



**OHIO CHAMBER**  
*of* **COMMERCE**

**3-7-2017 Energy and Environment  
Committee Meeting**

**OH - HB62** Establish Water Quality Improvement Program

Primary Sponsor: [Representative John M. Rogers \(D\)](#)

Actions:

**February 21, 2017**

- Refer to Committee

**February 14, 2017**

- Introduced

**OH - HB105** Limit revenue credited to Oil and Gas Well Fund and divert excess

Primary Sponsor: [Representative John M. Rogers \(D\)](#)

Actions:

**March 2, 2017**

- Introduced

**OH - SB2** Revise environmental protection laws

Primary Sponsor: [Senator Randy Gardner \(R\)](#)

Actions:

**February 1, 2017**

- Refer to Committee

**January 31, 2017**

- Introduced

**OH - SB50** Prohibit deep well injection of brine and conversion of wells

Primary Sponsor: [Senator Michael J. Skindell \(D\)](#)

Actions:

**February 15, 2017**

- Refer to Committee

**February 14, 2017**

- Introduced

**OH - SB53** Ban taking oil or gas from bed of Lake Erie

Primary Sponsor: [Senator Michael J. Skindell \(D\)](#)

Actions:

**February 15, 2017**

- Refer to Committee

**February 14, 2017**

- Introduced



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Sam Benham

### H.B. 15

132nd General Assembly  
(As Introduced)

**Reps.** Cera, Rogers, O'Brien, Antonio, Fedor, Sheehy

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### **BILL SUMMARY**

- Credits a portion of kilowatt-hour tax receipts to abandoned mine reclamation, acid mine drainage abatement, and mine safety programs.
  - Authorizes Department of Natural Resources (DNR) to transfer kilowatt-hour tax revenue between abandoned mine reclamation and acid mine drainage abatement programs.
  - Requires DNR to create procedures to encourage the employment of dislocated coal miners in projects funded under DNR's mine reclamation program and acid mine drainage abatement and treatment program.
  - Authorizes mine safety funding to be used for personnel, infrastructure, and programming costs related to mine safety training.
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### **CONTENT AND OPERATION**

#### **Allocation of kilowatt-hour tax receipts**

The bill changes how receipts from the kilowatt-hour tax are allocated. In particular, the bill credits a portion of those receipts to abandoned mine reclamation, acid mine drainage abatement, and mine safety programs administered by DNR. Under continuing law, a tax is levied on electric distribution companies with end users in Ohio, as well as on certain large-scale commercial or industrial electricity users that are taxed on the basis of their consumption. This tax is often referred to as the "kilowatt-hour tax" (kWh tax) because rates are tiered and vary according to the kWh consumption of electricity.

Under current law, nearly all kWh tax revenue is credited to the General Revenue Fund (GRF). The bill diverts some of this revenue to fund three DNR programs related to mine reclamation (1.5%), acid mine drainage abatement and treatment (1.5%), and mine safety (0.75%).<sup>1</sup> The remaining 96.25% continues to be credited to the GRF. In accord with the change in the revenue distribution, the bill changes the statement of the purpose of the kWh tax.<sup>2</sup>

## **DNR mine reclamation and safety programs**

In addition to changing the allocation of the kWh tax, the bill makes several modifications to the three DNR programs to be funded by kWh tax revenue under the bill – mine reclamation, acid mine drainage abatement and treatment, and mine safety.

### **Mine fund transfers**

The bill authorizes DNR to transfer funds between its mine reclamation and acid mine drainage abatement and treatment programs, to the extent the amount transferred in a fiscal year does not exceed the kWh tax revenue dedicated to each program under the bill (see "**Allocation of kilowatt-hour tax receipts**," above). (The amount allocated for either purpose in excess of kWh tax revenue largely consists of federal allocations that federal law proscribes from being transferred to the other purpose.<sup>3</sup>)

### **Project employment preference: dislocated coal industry workers**

The bill requires DNR to adopt policies and procedures to encourage contractors to employ dislocated coal miners for projects funded through DNR's mine reclamation or acid mine drainage abatement and treatment programs.<sup>4</sup>

### **Acid mine drainage abatement grants**

The bill requires DNR to obtain approval from the Council on Unreclaimed Strip Mined Lands before awarding acid mine drainage abatement grants.<sup>5</sup> (This requirement is rendered inoperative by the abolition of the Council by H.B. 471 of the 131st General Assembly.)

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<sup>1</sup> R.C. 5727.81(E).

<sup>2</sup> R.C. 5727.84(A).

<sup>3</sup> 30 C.F.R. 872.12(c) and 876.12(a).

<sup>4</sup> R.C. 1513.37(M).

<sup>5</sup> R.C. 1513.37(E)(3).



## Mine safety fund usage

The bill authorizes DNR to use mine safety program funds to fund mine safety training infrastructure, programming, and personnel costs. Continuing law generally limits this funding to the following purposes:

- Mine safety and health inspections and audits;
- Purchases and maintenance of mine rescue and inspection equipment;
- Purchases or leases of mine rescue stations and mine rescue and safety training facilities;
- Mine rescue and safety and health training for miners;
- Certification of mine officials.<sup>6</sup>

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## HISTORY

ACTION	DATE
Introduced	02-01-17

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<sup>6</sup> R.C. 1561.24(F).



**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 62**

**Representatives Patterson, Sheehy**

**Cosponsors: Representatives Rogers, Boccieri, Fedor, Antonio, Bishoff, O'Brien,  
Ashford, Leland, Ramos**

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**A BILL**

To amend sections 321.24, 939.01, and 939.02 and to 1  
enact section 5709.30 of the Revised Code to 2  
require the Director of Agriculture to adopt 3  
rules establishing the Ohio Water Quality 4  
Improvement Program, to exempt land enrolled in 5  
the Program from taxation, and to reimburse 6  
local taxing units for revenue lost due to that 7  
exemption. 8

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 321.24, 939.01, and 939.02 be 9  
amended and section 5709.30 of the Revised Code be enacted to 10  
read as follows: 11

**Sec. 321.24.** (A) On or before the fifteenth day of 12  
February, in each year, the county treasurer shall settle with 13  
the county auditor for all taxes and assessments that the 14  
treasurer has collected on the general duplicate of real and 15  
public utility property at the time of making the settlement. If 16  
the county treasurer has made or will make advance payments to 17  
the several taxing districts of current year unpaid taxes under 18

section 321.341 of the Revised Code before collecting them, the 19  
county treasurer shall take the advance payments into account 20  
for purposes of the settlement with the county auditor under 21  
this division. 22

(B) On or before the thirtieth day of June, in each year, 23  
the treasurer shall settle with the auditor for all advance 24  
payments of general personal and classified property taxes that 25  
the treasurer has received at the time of making the settlement. 26

(C) On or before the tenth day of August, in each year, 27  
the treasurer shall settle with the auditor for all taxes and 28  
assessments that the treasurer has collected on the general 29  
duplicates of real and public utility property at the time of 30  
making such settlement, not included in the preceding February 31  
settlement. If the county treasurer has made or will make 32  
advance payments to the several taxing districts of the current 33  
year delinquent taxes under section 321.341 of the Revised Code 34  
before collecting them, the county treasurer shall take the 35  
advance payments into account for purposes of the settlement 36  
with the county auditor under this division. 37

(D) On or before the thirty-first day of October, in each 38  
year, the treasurer shall settle with the auditor for all taxes 39  
that the treasurer has collected on the general personal and 40  
classified property duplicates, and for all advance payments of 41  
general personal and classified property taxes, not included in 42  
the preceding June settlement, that the treasurer has received 43  
at the time of making such settlement. 44

(E) In the event the time for the payment of taxes is 45  
extended, pursuant to section 323.17 of the Revised Code, the 46  
date on or before which settlement for the taxes so extended 47  
must be made, as herein prescribed, shall be deemed to be 48

extended for a like period of time. At each such settlement, the auditor shall allow to the treasurer, on the moneys received or collected and accounted for by the treasurer, the treasurer's fees, at the rate or percentage allowed by law, at a full settlement of the treasurer.

(F) Within thirty days after the day of each settlement of taxes required under divisions (A) and (C) of this section, the treasurer shall certify to the tax commissioner any adjustments that have been made to the amount certified previously pursuant to section 319.302 of the Revised Code and that the settlement has been completed. Upon receipt of such certification, the commissioner shall provide for payment to the county treasurer from the general revenue fund of an amount equal to one-half of the amount certified by the treasurer in the preceding tax year under section 319.302 of the Revised Code, less one-half of the amount computed for all taxing districts in that county for the current fiscal year under section 5703.80 of the Revised Code for crediting to the property tax administration fund. Such payment shall be credited upon receipt to the county's undivided income tax fund, and the county auditor shall transfer to the county general fund from the amount thereof the total amount of all fees and charges which the auditor and treasurer would have been authorized to receive had such section not been in effect and that amount had been levied and collected as taxes. The county auditor shall distribute the amount remaining among the various taxing districts in the county as if it had been levied, collected, and settled as real property taxes. The amount distributed to each taxing district shall be reduced by the total of the amounts computed for the district under section 5703.80 of the Revised Code, but the reduction shall not exceed the amount that otherwise would be distributed to the taxing



district under this division. The tax commissioner shall make 80  
available to taxing districts such information as is sufficient 81  
for a taxing district to be able to determine the amount of the 82  
reduction in its distribution under this section. 83

(G) ~~(1)~~ Within thirty days after ~~the day of the a~~ 84  
~~settlement required in division (D) of taxes under divisions (A)~~ 85  
~~and (C) of this section, the county treasurer shall notify~~ 86  
~~certify to the tax commissioner that the settlement has been~~ 87  
~~completed one-half of the difference obtained by subtracting the~~ 88  
~~amount of tax assessed on property in the county appearing on~~ 89  
~~the tax list for the preceding tax year from the amount of tax~~ 90  
~~that would be assessed on property in the county that would~~ 91  
~~appear on the tax list for the preceding tax year but for the~~ 92  
~~exemption authorized under section 5709.30 of the Revised Code.~~ 93  
~~Upon receipt of that notification, the~~ The commissioner, within 94  
thirty days of receiving such a certification, shall provide for 95  
payment to the county treasurer, from the general revenue fund, 96  
of ~~an~~ the amount equal to the amount certified under former 97  
~~section 319.311 of the Revised Code and paid in the state's~~ 98  
~~fiscal year 2003 multiplied by the percentage specified in~~ 99  
~~division (G) (2) of this section. The payment, which shall be~~ 100  
credited upon receipt to the county's undivided income tax fund, ~~and~~ 101  
~~and~~ Immediately upon receipt of funds into that fund, the 102  
county auditor shall distribute ~~the amount thereof among the~~ 103  
~~various to each taxing districts of authority in the county as~~ 104  
~~if it had been levied, collected, and settled as personal~~ 105  
~~property taxes~~ an amount equal to one-half of the difference 106  
obtained by subtracting the amount of tax levied by the taxing 107  
authority and assessed on property in the county appearing on 108  
the tax list for the preceding tax year from the amount of tax 109  
levied by the taxing authority that would be assessed on 110

property in the county that would appear on the tax list for the 111  
preceding tax year but for the exemption authorized under 112  
section 5709.30 of the Revised Code. ~~The~~ Any amount received by 113  
a taxing ~~district~~ authority under this division shall be 114  
apportioned among its funds in the same proportion as the 115  
~~current~~ preceding tax year's ~~personal~~ property taxes are 116  
apportioned. 117

~~(2) Payments required under division (G) (1) of this~~ 118  
~~section shall be made at the following percentages of the amount~~ 119  
~~certified under former section 319.311 of the Revised Code and~~ 120  
~~paid under division (G) (1) of this section in the state's fiscal~~ 121  
~~year 2003:~~ 122

~~(a) In fiscal year 2004, ninety per cent;~~ 123

~~(b) In fiscal year 2005, eighty per cent;~~ 124

~~(c) In fiscal year 2006, sixty four per cent;~~ 125

~~(d) In fiscal year 2007, forty per cent;~~ 126

~~(e) In fiscal year 2008, thirty two per cent;~~ 127

~~(f) In fiscal year 2009, sixteen per cent.~~ 128

~~After fiscal year 2009, no payments shall be made under~~ 129  
~~division (G) (1) of this section.~~ 130

(H) (1) On or before the fifteenth day of April each year, 131  
the county treasurer shall settle with the county auditor for 132  
all manufactured home taxes that the county treasurer has 133  
collected on the manufactured home tax duplicate at the time of 134  
making the settlement. 135

(2) On or before the fifteenth day of September each year, 136  
the county treasurer shall settle with the county auditor for 137

all remaining manufactured home taxes that the county treasurer 138  
has collected on the manufactured home tax duplicate at the time 139  
of making the settlement. 140

(3) If the time for payment of such taxes is extended 141  
under section 4503.06 of the Revised Code, the time for making 142  
the settlement as prescribed by divisions (H) (1) and (2) of this 143  
section is extended for a like period of time. 144

(I) On or before the second Monday in September of each 145  
year, the county treasurer shall certify to the tax commissioner 146  
the total amount by which the manufactured home taxes levied in 147  
that year were reduced pursuant to section 319.302 of the 148  
Revised Code. Within ninety days after the receipt of such 149  
certification, the commissioner shall provide for payment to the 150  
county treasurer from the general revenue fund of an amount 151  
equal to the amount certified by the treasurer. Such payment 152  
shall be credited upon receipt to the county's undivided income 153  
tax fund, and the county auditor shall transfer to the county 154  
general fund from the amount thereof the total amount of all 155  
fees and charges that the auditor and treasurer would have been 156  
authorized to receive had such section not been in effect and 157  
that amount had been levied and collected as manufactured home 158  
taxes. The county auditor shall distribute the amount remaining 159  
among the various taxing districts in the county as if it had 160  
been levied, collected, and settled as manufactured home taxes. 161

**Sec. 939.01.** As used in this chapter: 162

(A) "Agricultural pollution" means failure to use 163  
management or conservation practices in farming operations to 164  
abate wind or water erosion of the soil or to abate the 165  
degradation of the waters of the state by residual farm 166  
products, manure, or soil sediment, including attached 167

substances.	168
(B) "Animal feeding operation" means the production area,	169
as defined in section 903.01 of the Revised Code, of an	170
agricultural operation where agricultural animals are kept and	171
raised in confined areas. "Animal feeding operation" does not	172
include a facility that possesses a permit issued under Chapter	173
903. or division (J) of section 6111.03 of the Revised Code.	174
(C) "Best management practices" means practices or a	175
combination of practices that are determined to be the most	176
effective and practicable means of preventing or reducing	177
agricultural pollution sources to a level compatible with the	178
attainment of applicable water quality standards. "Best	179
management practices" includes structural and nonstructural	180
practices, conservation practices, and operation and maintenance	181
procedures.	182
(D) "Composting" means the controlled decomposition of	183
organic solid material consisting of dead animals that	184
stabilizes the organic fraction of the material.	185
(E) "Conservation" means the wise use and management of	186
natural resources.	187
(F) <u>"Conservation reserve program" means the federal</u>	188
<u>conservation reserve program that is established under 16 U.S.C.</u>	189
<u>3831 and administered by the United States department of</u>	190
<u>agriculture, and that provides benefits to a landowner in</u>	191
<u>exchange for the landowner removing land from agricultural</u>	192
<u>production and planting species to improve water quality.</u>	193
<u>(G)</u> "Manure" means animal excreta.	194
<del>(G)</del> <u>(H)</u> "Ohio soil and water conservation commission"	195
means the Ohio soil and water conservation commission	196

established in section 940.02 of the Revised Code.	197
<del>(H)</del> <u>(I)</u> "Operation and management plan" means a written record, developed or approved by the director of agriculture, the director's designee, or the board of supervisors of a soil and water conservation district, for the owner or operator of agricultural land or an animal feeding operation that contains both of the following:	198 199 200 201 202 203
(1) Implementation schedules and operational procedures for a level of management and pollution abatement practices that will abate the degradation of the waters of the state by residual farm products, manure, and soil sediment, including attached pollutants;	204 205 206 207 208
(2) Best management practices that are to be used by the owner or operator.	209 210
<del>(I)</del> <u>(J)</u> "Pollution abatement practice" means any erosion control, residual farm products, or manure pollution abatement facility, structure, or procedure and the operation and management associated with it as contained in an operation and management plan.	211 212 213 214 215
<del>(J)</del> <u>(K)</u> "Residual farm products" means bedding, wash waters, waste feed, and silage drainage. "Residual farm products" also includes the compost products resulting from the composting of dead animals in operations subject to section 939.04 of the Revised Code when either of the following applies:	216 217 218 219 220
(1) The composting is conducted by the person who raises the animals and the compost product is used in agricultural operations owned or operated by that person regardless of whether the person owns the animals.	221 222 223 224
(2) The composting is conducted by the person who owns the	225

animals, but does not raise them and the compost product is used 226  
in agricultural operations either by a person who raises the 227  
animals or by a person who raises grain that is used to feed 228  
them and that is supplied by the owner of the animals. 229

~~(K)~~ (L) "Soil and water conservation district" has the 230  
same meaning as in section 940.01 of the Revised Code. 231

~~(L)~~ (M) "Waters of the state" means all streams, lakes, 232  
ponds, wetlands, watercourses, waterways, wells, springs, 233  
irrigation systems, drainage systems, and other bodies or 234  
accumulations of water, surface and underground, natural or 235  
artificial, regardless of the depth of the strata in which 236  
underground water is located, that are situated wholly or partly 237  
within, or border on, this state or are within its jurisdiction, 238  
except those private waters that do not combine or effect a 239  
junction with natural surface or underground waters. 240

**Sec. 939.02.** The director of agriculture shall do all of 241  
the following: 242

(A) Provide administrative leadership to soil and water 243  
conservation districts in planning, budgeting, staffing, and 244  
administering district programs and the training of district 245  
supervisors and personnel in their duties, responsibilities, and 246  
authorities as prescribed in this chapter and Chapter 940. of 247  
the Revised Code; 248

(B) Administer this chapter and Chapter 940. of the 249  
Revised Code pertaining to state responsibilities and provide 250  
staff assistance to the Ohio soil and water conservation 251  
commission in exercising its statutory responsibilities; 252

(C) Assist in expediting state responsibilities for 253  
watershed development and other natural resource conservation 254

works of improvement;	255
(D) Coordinate the development and implementation of	256
cooperative programs and working agreements between soil and	257
water conservation districts and the department of agriculture	258
or other agencies of local, state, and federal government;	259
(E) Subject to the approval of the Ohio soil and water	260
conservation commission, adopt rules in accordance with Chapter	261
119. of the Revised Code that do or comply with all of the	262
following:	263
(1) Establish technically feasible and economically	264
reasonable standards to achieve a level of management and	265
conservation practices in farming operations that will abate	266
wind or water erosion of the soil or abate the degradation of	267
the waters of the state by residual farm products, manure, or	268
soil sediment, including attached substances, and establish	269
criteria for determination of the acceptability of such	270
management and conservation practices;	271
(2) Establish procedures for administration of rules for	272
agricultural pollution abatement and for enforcement of those	273
rules;	274
(3) Specify the pollution abatement practices eligible for	275
state cost sharing and determine the conditions for eligibility,	276
the construction standards and specifications, the useful life,	277
the maintenance requirements, and the limits of cost sharing for	278
those practices. Eligible practices shall be limited to	279
practices that address agricultural operations and that require	280
expenditures that are likely to exceed the economic returns to	281
the owner or operator and that abate soil erosion or degradation	282
of the waters of the state by residual farm products, manure, or	283

soil sediment, including attached pollutants.	284
(4) Establish procedures for administering grants to	285
owners or operators of agricultural land or animal feeding	286
operations for the implementation of operation and management	287
plans;	288
(5) Do both of the following with regard to composting	289
conducted in conjunction with agricultural operations:	290
(a) Establish methods, techniques, or practices for	291
composting dead animals, or particular types of dead animals,	292
that are to be used at such operations, as the director	293
considers to be necessary or appropriate;	294
(b) Establish requirements and procedures governing the	295
review and approval or disapproval of composting plans by the	296
supervisors of soil and water conservation districts under	297
division (R) of section 940.06 of the Revised Code.	298
(6) Establish best management practices for inclusion in	299
operation and management plans;	300
(7) Establish the amount of civil penalties assessed by	301
the director under division (B) of section 939.07 of the Revised	302
Code for violation of rules adopted under division (E) of this	303
section;	304
(8) Not conflict with air or water quality standards	305
adopted pursuant to section 3704.03 or 6111.041 of the Revised	306
Code. Compliance with rules adopted under this section does not	307
affect liability for noncompliance with air or water quality	308
standards adopted pursuant to section 3704.03 or 6111.041 of the	309
Revised Code. The application of a level of management and	310
conservation practices recommended under this section to control	311
windblown soil from farming operations creates a presumption of	312



compliance with section 3704.03 of the Revised Code as that 313  
section applies to windblown soil. 314

(F) Cost share with landowners on practices established 315  
pursuant to division (E) (3) of this section as moneys are 316  
appropriated and available for that purpose. Any practice for 317  
which cost share is provided shall be maintained for its useful 318  
life. Failure to maintain a cost share practice for its useful 319  
life shall subject the landowner to full repayment to the 320  
department. 321

(G) Employ field assistants and other employees that are 322  
necessary for the performance of the work prescribed by Chapter 323  
940. of the Revised Code, for performance of work of the 324  
department under this chapter, and as agreed to under working 325  
agreements or contractual arrangements with soil and water 326  
conservation districts, prescribe their duties, and fix their 327  
compensation in accordance with schedules that are provided by 328  
law for the compensation of state employees. All such employees 329  
of the department, unless specifically exempted by law, shall be 330  
employed subject to the classified civil service laws in force 331  
at the time of employment. 332

(H) In connection with new or relocated projects involving 333  
highways, underground cables, pipelines, railroads, and other 334  
improvements affecting soil and water resources, including 335  
surface and subsurface drainage: 336

(1) Provide engineering service that is mutually agreeable 337  
to the Ohio soil and water conservation commission and the 338  
director to aid in the design and installation of soil and water 339  
conservation practices as a necessary component of such 340  
projects; 341

(2) Maintain close liaison between the owners of lands on 342  
which the projects are executed, soil and water conservation 343  
districts, and authorities responsible for such projects; 344

(3) Review plans for such projects to ensure their 345  
compliance with standards developed under division (E) of this 346  
section in cooperation with the department of transportation or 347  
with any other interested agency that is engaged in soil or 348  
water conservation projects in the state in order to minimize 349  
adverse impacts on soil and water resources adjacent to or 350  
otherwise affected by these projects; 351

(4) Recommend measures to retard erosion and protect soil 352  
and water resources through the installation of water 353  
impoundment or other soil and water conservation practices; 354

(5) Cooperate with other agencies and subdivisions of the 355  
state to protect the agricultural status of rural lands adjacent 356  
to such projects and control adverse impacts on soil and water 357  
resources. 358

(I) Collect, analyze, inventory, and interpret all 359  
available information pertaining to the origin, distribution, 360  
extent, use, and conservation of the soil resources of the 361  
state; 362

(J) Prepare and maintain up-to-date reports, maps, and 363  
other materials pertaining to the soil resources of the state 364  
and their use and make that information available to 365  
governmental agencies, public officials, conservation entities, 366  
and the public; 367

(K) Provide soil and water conservation districts with 368  
technical assistance including on-site soil investigations and 369  
soil interpretation reports on the suitability or limitations of 370

soil to support a particular use or to plan soil conservation 371  
measures. The assistance shall be on terms that are mutually 372  
agreeable to the districts and the department of agriculture. 373

(L) Assist local government officials in utilizing land 374  
use planning and zoning, current agricultural use value 375  
assessment, development reviews, and land management activities; 376

(M) When necessary for the purposes of this chapter or 377  
Chapter 940. of the Revised Code, develop or approve operation 378  
and management plans. The director may designate an employee of 379  
the department to develop or approve operation and management 380  
plans in lieu of the director. 381

(N) Adopt rules in accordance with Chapter 119. of the 382  
Revised Code establishing a water quality improvement program 383  
that do all of the following: 384

(1) Require the director to develop, implement, and 385  
operate the program, to the extent possible, in a manner 386  
consistent with the development, implementation, and operation 387  
of the conservation reserve program as that program pertains to 388  
water quality; 389

(2) Require the applicable soil and water conservation 390  
district to assist a landowner who participates in the program 391  
when the landowner requests such assistance; 392

(3) Authorize a person to apply to the director, on forms 393  
furnished and prescribed by the director, to enroll land owned 394  
by the person in the water quality improvement program; 395

(4) Prescribe standards and criteria by which the director 396  
shall determine whether land is eligible to be enrolled in the 397  
program. The director shall ensure that the standards and 398  
criteria are consistent with the standards and criteria 399

prescribed under the conservation reserve program as that 400  
program pertains to determining whether land is eligible to be 401  
enrolled in the program. 402

Land enrolled in the water quality improvement program is 403  
exempt from taxation under section 5709.30 of the Revised Code. 404  
The director shall notify the tax commissioner if land ceases to 405  
be enrolled in the program. 406

This section does not restrict the manure of domestic or 407  
farm animals defecated on land outside an animal feeding 408  
operation or runoff from that land into the waters of the state. 409

**Sec. 5709.30. Land enrolled in the water quality** 410  
improvement program created under division (N) of section 939.02 411  
of the Revised Code on the first day of January of a tax year 412  
shall be exempt from taxation for that tax year. If land subject 413  
to the exemption for the preceding tax year is no longer 414  
enrolled in that program on the first day of the current tax 415  
year, a charge shall be levied on such land equal to the amount 416  
of tax that would have been levied on the land if it had not 417  
been exempted under this section for the tax year during which 418  
the land is removed from the program and the two preceding tax 419  
years. The charge is a lien of the state upon such land as of 420  
the first day of January of the tax year in which the charge is 421  
levied as provided in section 323.11 of the Revised Code. The 422  
auditor shall place the charge as a separate item on the tax 423  
list for the current tax year to be collected by the county 424  
treasurer in the same manner and at the same time as real 425  
property taxes levied against such land for the current calendar 426  
year are collected. 427

Upon the collection of any charge made under this section 428  
and any penalties and interest arising thereon, the county 429

auditor, after deducting all fees allowed on the collection of 430  
moneys on the tax list and duplicate, shall remit the full 431  
amount thereof to the treasurer of state, who shall credit the 432  
amount to the general revenue fund. 433

**Section 2.** That existing sections 321.24, 939.01, and 434  
939.02 of the Revised Code are hereby repealed. 435

**Section 3.** Section 321.24 of the Revised Code is presented 436  
in this act as a composite of the section as amended by both 437  
Sub. S.B. 353 of the 127th General Assembly and Am. Sub. H.B. 1 438  
of the 128th General Assembly. The General Assembly, applying 439  
the principle stated in division (B) of section 1.52 of the 440  
Revised Code that amendments are to be harmonized if reasonably 441  
capable of simultaneous operation, finds that the composite is 442  
the resulting version of the section in effect prior to the 443  
effective date of the section as presented in this act. 444



# Ohio Legislative Service Commission

## Bill Analysis

Helena Volzer and Amanda George

### **S.B. 2**

132nd General Assembly  
(As Introduced)

**Sens.** Hite, Gardner, Manning, Yuko, Williams, Brown, Sykes

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## **BILL SUMMARY**

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

- Revises the authority of the Director of Environmental Protection to take actions to abate pollution or contamination at a location where hazardous waste was disposed of.
- Applies the procedures and requirements governing the abatement of pollution at locations where hazardous waste was disposed of to locations where solid waste and construction and demolition debris (C&DD) was disposed of.
- Authorizes the Director to expend money credited to the Environmental Protection Remediation Fund for the purpose of conducting investigations at any location where solid waste or C&DD was disposed of.
- With regard to an agreement with an owner of land on which cleanup activities will occur, specifies that an easement granted to the Director under current law may authorize OEPA to enter upon the land to construct, maintain, repair, remove, or make any other alteration or improvement.
- Specifies that methods of reimbursement for costs of cleanup activities under an agreement with a landowner may include assignment of royalties or proceeds from the sale of timber or other resources.
- Generally authorizes the Director to enter into an agreement with an owner of real or personal property (other than the owner of property that is subject to cleanup activities) for purposes of conducting cleanup activities, including obtaining soil that may be used on land where the activities will be conducted.

- Authorizes the Director to obtain an easement from a person who is not the owner of property subject to cleanup activities to address the use of resources or materials for purposes of conducting the activities.
- In addition to circumstances authorized under current law, specifies that the Director, in the absence of an agreement for reimbursement, may record the unreimbursed portion of the costs of cleanup activities at the office of the county recorder of the county in which the property or facility is located.
- Specifies that the recorded costs constitute a lien against the property.
- Eliminates provisions of law requiring the Director to use a specified competitive bidding process if the Director contracts for services related to the cleanup of a property or facility, and, thus applies general competitive bidding procedures to such contracts.
- Declares that the state is immune from liability for any injury or damage resulting from specified cleanup or remediation activities, provided that the activities do not constitute reckless, willful, or wanton misconduct.
- Adds specified cleanup and remediation activities to the list of activities from which the state is immune from liability.
- Specifies that if the legislative or executive authority of a municipal corporation, county, or township has evidence to indicate that significant quantities of hazardous waste were disposed of in C&DD facilities within its boundaries, the authority may file a formal written request with the Director to survey the facilities.

### **Construction and Demolition Debris Law**

- Establishes requirements governing processing facilities under the C&DD Law.
- Specifies that a "processing facility" is, in part, a site, location, tract of land, installation, or building that is used or intended to be used for the purpose of processing, transferring, or recycling C&DD that was generated off the premises of the facility.
- Removes the term "transfer facility" from current law, and instead includes the transfer of C&DD as one of the authorized activities of a processing facility.
- Requires the Director to adopt rules governing processing facilities and the inspection of and issuance of licenses and permits to install for those facilities.

- 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 a health district is not approved to regulate C&DD facilities.
- Establishes procedures and requirements governing the issuance of an annual processing facility license that are generally the same as the existing procedures and requirements governing an annual license to operate or maintain a C&DD facility.
- Establishes procedures and requirements governing the issuance of a permit to install a processing facility that are generally the same as the existing procedures and requirements governing a permit to install a C&DD facility.
- Generally requires the owner or operator of an existing processing facility to register the facility and to obtain a license and permit to install for the facility after the Director adopts the rules governing processing facilities.
- Requires an applicant for an annual processing facility license to pay an application fee of \$100 and establishes a penalty for late payment.
- Establishes a \$650 fee for an annual processing facility license and specifies that the issuance of the annual license is conditioned upon payment of the annual fee.

### **Waste Management Fund**

- Revises the uses of money in the Waste Management Fund by eliminating the earmarking of sources of revenue for specified purposes and instead allowing money in the Fund to be used for any of those purposes.

### **Public water system capability**

- Requires all public water systems to demonstrate technical, managerial, and financial capability by implementing an asset management program by October 1, 2018.
- Authorizes the Director to take certain actions to improve and ensure the capability of a public water system that has failed to make the required demonstration.
- Requires a public water system to incorporate specified information in the program, including an inventory and evaluation of all assets and a long-term funding strategy to support asset management program implementation.



- Requires a public water system, if requested by the Director, to submit a written description of the asset management program within 30 days after receiving the request.
- Authorizes the Director to request a public water system to revise or resubmit a written description of the system's asset management program if the system fails to submit an acceptable written description of the system's asset management plan or otherwise fails to demonstrate technical, managerial, and financial capability.
- Authorizes Environmental Protection Agency staff to provide technical guidance to a public water system in preparing the asset management program or while addressing deficiencies noted in the asset management program.
- Requires the Director to make available a template for small public water systems to assist in preparing an asset management program and to provide information about the availability of sources of funding.
- Specifies that a small public water system may meet the requirement to submit a written description of an asset management program by submitting the template or by including with the template a statement that the activities described in the template are being implemented.

### **Receivership of a public water system**

- Authorizes the Director to petition a court of common pleas to appoint a receiver to take possession of and operate a public water system when both of the following apply:
  - The system serves less than 500 service connections; and
  - Conditions existing at the system present a threat to public health or welfare.
- Prohibits a court from appointing a receiver to operate a system owned and operated by a public entity or regulated by the Public Utilities Commission.
- Establishes requirements governing the contents of a petition for receivership, notice and hearings regarding a petition, the appointment of receivers, powers and duties of a receiver, and the termination of a receivership.
- Requires the court to approve any expenditure of more than \$15,000 made by a receiver.

- Specifies that contracts that are necessary to carry out the powers and duties of a receiver that are valued at \$15,000 or more may not be entered into by the receiver unless at least two cost quotations from different vendors are received.
- Specifies that neither a receiver nor the Director is liable for debts incurred by the owner or operator of a public water system .
- Requires the Director to provide technical assistance to an appointed receiver.

### **Public water systems exemptions**

- Retains the conditions required for the exemption of a public water system from the law governing safe drinking water, but alters one condition that specifies that the system may not sell water to any person by requiring the Director to determine whether the system sells or does not sell water.
- Subjects a public water system that is exempted from the law governing safe drinking water to the Director's plans and orders for the provision of safe drinking water in emergencies.

### **Financial assurance requirement for community water systems**

- Requires the owner or operator of certain community water systems to provide financial assurance, in a form approved by the Director, when submitting plans to construct, install, or make a substantial modification to the system instead of requiring the deposit of a cash amount in escrow, as in current law.
- Requires the Director to approve the form of financial assurance.
- Increases the maximum amount of financial assurance that the owner must provide from \$50,000 to \$100,000.

### **Discharge to a privately owned treatment works**

- Specifies that the exclusion of the discharges of waste into a sewerage system from the law prohibiting polluting state waters does not authorize a discharge to a privately owned treatment works in violation of any permit conditions established under federal law.

### **Section 401 Water Quality Certification**

- Authorizes the Director to justifiably waive a Section 401 Water Quality Certification, pursuant to an appealable action, for any applicant for a federal license or permit to conduct any activity that may result in a discharge into state waters.



- Requires the issuance or denial of a Certification to be made pursuant to an appealable action.
- Authorizes the Director, at the request or concurrence of the certification holder, to transfer or modify a Certification.
- Authorizes the Director to revoke a Certification if the approval of the Certification was based on false or misleading information.

### **Dredged material**

- Prohibits a person from using, managing, or placing dredged material in any location unless authorized to do so in circumstances specified by the bill.
- Specifies that a person who purposely violates the prohibition is guilty of a felony and must be fined not more than \$25,000 or imprisoned for not more than four years, or both.
- Specifies that a person who knowingly violates the prohibition is guilty of a misdemeanor and must be fined not more than \$10,000 or imprisoned for not more than a year, or both.
- Defines dredged material for purposes of the prohibition as material excavated or dredged from a federal navigation channel during harbor or navigation maintenance activities.
- Authorizes the Director to adopt rules governing the beneficial use of dredged material and the beneficial use of material excavated or dredged from adjacent or connected commercial maritime port facilities necessary to protect public health, safety, and the environment.

### **Certified water quality professionals**

- Requires, rather than authorizes as in current law, the Director to establish a program and to adopt rules governing the certification of water quality professionals to assess streams and categorize wetlands in support of applications for Section 401 Water Quality Certifications and isolated wetland permits.
- Requires the Director to establish a multi-sector work group to assist in the development of the rules.
- Revises the Director's rule-making authority regarding audits of certified water quality professionals and establishes rule-making authority regarding the public disclosure of information concerning a certified water quality professional.

- Requires the Director to issue or deny a Section 401 Water Quality Certification within 90 days after the receipt of a complete application when a certified water quality professional conducts a stream or wetland assessment to support the application.
- Specifies that an applicant for a Section 401 Water Quality Certification or an isolated wetlands permit is not required to use the services of a certified water quality professional.

### **Blast furnace slag and steel slag**

- 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.
- Prohibits the placement or management of blast furnace slag and steel slag in a manner that results in an exceedance of water quality standards, primary or secondary contaminant levels for ground water, any discharge prohibited by federal environmental law, or a threat to public health, safety, or the environment.

### **Ohio Lake Erie Commission**

- Adds two members from the Great Lakes Protection Fund Board to the Ohio Lake Erie Commission.
- Specifies that the terms of the five existing members of the Commission who are appointed by the Governor expire on the bill's effective date.
- Requires the Governor to appoint five new members with the advice and consent of the Senate not later than 45 days after the bill's effective date to specified staggered terms.
- Authorizes the Governor to reappoint individuals whose terms expire on the bill's effective date.
- Applies new requirements to the five members appointed by the Governor, such as term limits and causes for removal.
- Requires the agencies represented on the Commission to provide administrative services required by the Commission in the performance of its duties.
- Requires the Commission, not later than the last day of July of each odd-numbered year, to publish a Lake Erie Protection and Restoration Strategy that describes the

goals of the Commission and prioritizes the uses of the Lake Erie Protection Fund and other funds for the following fiscal year.

- Establishes new duties for the Commission, such as serving as a repository and clearinghouse for public information and data related to Lake Erie and the Lake Erie basin and collecting and distributing such information and data at the Commission's discretion.
- Eliminates some of the duties currently required of the Commission, such as the requirement to recommend policies and programs to modify the coastal management program of Ohio.
- Authorizes the Commission to dissolve public advisory councils established for the purpose of assisting in implementing programs established under the laws governing the Commission, but retains the authority to establish the councils.
- Specifies that members of the Commission and members of a public advisory council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

#### **Lake Erie Protection Fund**

- Eliminates several of the purposes for which the Commission may use the Lake Erie Protection Fund under current law, such as supplementing, in a stable and predictable manner, state commitments to policies and programs pertaining to Lake Erie water quality and resource protection.
- Revises one of the uses of the Fund by specifying that the Fund may be used for funding cooperative research, data gathering, or demonstration projects related to the priorities outlined in the Lake Erie Protection and Restoration Strategy.
- Specifies that the Fund may be used for encouraging cooperation with and among leaders from various organizations, including agriculture, within the Lake Erie basin.
- Allows grants made from the Fund to be used for projects and programs that are designed to address priorities outlined in the Lake Erie Protection and Restoration Strategy.

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## CONTENT AND OPERATION

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

#### Investigatory and enforcement action

The bill revises the authority of the Director of Environmental Protection to take certain actions to abate pollution or contamination at a parcel of property by doing all of the following:

(1) Authorizing the Director to conduct investigations at a facility or property where solid wastes or construction and demolition debris (C&DD) are disposed of, rather than only at locations where hazardous waste was disposed of as under current law;

(2) Authorizing the Director to expend money from the Environmental Protection Remediation Fund to conduct investigations at a facility or property where solid waste or C&DD was disposed of; and

(3) Requiring the Director to initiate appropriate actions under specified environmental laws or seek any other appropriate legal or equitable remedies if the Director determines that conditions at a facility or property where solid waste or C&DD was disposed of constitute a substantial threat to public health or safety. Under current law, the Director is required to take such actions with regard to locations at which hazardous waste was disposed of when conditions at the location:

--Constitute a substantial threat to public health or safety; or

--Are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination.<sup>1</sup>

Thus, unlike locations contaminated by hazardous waste, the Director is only required to initiate appropriate action at a location where C&DD and solid waste is disposed of when the conditions are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination. There is no requirement to initiate actions when conditions are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination.

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<sup>1</sup> R.C. 3734.20(A) and (B).



## Liens

Under current law, the Director may record costs of measures performed at a parcel of property, and those recorded costs constitute a lien against the property. The lien continues until it is discharged. The bill specifies that the Director also may record investigatory costs and that all recorded costs attach to the real property and constitute a perfected lien against the property. In addition, the bill specifies that a lien so imposed continues until discharged or upon a filing by the Director of a release of the lien in the office of the county recorder of the county where the facility or property subject to the lien is located.<sup>2</sup>

## Plan for cleanup activities

Under current law, the Director is required to develop a plan for cleanup of a hazardous waste facility. The bill expands this requirement by requiring the Director to develop a plan for cleanup activities at *any* property on which solid waste or C&DD is disposed of.

Current law requires the plan to remediate hazardous waste contamination to include only those measures necessary to abate conditions that are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination or that constitute a threat to public health or safety. Under the bill, with regard to a parcel of property contaminated with hazardous waste, the plan may include specified measures necessary for the following:

- (1) The proper closure of the hazardous waste facility (or any solid waste facility containing significant quantities of hazardous waste);
- (2) The development and construction of suitable hazardous waste facilities to the extent the Director determines that such facilities are not available; and
- (3) The abatement of conditions at a facility that are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination or that constitute a substantial threat to public health or safety.

With regard to property where solid waste or C&DD was disposed of, the bill requires the plan to include specified measures necessary for the following:

- (1) The closure or post-closure care of the solid waste or C&DD facility; and

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<sup>2</sup> R.C. 3734.20(B).



(2) Remediation or abatement of conditions that cause, contribute to, or threaten to cause or contribute to air or water pollution or soil contamination or that constitute a substantial threat to public health or safety at property where solid waste or C&DD is disposed of.<sup>3</sup>

### **Agreements regarding cleanup activities and reimbursement of costs**

Under current law largely retained by the bill, the Director must endeavor to enter into an agreement with the owner of land on which cleanup activities will be conducted, specifying the activities to be performed and authorizing appropriate personnel to enter upon the land. Current law limits such agreements to cleanup activities at hazardous waste facilities. The bill also requires the Director to endeavor to enter into such an agreement regarding any property on which solid waste or C&DD was disposed of. Further, the Director may enter into an agreement with any other owner of real or personal property (other than the landowner where the cleanup activities will take place) for purposes of conducting cleanup activities, including obtaining soil that may be used on land where the activities will be conducted.

Current law authorizes agreements entered into by the Director to contain provisions for the reimbursement of the state for the costs of the activities. The bill specifies that methods of reimbursement for costs of cleanup activities may include assignment of royalties or proceeds from the sale of timber or other resources present at the location. The bill also adds that "when necessary or appropriate," rather than "when necessary" as in current law, an agreement may require an owner to enter an environmental covenant with the Director.

The bill amends the law that specifies that the agreement may require the owner to execute an easement whereby the Director, an authorized employee of the agency, or a contractor may enter upon the facility to sample, repair, or reconstruct air and water quality monitoring equipment. The bill does so by adding that the easement also may allow the Director to construct, maintain, repair, remove, or make any other alteration or improvement, as determined appropriate by the Director. The Director also may obtain an easement from any person who is not the land owner to address the use of resources or materials for purposes of conducting the cleanup activities.

Finally, the bill specifies that any recorded costs constitute a lien against the property and that the lien continues until it is discharged or upon a filing by the

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<sup>3</sup> R.C. 3734.21(C).

Director of a release of the lien in the office of the county recorder of the county where the property subject to the lien is located.<sup>4</sup>

### **Acquisition of property for cleanup purposes**

Under current law, the Director is authorized to acquire a hazardous waste facility or a solid waste facility with significant quantities of hazardous waste for cleanup purposes. With regard to the facility, the Director is required to perform closure or other measures necessary to abate conditions at the facility that threaten the environment or public health. The bill also requires the Director to perform post-closure care of the facility.<sup>5</sup>

### **Competitive bidding**

The bill eliminates provisions requiring the Director to use a specified competitive bidding process if the Director contracts for services, construction, and repair for the cleanup of a property or facility. This effectively applies general competitive bidding procedures that are applicable to state agencies to such contracts.<sup>6</sup>

### **Immunity**

The bill alters the law that 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 an agency, department, or institution of the state or resulting from conditions present at a facility that is acquired by the state. The bill does so by adding 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 an agency, department, or institution of the state; and

(2) Cleanup or remediation conducted pursuant to state law, including activities for which money may be expended from specified state funds, provided that those activities do not constitute reckless, willful, or wanton misconduct.<sup>7</sup>

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<sup>4</sup> R.C. 3734.22.

<sup>5</sup> R.C. 3734.23(A) and (B).

<sup>6</sup> R.C. 3734.23(C).

<sup>7</sup> R.C. 3734.30.



## **Request to survey facility**

Under the bill, if the legislative or executive authority of a municipal corporation, county, or township has evidence to indicate that significant quantities of hazardous waste were disposed of in C&DD facilities within its boundaries, the legislative or executive authority may file a formal written request with the Director, accompanied by supporting evidence, to survey the locations or facilities.

Current law only authorizes such legislative or executive authorities to request a survey if there is evidence to indicate that significant quantities of hazardous waste were disposed of in solid waste facilities or former hazardous waste facilities.<sup>8</sup>

## **Definition of "soil contamination"**

The bill expands the meaning of soil contamination for purposes of the provisions outlined above to include solid waste or C&DD or any constituents thereof that pose a substantial threat to public health or safety or the environment.<sup>9</sup> Under current law, the definition of "soil contamination" only includes provisions referencing hazardous waste or hazardous waste residues.

## **Environmental covenants**

The bill amends the definition of "environmental response project" under the law governing environmental covenants to include property subject to corrective action, closure, or post-closure under the C&DD Law and the use or reservation of soil to be used in the performance of the corrective action, or closure or post-closure care.<sup>10</sup>

## **Construction and Demolition Debris Law**

### **Processing facilities**

The bill establishes requirements governing processing facilities under the C&DD Law. Under the bill, a processing facility is a site, location, tract of land, installation, or building that is used or intended to be used for the purpose of processing, transferring, or recycling C&DD that was generated off the premises of the facility. Transferring includes the receipt or storage of C&DD, or the movement of C&DD from vehicles or containers to a working surface and into other vehicles or containers for purposes of transferring the debris to a solid waste landfill facility, a C&DD facility, or a processing facility. Processing includes the receipt or storage of

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<sup>8</sup> R.C. 3734.19(A).

<sup>9</sup> R.C. 3734.19(B).

<sup>10</sup> R.C. 5301.80(E)(1)(a).

C&DD, or the movement of C&DD from vehicles or containers to a working surface, for purposes of separating the debris into individual types of materials as a commodity for use in a beneficial manner that does not constitute disposal.

A processing facility does not include a licensed solid waste transfer facility or a licensed solid waste facility.<sup>11</sup> As a result of the addition of the new term "processing facility," the bill removes the existing term "transfer facility" in the C&DD law, and instead includes the transfer of C&DD as one of the authorized activities of a processing facility.<sup>12</sup>

Under the bill, "recycling" means processing C&DD that would otherwise be disposed of and returning the material to commerce as a commodity for use in a beneficial manner that does not constitute disposal.<sup>13</sup>

## **Rules**

The bill requires the Director of Environmental Protection to adopt rules governing processing facilities and the inspection of and issuance of permits to install and licenses for those facilities. The rules must ensure that the facilities will not create a nuisance, fire hazard, or health hazard or cause or contribute to air or water pollution.<sup>14</sup> The rules may establish all of the following:

- (1) Requirements for the location, design, construction, operation, and closure of processing facilities;
- (2) Requirements for the acceptance, storage, and accumulation of materials, including the accumulation of material for product development;
- (3) The authorized maximum daily receipts;
- (4) Fire prevention measures;
- (5) Record-keeping procedures;
- (6) The process for the closure of a processing facility;
- (7) Financial assurance requirements;

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<sup>11</sup> R.C. 3714.01.

<sup>12</sup> R.C. 3714.01.

<sup>13</sup> R.C. 3714.01.

<sup>14</sup> R.C. 3714.022(A).

(8) The management of storm water and leachate; and

(9) Standards and procedures for the issuance of permits to install (see "**Permits to install**," below) that must include all of the following:

--Information that must be included in the designs and plans required to be submitted with the application for a permit to install and criteria for approving, disapproving, or requiring modification of the designs and plans;

--Information that must be included with an application for a permit to install in addition to the information required under the bill;

--Procedures for the issuance, denial, modification, transfer, suspension, and revocation of permits to install;

--Grounds for the denial, modification, suspension, or revocation of permits to install;

--A requirement that a person that is required to obtain both a permit to install and an operation license under the bill obtain both the permit and license;

--Criteria for establishing time periods after which a permit to install expires;

--Any other requirements that the Director determines necessary in order to establish the program for the issuance of permits to install under the bill.<sup>15</sup>

Rules establishing financial assurance requirements for the closure of a processing facility must require that prior to being issued an initial license for the facility, the owner or operator of a facility submit a surety bond, a letter of credit, or other acceptable financial assurance in a fixed amount as specified by the Director plus the fixed per cubic yard cost of transportation to and disposal of mixed construction and demolition debris at an authorized disposal facility.<sup>16</sup>

Just as the Director is prohibited from adopting rules governing C&DD facilities that prohibit the open burning of construction debris on a construction site, the bill prohibits the Director from adopting rules governing processing facilities that prohibit the open burning of construction debris on a construction site if done in compliance with specified air pollution control laws.<sup>17</sup>

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<sup>15</sup> R.C. 3714.022(B).

<sup>16</sup> R.C. 3714.022(C).

<sup>17</sup> R.C. 3714.022(D).



## **Permitting and licensing a processing facility**

### **Permit to install**

The bill requires the Director to establish a program for the issuance of permits to install for processing facilities. On and after the bill's effective date, a person is prohibited from establishing a processing facility without first obtaining a permit to install issued by the board of health, or from the Director if the facility is or is to be located in a health district that is not approved. An applicant for a permit to install must submit an application to a board of health or the Director on a form and in the manner that the Director prescribes.<sup>18</sup>

A permit to install for a processing facility may be issued with terms and conditions that a board of health or the Director finds necessary to ensure that the facility will comply with the C&DD Law and to protect public health and safety and the environment. The Director or a board may issue, deny, modify, suspend, or revoke a permit to install in accordance with rules.<sup>19</sup>

### **Processing license**

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). The license may be issued with such terms and conditions as the board or the Director finds necessary to ensure that the processing facility will comply with C&DD Law and to protect the public health and safety and the environment. Processing facility licenses expire annually on December 31.<sup>20</sup> The bill establishes procedures and requirements governing the issuance of an annual processing facility license that are generally the same as the procedures and requirements governing an annual license to operate or maintain a C&DD facility under current law.<sup>21</sup>

In addition, the bill requires an applicant for an annual processing facility license to submit an application to the board of health or the Director on a form that the Director prescribes. The applicant must include with the application a nonrefundable application fee of \$100. If the application is submitted after the last day of September of

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<sup>18</sup> R.C. 3714.051(H).

<sup>19</sup> R.C. 3714.051(I).

<sup>20</sup> R.C. 3714.06(A).

<sup>21</sup> R.C. 3714.06(B) and (D).

the year preceding that for which the license is sought, the applicant must pay a late fee equal to 10% of the amount owed for the application fee.

Upon issuance of a license, the licensee must pay to the board of health or Director an annual license fee of \$650. The annual license fee applies to private operators and the state and its political subdivisions. The licensee must pay the annual license fee within 30 days after the issuance of the license. Each license must specify that it is conditioned upon the payment of the annual license fee within that time frame. All application, license, and late fees must be credited to the special fund of the health district or, if the application is submitted to the Director, the existing Waste Management Fund.<sup>22</sup>

The bill prohibits the Director or a board of health from issuing a license for a processing facility when the horizontal limits of C&DD processing at the proposed facility or at a facility at which an expansion is proposed are to be located in any of the following locations:

- (1) Within 100 feet of a perennial stream as defined by the United States Geological Survey 7½ minute quadrangle map or a category 3 wetland;
- (2) Within 100 feet of the facility's property line; or
- (3) Within 500 feet of an occupied dwelling.<sup>23</sup>

The provisions in (1) through (3) above do not apply to a processing facility that was in operation prior to the bill's effective date. However, they do apply if that processing facility makes a request to the Director or board of health to expand the horizontal limits of the C&DD processing areas at the facility.<sup>24</sup>

The Director or a board of health is also prohibited from issuing a license for a processing facility unless the facility will have both of the following:

- (1) Access roads constructed in a manner that allows use in all weather conditions and that will withstand the anticipated degree of use and minimize erosion and generation of dust; and

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<sup>22</sup> R.C. 3714.06(C).

<sup>23</sup> R.C. 3714.06(E).

<sup>24</sup> R.C. 3714.06(H).

(2) Surface water drainage and sediment controls that are required by the Director.<sup>25</sup>

The bill authorizes the Director to adopt rules allowing for the issuance of a single license governing both a C&DD facility and a processing facility located on the same property.<sup>26</sup>

### **Registration of existing processing facilities**

The bill establishes requirements and procedures for the registration of a processing facility that was in operation prior to the bill's effective date or that was not in operation prior to the bill's effective date, but is in operation prior to the effective date of any rules adopted under the bill governing the licensing of processing facilities ("processing facility").

The owner or operator of such a facility must submit an application for the registration in accordance with the bill's procedures. If the application concerns a processing facility that was not in operation on the bill's effective date, the applicant must then submit with the application a notarized statement certifying that the proposed horizontal limits of C&DD processing at the time the application is submitted are not located:

(1) Within 100 feet of a perennial stream as defined by the United States Geological Survey seven and one-half minute quadrangle map or a category 3 wetland;

(2) Within 100 feet of the facility's property line; or

(3) Within 500 feet of an occupied dwelling.

Under the bill, the board of health or the Director must issue the registration to the processing facility if the registration application for the processing facility meets the criteria set forth under the bill.<sup>27</sup> However, if the registration application is incomplete, the applicant has up to 30 days to correct noted deficiencies and resubmit the registration application.

Any registrant proposing to continue to operate a processing facility on the effective date of the rules adopted under the bill must, within six months after the effective date of the rules, submit to the board of health or to the Director an application

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<sup>25</sup> R.C. 3714.06(F).

<sup>26</sup> R.C. 3714.022(E).

<sup>27</sup> Section 4(D).



for an initial processing facility license and permit to install. Registrations terminate on the date that the board of health or the Director issues or denies a license.<sup>28</sup>

### **Processing facility operator 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. Current law requires the Director to establish those programs for operators of C&DD facilities.<sup>29</sup> The program must include instruction in and must emphasize, at a minimum, both of the following:

(1) The laws governing C&DD facilities, processing facilities, and disposal of C&DD; and

(2) Best management practices governing C&DD facilities, processing facilities, and disposal of C&DD.<sup>30</sup>

Current law also requires the Director to accredit educational programs and approve statewide associations representing C&DD facilities to provide continuing education training for operators of C&DD facilities. The bill requires operators of processing facilities to be included in these education program requirements.<sup>31</sup>

### **Waste Management Fund**

The bill revises the uses of money in the Waste Management Fund by eliminating the earmarking of sources of revenue for specified purposes. Instead, the bill requires any money in the Fund to be used by the Environmental Protection Agency generally to pay for all of the following:

(1) The costs of administering and enforcing the laws governing solid, hazardous, and infectious waste, and C&DD;

(2) Ground water evaluations related to solid wastes, infectious wastes, and C&DD; and

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<sup>28</sup> Section 4.

<sup>29</sup> R.C. 3714.062(A).

<sup>30</sup> R.C. 3714.062(B).

<sup>31</sup> R.C. 3714.062(C).

(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.

Current law does all of the following with regard to the purposes for which the Fund is used:

(1) Requires money collected from the following sources to be used for the administration and enforcement of the laws pertaining to solid wastes, infectious wastes, and C&DD and to address violations of the Air and Water Pollution Control Laws at solid, hazardous, and infectious wastes facilities:

--One of the four state fees levied on the transfer or disposal of solid wastes; and

--Reimbursement of expenses incurred by the Director of Environmental Protection in preparing and ordering the implementation of an initial or amended solid waste management plan.

(2) Requires money collected from the following sources to be used exclusively for the administration and enforcement of the C&DD Law:

--The application fee for the issuance of a permit to install a new C&DD facility;

--The disposal fee for C&DD or asbestos or asbestos containing material; and

--Reimbursement of expenses incurred by the Director for the inspection of, or investigation of a violation by, a C&DD facility.

(3) Requires money collected from the following sources to be used exclusively for the administration and enforcement of the law governing infectious waste:

--The registration fee for an infectious waste generator; and

--Reimbursement of expenses incurred by the Director for the inspection of an infectious waste treatment facility or a solid waste facility that accepts infectious wastes.<sup>32</sup>

### **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,

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<sup>32</sup> R.C. 3734.061.

2018. However, the Director of Environmental Protection may require a system to implement an asset management program prior to that date.<sup>33</sup>

A public water system must include in the asset management program all of the following information:

- (1) An inventory and evaluation of all assets;
- (2) Operation and maintenance programs;
- (3) An emergency preparedness and contingency planning program;
- (4) Criteria and timelines for infrastructure rehabilitation and replacement;
- (5) Approved capacity projections and capital improvement planning; and

(6) A long-term funding strategy to support asset management program implementation.<sup>34</sup>

A public water system, if requested by the Director, must submit a written description of the asset management program not later than 30 days after the date of the request. If a public water system fails to submit an acceptable written description of the system's asset management program or otherwise fails to demonstrate technical, managerial, and financial capability, the Director may request the owner or operator of the system to revise and resubmit the written description. Environmental Protection Agency staff may provide technical guidance to a public water system in preparing the asset management program or while addressing deficiencies noted in the asset management program.<sup>35</sup>

If a public water system fails to demonstrate technical, managerial, and financial capability, the Director also may take specified actions to improve and ensure the capability of the public water system, including denying a plan for the construction or installation of, or substantial change in, a public water system.<sup>36</sup>

Finally, the bill requires the Director to make available both of the following either on the Environmental Protection Agency's website or via another public forum:

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<sup>33</sup> R.C. 6109.24(B)(1) and (2).

<sup>34</sup> R.C. 6109.24(B)(3).

<sup>35</sup> R.C. 6109.24(D).

<sup>36</sup> R.C. 6109.24(E).

(1) A template for small public water systems to prepare an asset management program;

(2) Information about sources of funding available to assist public water systems with preparing and completing an asset management program.<sup>37</sup>

A small public water system may meet the requirement to submit the written description by submitting the template or by including with the completed template a statement that the activities described in the template are being implemented.<sup>38</sup>

Under current law, a public water system that is a community water system, or that is not a community water system and serves a nontransient population must include with the submission of plans for the construction or installation of, or substantial change in, a public water system required documentation that demonstrates the technical, managerial, and financial capability of the system to comply with laws related to safe drinking water. The Director may deny the plans if the public water system fails the demonstration.<sup>39</sup>

## **Receivership of a public water system**

The bill authorizes the Director of Environmental Protection 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. However, the Director may not petition the court to appoint a receiver for a system owned and operated by a public entity or a system regulated by the Public Utilities Commission.<sup>40</sup> Under current law, a public water system generally is a system for the provision to the public of water for human consumption that has at least 15 service connections or regularly serves at least 25 individuals.<sup>41</sup>

### **Procedure for appointing a receiver**

The bill requires the Director to include all of the following in the petition for receivership:

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<sup>37</sup> R.C. 6109.24(F).

<sup>38</sup> R.C. 6109.24(C).

<sup>39</sup> R.C. 6109.24.

<sup>40</sup> R.C. 6109.25(A)(1).

<sup>41</sup> R.C. 6109.01, not in the bill.

(1) A description of the specific conditions existing at the public water system which present a threat to public health or welfare;

(2) A statement of the absence of other adequate remedies at law;

(3) The population served by the public water system;

(4) A statement that declares both of the following:

--The facts concerning the conditions at the public water system have been brought to the attention of the owner and operator or that efforts to contact the owner or operator have been unsuccessful; and

--The conditions have not been remedied within a reasonable period of time or that the conditions, though remedied periodically, habitually exist at the public water system as a pattern or practice.

(5) The name and address of the owner of the public water system.<sup>42</sup>

The Director must provide notice of the petition to any party with a known ownership interest in the public water system, the appropriate local board of health, customers of the public water system, and any other appropriate persons identified by the Director.

The court must hold a hearing on a petition within five court days of the day the petition is filed. However, the court may appoint a receiver prior to conducting a hearing if the court determines that the circumstances require such action. If the court appoints a receiver before the hearing, the court must provide notice of the appointment to any party with a known ownership interest in the system. Following the hearing on the petition, and after determining that appointment of a receiver is warranted, the court must appoint a receiver and notify the Director, any party with a known ownership interest in the system, and any other appropriate persons of the appointment.<sup>43</sup>

### **Appointment of a receiver; powers and duties**

The court may not appoint a person as a receiver who has a financial or ownership interest in the public water system or who is not an Ohio resident as a receiver. In selecting a qualified receiver, the court must give priority consideration to any qualified person nominated by the Director. However, the court is not obligated to

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<sup>42</sup> R.C. 6109.25(A)(2).

<sup>43</sup> R.C. 6109.25(B)(1) and (2).



select such a person. Prior to acting as a receiver, the receiver must be sworn to perform the duties of receiver faithfully. The receiver must execute a bond in an amount required by the court, to the effect that the receiver will faithfully discharge the duties of receiver and obey the order of the court.<sup>44</sup>

In establishing a receivership under the bill, a court must set forth the powers and duties of the receiver. The court may authorize the receiver to take actions necessary to safely and efficiently operate the public water system within the requirements of state and federal law. However, the receiver is required to obtain court approval prior to making any single expenditure of more than \$15,000. In addition, if the receiver proposes to enter into a contract that is necessary to carry out the receiver's duties and that is valued at \$15,000 or more, the receiver must present the court with at least two cost quotations from different vendors before entering the contract. The court must closely review the conduct of the receiver and require the receiver to submit monthly detailed reports.<sup>45</sup> Furthermore, a receiver, under the control of the appointing court, may bring and defend actions in the receiver's own name, and take and keep possession of property. The court is required by the bill to authorize the receiver to do all of the following:

(1) Collect payment for all goods and services provided to persons served by the public water system during the period of the receivership at the same rate as was charged by the owner at the time the petition for receivership was filed, unless a different rate is set by the court;

(2) Honor all leases, mortgages, and secured transactions governing all buildings, goods, and fixtures of which the receiver has taken possession and continues to use, subject to the following conditions:

--In the case of a rental agreement, only to the extent of payments that are for the use of the property during the period of the receivership;

--In the case of a purchase agreement, only to the extent of payments that come due during the period of the receivership.

(3) Make monthly reports on the status of the public water system to the Director and the owner of the system;

(4) Compromise demands or claims;

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<sup>44</sup> R.C. 6109.25(C) and (D).

<sup>45</sup> R.C. 6109.25(E).

(5) Take actions necessary for the operation of the public water system in compliance with the laws governing safe drinking water; and

(6) Perform any other action regarding the public water system as the court authorizes.<sup>46</sup>

The bill specifies that neither the receiver nor the Director is liable for debts incurred by the owner or operator of a public water system for which a receiver was appointed. The Director must provide technical assistance to an appointed receiver.<sup>47</sup>

### **Termination of receivership**

The court must terminate a receivership if the court determines either of the following:

(1) The public water system is closed and no longer operating; or

(2) Circumstances no longer exist at the public water system that present a threat to public health or welfare, and there is no deficiency in the public water system likely to create a future risk of harm.

However, a court may not terminate a receivership for a public water system if the system previously operated under another receivership under the same owner unless the responsibility for the operation of the system is transferred to an owner or operator approved by the court and the Director.<sup>48</sup>

### **Public water systems exemptions**

The bill alters the criteria under which a public water system is exempt from the law governing safe drinking water. Under current law, a public water system is exempt if the system meets all of the following conditions:

(1) Its consists only of distribution and storage facilities and does not have any collection and treatment facilities;

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

(3) It does not sell water to any person; and

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<sup>46</sup> R.C. 6109.25(F).

<sup>47</sup> R.C. 6109.25(G) and (I).

<sup>48</sup> R.C. 6109.25(H).

(4) Is not a carrier which conveys passengers in interstate commerce.

The bill alters the third criterion by specifying that the Director of Environmental Protection must determine whether a public water system sells water to any person. The bill also makes an exempted public water system potentially subject to any order or plan of the Director during safe drinking water emergencies.<sup>49</sup>

### **Financial assurance requirement for community water systems**

The bill alters the financial assurance requirements for community water systems that serve fewer than 500 service connections. Specifically, the owner or operator of such a system must provide financial assurance, in a form acceptable to the Director of Environmental Protection, when the person submits plans to the Director for the construction, substantial modification, or installation of such a system. The financial assurance must be in an amount equal to 15% of the cost of the system or part thereof, but not more than \$100,000. The Director may not approve the plans unless the owner or operator provides the financial assurance. The financial assurance requirements do not apply to a community water system that is operated by a public entity or regulated by the Public Utilities Commission. A community water system is a public water system (see above) that has at least 15 service connections used by year-round residents or that serves at least 25 year-round residents.

Under current law, the owner or operator of such a community water system must deposit in escrow an amount equal to 15% of the cost of the system or part thereof, but not more than \$50,000, prior to approval of plans for the construction, substantial modification, or installation of the system.<sup>50</sup>

### **Discharge to a privately owned treatment works**

Under current law, the discharge of sewage, industrial waste, or other wastes into a sewer system to a treatment works is exempt from the prohibition against polluting the waters of the state. The bill specifies that the exemption does not authorize such a discharge to a privately owned treatment works in violation of any permit conditions issued under federal law governing privately owned treatment works.<sup>51</sup>

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<sup>49</sup> R.C. 6109.02(C).

<sup>50</sup> R.C. 6109.08 and 6109.01, not in the bill.

<sup>51</sup> R.C. 6111.04(F)(6); see also 40 C.F.R. 122.44(m).





## Section 401 Water Quality Certification

Section 404 of the Federal Water Pollution Control Act, which is administered by the U.S. Army Corps of Engineers, requires the implementation of a program to regulate the discharge of dredged and fill material into the waters of the United States, including wetlands.<sup>52</sup> Under section 404, prior to placing dredged or fill material, a person must obtain a section 404 permit from the Army Corps. Before a person can obtain a section 404 permit, the person must obtain a section 401 Water Quality Certification from the state in which the discharge will take place. The Certification must confirm that the proposed activity that would cause the discharge will comply with state water quality standards as well as applicable provisions of the Federal Water Pollution Control Act. In Ohio, the Environmental Protection Agency administers the Section 401 program.

The bill authorizes the Director of Environmental Protection, pursuant to section 401, to do any of the following:

- (1) Issue or deny a Certification only pursuant to an appealable action;
- (2) Waive a Certification pursuant to an appealable action. Any waiver must contain a justification for the action.
- (3) At the request or concurrence of the Certification holder, transfer or modify the Certification; and
- (4) Revoke a Certification when the Director determines that the certification approval was based on false or misleading information.

Under current law, the Director may certify or deny a Certification, but the Director is not authorized to undertake the expanded duties set forth above.<sup>53</sup>

### Dredged material

#### Prohibition against placing dredged material

The bill prohibits a person from using, managing, or placing dredged material in any location unless authorized to do so in accordance with one of the following:

- (1) The law governing the deposit of dredged material in Lake Erie;

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<sup>52</sup> 33 U.S.C. 1344.

<sup>53</sup> R.C. 6111.03(P).



(2) Rules adopted under the bill governing the beneficial use of dredged material (see below);

(3) Permits issued under the Water Pollution Control Law; or

(4) Any authorization issued by the Director of Environmental Protection.<sup>54</sup>

Existing civil and criminal penalties apply to a violation of the prohibition as follows:

Criminal Penalty	Civil Penalty
Any person who <b>purposefully</b> violates the prohibition is guilty of a felony, punishable by a fine of not more than \$25,000, imprisonment for not more than four years, or both. Each day of violation is a separate offense.	Any person who violates the prohibition must pay a civil penalty of not more than \$10,000 per day of violation.
Any person who <b>knowingly</b> violates the prohibition is guilty of a misdemeanor, punishable by a fine of not more than \$10,000, imprisonment for not more than one year, or both. Each day of violation is a separate offense.	

The Attorney General, upon request of the Director, must criminally prosecute a violation of the prohibition or commence a civil action regarding the prohibition.<sup>55</sup>

For purposes of the prohibition, dredged material is material excavated or dredged from a federal navigation channel during harbor or navigation maintenance activities.<sup>56</sup>

### **Beneficial use of dredged material**

The bill authorizes the Director to adopt rules governing the beneficial use of dredged material and the beneficial use of material excavated or dredged from adjacent or connected commercial maritime port facilities that are necessary to protect public health, safety, and the environment. The Director must ensure that the rules establish both of the following:

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<sup>54</sup> R.C. 6111.33(B)

<sup>55</sup> R.C. 6111.07(A) and (B); R.C. 6111.09 and 6111.99, not in the bill.

<sup>56</sup> R.C. 6111.33(A).

(1) Criteria for determining when dredged material and material excavated or dredged from adjacent or connected commercial maritime port facilities does not constitute solid wastes or other wastes; and

(2) Requirements and procedures for the issuance, modification, suspension, revocation, and denial of an authorization, authorization by rule, and general and individual permits for the beneficial use of dredged material and the beneficial use of material excavated or dredged from adjacent or connected commercial maritime port facilities.<sup>57</sup>

The Director also must ensure that the criteria and requirements in rules are no less stringent than any applicable standard established under the federal Water Pollution Control Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Comprehensive Environmental Response, Compensation, and Liability Act, and the Safe Drinking Water Act.<sup>58</sup>

### **Certified water quality professionals**

Under current law, certified water quality professionals assess streams to determine existing aquatic life and categorize wetlands in support of applications for Section 401 Water Quality Certifications (see above). The bill specifies that when a certified water quality professional conducts a stream or wetland assessment to support an application for a Section 401 Water Quality Certification, the Director must issue or deny the Certification not later than 90 days after the complete application for it is received. Under current law, the Director must issue or deny the certification not later than 180 days after the application is received regardless of whether a certified water quality professional conducted the stream or wetland assessment.<sup>59</sup>

The bill requires, rather than authorizes as in current law, the Director to establish a program and adopt rules to certify water quality professionals to assess streams and categorize wetlands in support of applications for Section 401 Water Quality Certification and isolated wetland permits. The bill further requires the Director to establish a multi-sector work group to assist in the development of the rules.<sup>60</sup>

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<sup>57</sup> R.C. 6111.34(A) and (B).

<sup>58</sup> R.C. 6111.34(C).

<sup>59</sup> R.C. 6111.30(G).

<sup>60</sup> R.C. 6111.30(J).

In addition to requiring the Director to adopt the rules regarding certified water quality professionals, the bill alters and expands the required scope of the rules by doing both of the following:

(1) Requiring the rules to authorize audits, rather than random audits as in current law, of documentation developed or submitted by certified water quality professionals;

(2) Requiring the rules to authorize the Director to require public disclosure, including publication of specified information on the Environmental Protection Agency's website, of the following information for each certified water quality professional:

--Name;

--Qualifications and credentials;

--Status of the professional's certifications;

--Documents and reports submitted by the certified water quality professional;

--Documentation and results of agency audits of the certified water quality professional's work; and

--Any final disciplinary action related to the certified water quality professional's performance.<sup>61</sup>

The bill specifies that nothing in the law regarding certified water quality professionals requires an applicant for a Section 401 Water Quality Certification or a permit for impacts to an isolated wetland to use the services of a certified water quality professional.<sup>62</sup>

### **Blast furnace slag and steel slag**

The bill excludes blast furnace slag and steel slag from the definition of industrial and other wastes in the law governing water pollution, thereby exempting them from certain requirements of that law. For example, an NPDES (National Pollutant Discharge Elimination System) permit is generally required before a person may legally discharge industrial or other wastes into the waters of the state. However, because the bill exempts blast furnace slag and steel slag from the terms "industrial waste" or "other

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<sup>61</sup> R.C. 6111.30(J)(6) and (8).

<sup>62</sup> R.C. 6111.30(K).

waste," NPDES permit requirements would not apply. The bill further specifies that the exemption applies regardless of whether the blast furnace slag or steel slag is placed on the ground, placed below grade, or used in products that come into contact with the ground or are placed below grade.<sup>63</sup>

For purposes of both the exemption above and the prohibition described further below, the bill defines blast furnace slag and steel slag as follows:<sup>64</sup>

Defined Term	Definition
Blast furnace slag	A nonmetallic material that is an intended output or intended result of the melting of iron ore or iron pellets together with coke and a flux in a blast furnace, that is sold and distributed in the stream of commerce as a product.
Steel slag	<p>An intended output or intended result of the use of an electric arc furnace or basic oxygen furnace to make steel that is all of the following:</p> <p>(1) Not a hazardous waste;</p> <p>(2) Poured from the furnace in a molten state, cooled, and processed to remove all free metallic; and</p> <p>(3) Sold and distributed in the stream of commerce as a product.</p>

The bill prohibits the placement or management of blast furnace slag and steel slag in a manner that results in an exceedance of water quality standards or primary or secondary contaminant levels for ground water; any discharge prohibited by federal environmental law, except in accordance with a permit; or a threat to public health, safety, or the environment.<sup>65</sup> Existing civil and criminal penalties apply to this prohibition as follows:

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<sup>63</sup> R.C. 6111.052(B), and 6111.03(J)(1), not in the bill.

<sup>64</sup> R.C. 6111.052(A).

<sup>65</sup> R.C. 6111.052(C).



Criminal Penalty	Civil Penalty
Any person who <b>purposefully</b> violates the prohibition is guilty of a felony, punishable by a fine of not more than \$25,000, imprisonment for not more than four years, or both. Each day of violation is a separate offense.	Any person who violates the prohibition must pay a civil penalty of not more than \$10,000 per day of violation.
Any person who <b>knowingly</b> violates the prohibition is guilty of a misdemeanor, punishable by a fine of not more than \$10,000, imprisonment for not more than one year, or both. Each day of violation is a separate offense.	

The Attorney General, upon request of the Director, must criminally prosecute a violation of the prohibition or commence a civil action regarding the prohibition.<sup>66</sup>

## Ohio Lake Erie Commission

### Membership

The bill revises the membership and terms of the members of the Ohio Lake Erie Commission. Under current law, the Commission consists of the Directors of Environmental Protection, Natural Resources, Health, Agriculture, Transportation, and Development Services, or their designees, and five additional members appointed by the Governor. The bill adds to the Commission the two members of the Great Lakes Protection Fund Board who are appointed to that Board by the Governor. Those Board members must serve as ex officio, nonvoting, members on the Commission.

The bill specifies that the terms of the existing five additional members expire on the bill's effective date and that the Governor may reappoint those individuals. The Governor must appoint the initial five additional members with the advice and consent of the Senate not later than 45 days after the bill's effective date. The terms of the initially appointed five additional members are as follows:

- Two members must serve a term ending on September 1, 2017;
- Two members must serve a term ending on September 1, 2018;
- One member must serve a term ending September 1, 2019.

After these terms are completed, the five additional members appointed by the Governor must serve three-year terms.

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<sup>66</sup> R.C. 6111.07(A) and (B); R.C. 6111.09 and 6111.99, not in the bill.

All of the following apply to the five additional members appointed by the Governor:

--Each member must hold office from the date of the member's appointment until the end of the term for which the member was appointed.

--In the event of the death, removal, resignation, or incapacity of a member, the Governor, with the advice and consent of the Senate, must appoint a successor who must hold office for the remainder of the term for which the successor's predecessor was appointed.

--A member must continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

--Members may be reappointed for not more than two total terms.

--The Governor at any time may remove a member for misfeasance, nonfeasance, or malfeasance in office.

The bill also requires the agencies represented on the Commission to furnish administrative services required by the Commission in the performance of its duties.<sup>67</sup>

### **Duties of the Commission**

The bill requires the Commission to do all of the following:

(1) Ensure the coordination of funding and monitoring federal, state, and local policies, programs, and priorities pertaining to Lake Erie, including issues related to nutrient related water quality and beneficial use of dredged material. The Commission must prioritize policies, programs, and priorities identified in the Lake Erie Protection and Restoration Strategy. Under current law, the Commission must ensure the coordination of state and local policies and programs pertaining to Lake Erie water quality, toxic pollution control, and resource protection.

(2) Review, and make recommendations concerning, the development and implementation of policies, programs, and issues that are consistent with the Great Lakes Water Quality Agreement and other international, federal, and state compacts and agreements. Current law requires the Commission to review, and make recommendations concerning, the development and implementation of policies, programs, and issues for long-term, comprehensive protection of Lake Erie water

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<sup>67</sup> R.C. 1506.21(A) and Section 5.



resources and water quality that are consistent with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Agreement.

(3) Serve as a repository and clearinghouse for public information and data related to Lake Erie and the Lake Erie basin and collect and distribute such information and data at the Commission's discretion;

(4) Publish and submit the Lake Erie Protection and Restoration Strategy (see below) rather than the Lake Erie protection agenda as under current law.

(5) Provide representation regarding the interests of Ohio in state, regional, national, and international forums pertaining to Lake Erie and the Lake Erie basin. Current law requires the Commission to provide such representation regarding the resources and water quality of Lake Erie and the Lake Erie basin.

(6) Develop, implement, and coordinate an education, public information, and community relations program concerning the Commission's policies, programs, and issues and the resources of Lake Erie, rather than promoting education concerning the wise management of the resources of Lake Erie as in current law; and

(7) Develop and implement a marketing program promoting the sale of the Lake Erie license plate and other public and private fundraising initiatives to support the Commission's programs.<sup>68</sup>

The bill eliminates all of the following duties currently required of the Commission:

(1) A requirement that the Commission consider matters relating to the laws governing the Commission and its funding at each regular meeting of the Commission;

(2) A requirement that the Commission ensure the implementation of a basinwide approach to Lake Erie issues; and

(3) A requirement that the Commission recommend policies and programs to modify the coastal management program of Ohio.<sup>69</sup>

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<sup>68</sup> R.C. 1506.21(B).

<sup>69</sup> R.C. 1506.21(B)(3), (4), and (6).



The bill authorizes the Commission to dissolve public advisory councils established for the purpose of assisting in implementing programs established under the laws governing the Commission.<sup>70</sup>

Membership on the Commission or membership on a public advisory council established by the Commission does not constitute holding a public office or position of employment and is not grounds for removal of public officers or employees from their offices or positions of employment. Members of the Commission and members of a public advisory council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.<sup>71</sup>

### **Lake Erie Protection and Restoration Strategy**

As indicated above, the bill requires the Commission, by July 31 of each odd-numbered year, to publish a Lake Erie Protection and Restoration Strategy that describes the goals of the Commission and prioritizes the uses of the Lake Erie Protection Fund (see below) and other funds for the following fiscal year. The Commission must hold at least one public meeting in the Lake Erie basin regarding the Strategy and submit the Strategy to the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>72</sup> Current law requires the Commission to publish a Lake Erie Protection Agenda each March that describes the proposed uses of the Fund for the following fiscal year.<sup>73</sup>

### **Lake Erie Protection Fund**

The bill eliminates all of the following purposes for which the Lake Erie Protection Fund may be used under current law:

(1) Funding cooperative research and data collection regarding Lake Erie water quality and toxic contamination;

(2) Developing improved methods of measuring water quality and establishing a firm scientific base for implementing a basinwide system of water quality management for Lake Erie and its tributaries;

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<sup>70</sup> R.C. 1506.21(B)(8).

<sup>71</sup> R.C. 1506.21(A) and (B)(8).

<sup>72</sup> R.C. 1506.21(B)(4) and 1506.23(C).

<sup>73</sup> R.C. 1506.23(C).



(3) Supporting research to improve the scientific knowledge on which protection policies are based and devising new and innovative clean-up techniques for toxic contaminants; and

(4) Supplementing, in a stable and predictable manner, state commitments to policies and programs pertaining to Lake Erie water quality and resource protection.<sup>74</sup>

The bill authorizes the Fund to be used for funding cooperative research, data gathering, or demonstration projects related to the priorities outlined in the Lake Erie Protection and Restoration Strategy. Current law authorizes the Fund to be used for accelerating the pace of research into the economic, environmental, and human health effects of contamination of Lake Erie and its tributaries.<sup>75</sup>

Current law authorizes the Fund to be used for encouraging cooperation with and among leaders from various organizations such as state legislatures, institutions of higher education, and conservation groups within the Lake Erie basin. The bill adds agriculture organizations to this list.<sup>76</sup>

The bill revises the use of the Fund for awarding grants to allow grants from the Fund to be made for projects and programs that are designed to address priorities outlined in the Lake Erie Protection and Restoration Strategy, rather than for projects and programs designed to protect Lake Erie by reducing toxic contamination or improving water quality in Lake Erie as in current law.<sup>77</sup>

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## HISTORY

ACTION	DATE
Introduced	01-31-17

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<sup>74</sup> R.C. 1506.23(A)(2) through (5).

<sup>75</sup> R.C. 1506.23(A)(1).

<sup>76</sup> R.C. 1506.23(A)(2).

<sup>77</sup> R.C. 1506.23(A)(3).





# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Amanda George

### **S.B. 50**

132nd General Assembly  
(As Introduced)

Sen. Skindell

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### **BILL SUMMARY**

- Prohibits the disposal of brine by deep well injection, by land application, and in association with enhanced recovery.
  - Accordingly, eliminates the per-barrel injection well fee.
  - Prohibits the conversion of a well to a use other than its original purpose (for example, converting from an oil and gas production well to an injection well).
  - Establishes criminal penalties for a violation of the bill's prohibitions.
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### **CONTENT AND OPERATION**

#### **Brine disposal**

The bill prohibits anyone from disposing of brine from oil and gas operations in or on the land or in surface or ground water. However, the Chief may allow disposal for testing purposes and for purposes of implementing a new technology. Under current law, a person is only prohibited from disposing of brine in or on the land or in surface or ground water if the disposal causes or could reasonably be anticipated to cause damage or injury to public health or safety or the environment.<sup>1</sup>

Whoever negligently violates this prohibition must be fined between \$100 and \$1,000 for a first offense and between \$200 and \$2,000 for each subsequent offense.<sup>2</sup>

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<sup>1</sup> R.C. 1509.22.

<sup>2</sup> R.C. 1509.99(E).

As a result of the above changes, the bill repeals current law that does all of the following:

(1) Requires the issuance of a permit for the injection of brine and other waste substances, establishes procedures and requirements governing that issuance, and requires the Chief to adopt rules governing such injection;<sup>3</sup>

(2) Levies a per-barrel injection well fee, and provides for the calculation and collection of the amounts owed;<sup>4</sup> and

(3) Authorizes a board of county commissioners, a board of township trustees, and the legislative authority of a municipal corporation to permit, by resolution, the surface application of brine to roads, and establishes requirements governing such resolutions and surface application.<sup>5</sup>

Additionally, the bill prohibits the disposal of brine in association with a method of enhanced recovery.<sup>6</sup> Whoever negligently violates this prohibition must be fined between \$100 and \$1,000 for a first offense and between \$200 and \$2,000 for each subsequent offense.<sup>7</sup> Current law, largely retained by the bill with the exception of brine, prohibits a person from conducting secondary or additional recovery operations, including any underground injection of fluids, without a permit to do so from the Chief.<sup>8</sup>

## **Conversion of wells**

The bill prohibits a person from converting a well to a use other than its original purpose. For example, an oil and gas production well cannot be converted to an injection well.<sup>9</sup> Whoever negligently violates this prohibition must be fined between \$100 and \$1,000 for a first offense and between \$200 and \$2,000 for each subsequent offense.<sup>10</sup> Accordingly, it eliminates the prohibition in current law against converting a

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<sup>3</sup> R.C. 1509.22(D)(1), (3), and (5).

<sup>4</sup> R.C. 1509.22(H).

<sup>5</sup> R.C. 1509.226, repealed.

<sup>6</sup> R.C. 1509.21(B).

<sup>7</sup> R.C. 1509.99(E).

<sup>8</sup> R.C. 1509.21(A).

<sup>9</sup> R.C. 1509.051.

<sup>10</sup> R.C. 1509.99(E).



well to any use other than its original purpose without a permit to do so issued by the Chief.<sup>11</sup>

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## HISTORY

ACTION	DATE
Introduced	02-14-17

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<sup>11</sup> R.C. 1509.05.





# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Amanda George

### **S.B. 53**

132nd General Assembly  
(As Introduced)

Sen. Skindell

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### **BILL SUMMARY**

- Effectively bans the taking or removal of oil or natural gas from and under the bed of Lake Erie.

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### **CONTENT AND OPERATION**

The bill prohibits the Director of Natural Resources or any other state authority from issuing any permit or making any lease to take or remove oil or natural gas from and under the bed of Lake Erie.<sup>1</sup> In doing so, the bill creates an exception to current law that authorizes the Director of Natural Resources, with the approval of the Director of Environmental Protection, the Attorney General, and the Governor, and subject to certain requirements, to issue permits and make leases to parties applying for permission to take and remove sand, gravel, stone, and other minerals or substances from and under the bed of Lake Erie, either on a rent or royalty basis, as the Director of Natural Resources determines to be best for the state.<sup>2</sup>

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### **HISTORY**

ACTION	DATE
Introduced	02-14-17

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<sup>1</sup> R.C. 1505.07(B).

<sup>2</sup> R.C. 1505.07(A).