

NOTICE TO USERS OF WATER SUPPLY OF EXCESSIVE LEAD LEVELS

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House Bill 5120 (reported from committee as Substitute H-4)
Sponsor: Rep. Sheldon A. Neeley
Committee: Government Operations
Complete to 12-8-16

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 478 of 2016)

BRIEF SUMMARY:

The bill requires local users of a public water supply to receive a public advisory from a supplier of water within three business days after the supplier is notified by the Department of Environmental Quality that lead levels in the water exceeded the lead action level.

House Bill 5120 amends Section 19 of the Safe Drinking Water Act to specify that if public education regarding lead is required under departmental rule (R 325.10410), a supplier of water must issue a public advisory within three business days after the Department of Environmental Quality (DEQ) notifies the supplier of water that the lead action level had been exceeded. This notification is in addition to notifications required if a public water supply is found not to be in compliance with the state drinking water standards. Additional public education tasks specified in Rule 410 must be conducted as required.

The public advisory must be provided in a form and manner designed to fit the specific situation and be reasonably calculated to reach all persons served by the public water supply. To do so, a supplier of water must use at least one or more of the following forms of communicating the public advisory:

- ❖ Appropriate broadcast media, e.g., radio and television.
- ❖ Posting of the public advisory in conspicuous locations throughout the area served by the public water supply.
- ❖ Hand delivering the public advisory to persons served by the public water supply.
- ❖ A communication method other than one listed above as approved, in writing, by the department.

Currently, the act specifies that a notification received under Section 19 or information obtained from it cannot be used against a person in a litigation, except a prosecution for perjury or for giving a false statement. The bill will apply this provision also to a public advisory.

The act defines "public water supply" to mean a waterworks system that provides water for drinking or household purposes to persons other than the supplier of the water, and does not include either a waterworks system that supplies water to only one living unit or a waterworks system that consists solely of customer site piping. "Supplier of water" or "supplier" means a person who owns or operates a public water supply, and includes a water hauler.

State drinking water standards" means quality standards setting limits for contaminant levels or establishing treatment techniques to meet standards necessary to protect the public health.

MCL 325.1019

BACKGROUND INFORMATION AND BRIEF DISCUSSION OF THE ISSUE:

Under the Safe Drinking Water Act, water delivered by, or the operation of, a public water supply must comply with state drinking water standards. The standards set limits for contamination levels and establish treatment techniques to meet standards necessary to protect the public health. Noncompliance with a standard triggers certain public notification requirements. The public notice requirements are divided into three tiers that take into account the seriousness of the violation or situation and of the potential adverse health effects that may be involved, defined in departmental rules as follows:

- Tier I—Required for violations and situations having significant potential to have serious adverse effects on human health as a result of short term exposure.
- Tier II—Required for all other violations and situations that have potential to have serious adverse effects on human health. (Lead is a Tier II contaminant.)
- Tier III—Required for all other violations and situations not included in Tier I and Tier II.

The tier assignment for each specific violation or situation is identified in Table 1 of Rule 401 of the Michigan Administrative Code (R 325.10401a). A Tier II public notification, which would include lead, must be provided as soon as practical, but not later than 30 days after the supplier learns of the violation or situation. Departmental rules also require a water supply that exceeds the lead action level based on tap water samples to deliver public education materials as specified in the rule, along with offering to sample the water of any customer requesting sampling.

A community water supply that exceeds the lead action level on the basis of tap water samples, and that is not already conducting public education tasks under Rule 410, must do so within 60 days after the end of the monitoring period in which the lead levels were exceeded.

One of the complaints highlighted in the Flint water crisis was the sheer length of time before residents had any notice that their water contained dangerous levels of lead. It is understood that confirmation of the level of contaminants may take some time as tests are redone and additional samples taken, but many felt they should at least have been warned that a problem could exist. Had timely public advisories been issued in Flint, even while studies to determine the cause and level of exposure, fewer exposures to lead in the water would have occurred. Instead, the delay in notifying the public lead to unnecessary and likely preventable exposure by vulnerable populations such as pregnant women, infants, children, and adults with certain health conditions. Many felt that with earlier notification, they would have had a choice whether to consume tap water or to seek other sources of potable water.

Under House Bill 5120, the time period for residents of public water supplies to be notified of excessive levels of lead in the drinking water will be shortened. The bill will not change other testing, reporting, and notification requirements. However, in the case of lead, even a one-time exceedance of the lead action level will trigger a timely notice to those who rely on public water systems. In light of the known physical and neurological damage incurred by lead ingestion, such timely notification is appropriate. This should go a long way in rebuilding trust between the public and those responsible for delivering safe drinking water.

FISCAL IMPACT:

House Bill 5120 would not affect revenues or costs for the Department of Environmental Quality (DEQ). This bill is unlikely to have a direct effect on local government revenues. However, it may increase costs for local governments that also function as water suppliers. This potential cost increase depends on the form and manner for notification or public advisory of tier II violations employed by the local water supplier. The bill provides different options for communicating the public advisory that vary in cost. If the communication method is within water suppliers' current communication practices then the additional costs would be minimal or zero. If the chosen method requires communication practices beyond water suppliers' current scope then additional costs may be incurred. These possible additional costs are likely to vary by water supplier and are consequently difficult to project.

POSITIONS:

The Department of Environmental Quality indicated support for the committee substitute.
(12-8-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.