grants and loans. Local governments

would also become ineligible to apply directly to the U.S. EPA for infrastructure-related grants running in the millions of dollars annually.

Enforcement of Water Pollution Control Law

The bill increases criminal penalties for certain violations of the Water Pollution Control Law, establishes culpable mental states regarding certain violations, and provides that if a person is convicted of or pleads guilty to a violation of any provision of the Water Pollution Control Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any applicable response costs. A full breakdown of each change to a penalty can be found on pages 32 through 34 of the LSC Bill Analysis.

These changes are not likely to have any discernible effect on the annual operating expenses of the common pleas, municipal, or county courts with jurisdiction over violations of the Water Pollution Control Law, but may generate a minimal annual incarceration cost increase if additional violators are sentenced to a local jail or state prison, or sentenced to a longer stay in such a facility than might have been the case under current law. Counties may gain additional fine moneys, and the state and/or its political subdivisions may collect court-ordered response cost recoveries.