Eric Vendel *Legislative Service Commission*

Sub. H.B. 231*

124th General Assembly
(As Reported by S. Energy, Natural Resources, and Environment)

Reps. Faber, Cates, Seitz, Calvert, Husted, Gilb, Hartnett, Raga, Schmidt, Lendrum, Setzer, Evans, Core, DeWine, Webster, Collier, Damschroder, Carmichael, Manning, Reinhard, Widowfield, Flowers, Blasdel, Callender, Hoops, Jolivette, Seaver, Carano, Sferra, Ogg, Britton, Distel, Buehrer, Coates, Fessler

BILL SUMMARY

- Requires persons proposing the filling of isolated wetlands to obtain coverage under a general state isolated wetland permit issued by the Director of Environmental Protection or to obtain an individual state isolated wetland permit from the Director.
- Establishes three different categories of wetlands of varying levels of ecological significance.
- Depending on the category and size of the isolated wetland that is subject to filling, establishes different levels of review, different criteria for the approval or disapproval of a state isolated wetland permit, and different mitigation requirements.

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* *This analysis was prepared before the report of the Senate Energy, Natural Resources, and Environment Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Requires coverage under a general state isolated wetland permit for a proposed filling of a category 1 or category 2 isolated wetland of one-half acre or less, and applies level one review requirements to the proposed filling, including the submission of a pre-activity notice prior to the filling.

- Requires persons proposing the filling of a category 1 isolated wetland of more than one-half acre or a category 2 isolated wetland of between one-half acre and three acres to apply for an individual state isolated wetland permit, and applies level two review requirements to such an application.

- Requires persons proposing the filling of a category 2 isolated wetland of more than three acres or a category 3 isolated wetland to apply for an individual state isolated wetland permit, and applies level three review requirements to such an application.

- Establishes public notice and participation requirements prior to the issuance or denial of individual state isolated wetland permits and the issuance of a general permit.

- Requires the Director of Natural Resources in consultation with the Director of Environmental Protection to establish an approved list of wetland mitigation banks that may be used for mitigation purposes.

- Provides that the discharge of dredged material into isolated wetlands is subject to the bill.

- Establishes a permit application fee of $200 and a review fee for state isolated wetland permits, and establishes the Dredge and Fill Fund to be used for the purpose of administering the bill.

- Requires the Director of Budget and Management to prepare a full zero-base budget for the biennium ending June 30, 2005, for the Environmental Protection Agency and for one other small agency to be selected by the Director, and establishes requirements for the preparation of those budgets.

- Declares an emergency.

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CONTENT AND OPERATION

Background

Until recently, all activities governing the dredging and filling of waters of the state were regulated in Ohio under the federal Clean Water Act and rules adopted under the state Water Pollution Control Law that implement certain requirements established under the federal Act. The Clean Water Act, generally, requires persons that propose to dredge or fill waters of the state, including wetlands, to apply to the United States Army Corps of Engineers (Army Corps) for a permit under section 404 of that Act. The permit commonly is referred to as a "section 404 permit." Generally, a section 404 permit is required before a person may dredge or fill waters of the state, including wetlands. In addition, the Clean Water Act requires persons to receive a water quality certification under section 401 of the Act from the state that the dredging or filling will not result in a violation of certain water quality standards. The receipt of the certification from Ohio is a precondition to the issuance of the section 404 permit issued by the Army Corps. This certification is commonly referred to as a section 401 water quality certification. The Ohio Environmental Protection Agency (OEPA) regulates the dredging and filling of waters of the state, including wetlands,

pursuant to section 401 in accordance with rules adopted under the state Water Pollution Control Law.

A 2001 decision of the United States Supreme Court, *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, calls into question the authority of the OEPA and the Army Corps to regulate all categories of waters under sections 401 and 404 of the Clean Water Act.[1] That case found that the authority granted to the Army Corps under section 404 of the Clean Water Act did not extend to nonnavigable, isolated, intrastate waters of the United States, which include certain categories of wetlands. Because of the Court's decision, the ability of the Army Corps and the OEPA to regulate isolated waters, including isolated wetlands, under sections 401 and 404 of the Clean Water Act is not clear. Apparently, isolated wetlands now fall under the exclusive jurisdiction of the states. The bill clarifies that the OEPA has permitting authority for filling activities in isolated wetlands independent of the Clean Water Act.

Introduction

The bill establishes requirements for persons conducting filling of isolated wetlands in the state. Generally, a person that seeks to fill a wetland must obtain an individual state isolated wetland permit or be covered by a general state isolated wetland permit. Negative impacts to an isolated wetland resulting from the filling of the isolated wetland must be mitigated through conducting mitigation activities. The level of review for a permit, the criteria used to approve or disapprove a permit application, and the mitigation requirements for the filling of an isolated wetland all depend on the size and category of isolated wetland that is impacted. The bill establishes three different categories of isolated wetlands: category 1, category 2, and category 3. A category 1 isolated wetland is generally the lowest category of isolated wetland whereas a category 3 isolated wetland is the highest quality isolated wetland. The bill also establishes public notice and participation requirements, fees, and requirements related to wetland mitigation banks as well as requirements governing the discharge of dredged materials into isolated wetlands.

Definitions of "wetlands" and "isolated wetland"

As stated above, the bill governs the issuance of permits for the filling of an isolated wetland. The bill defines "wetlands" to mean those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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[1] *121 S. Ct. 675 (2001).*

The term includes swamps, marshes, bogs, and similar areas that are delineated in accordance with the 1987 United States Army Corps of Engineers wetland delineation manual and any other procedures and requirements adopted by the Army Corps for delineating wetlands. (Sec. 6111.02(P).) Under the bill, "isolated wetland" means a wetland that is not subject to regulation under the Federal Water Pollution Control Act (sec. 6111.02(F)).

Categories of wetlands

The bill establishes three categories of wetlands: category 1, category 2, and category 3 wetlands. Generally, category 1 wetlands are less ecologically significant than category 2 and category 3 wetlands. The bill defines the different categories as those categories described in rules adopted under the Water Pollution Control Law and as determined to be a category 1, category 2, or category 3 wetland, respectively, through application of the Ohio Environmental Protection Agency's "Ohio Rapid Assessment Method for Wetlands version 5.0" (ORAM), including the ORAM version 5.0 quantitative score calibration dated August 15, 2000, unless an application for a section 401 water quality certification was submitted prior to February 28, 2001, in which case the permit applicant may elect to proceed in accordance with the ORAM version 4.1. ORAM is a scoring system used by the OEPA to determine into which category a given wetland fits. (Sec. 6111.02(A).)

What is mitigation

Persons that propose a filling of an isolated wetland must provide compensation for any isolated wetland loss that results from the filling. The term used in the bill to refer to that compensation is "mitigation." The bill defines it to mean the restoration, creation, enhancement, or, in exceptional circumstances, preservation of wetlands expressly for the purpose of compensating for wetland impacts (sec. 6111.02(G)).[2] Mitigation must be conducted in accordance with certain ratios. Under the bill, for category 1 and category 2 isolated wetlands, other than forested category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank (see below) must be conducted at a ratio of 2 to 1. In

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[2] *The bill defines "restoration" as the reestablishment of a previously existing wetland at a site where it has ceased to exist (sec. 6111.02(M)); "creation" as the establishment of a wetland where one did not formerly exist and that involves wetland construction on nonhydric soils (sec. 6111.02(B)); "enhancement" as activities conducted in an existing wetland to improve or repair existing or natural wetland functions and values of that wetland (sec. 6111.02(C)); and "preservation" as the protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal mechanisms to prevent harm to the wetlands--"preservation" may include protection of adjacent upland areas as necessary to ensure protection of a wetland (sec. 6111.02(L)).*

other words, two acres of isolated wetland must be restored or created for each acre that is being impacted. For forested category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank (see below) must be conducted at a ratio of two and one-half to one. All other mitigation is subject to ratios established in rules adopted under the Water Pollution Control Law. In addition, mitigation involving the enhancement or preservation of isolated wetlands must be calculated and performed in accordance with those rules. (Sec. 6111.027(A) and (B).)

An applicant for coverage under a general state isolated wetland permit or for an individual state isolated wetland permit under the bill (see below) must demonstrate that the mitigation site will be protected in perpetuity and that appropriate practicable management measures are, or will be, in place to restrict harmful activities that jeopardize the mitigation (sec. 6111.027(C)). The bill defines "practicable" to mean available and capable of being executed with existing technology and without significant adverse effect on the economic feasibility of the project in light of the overall project purposes and in consideration of the relative environmental benefit (sec. 6111.02(K)).

State isolated wetland permits

The bill establishes requirements for the issuance of general and individual state isolated wetland permits. A person that proposes to engage in an activity that involves the filling of an isolated wetland must apply to the Director of Environmental Protection for coverage under a general state isolated wetland permit or must apply for an individual state isolated wetland permit in accordance with the bill (see below). The bill specifies that the issuance of a general or individual state isolated wetland permit constitutes the issuance of a section 401 water quality certification (see above) for purposes of the Federal Water Pollution Control Act. Under the bill, no person may engage in the filling of an isolated wetland unless authorized to do so by a general or individual state isolated wetland permit. (Sec. 6111.021(B) and (C).)

The bill requires the Director to issue a general state isolated wetland permit or permits to cover activities in Ohio to which level one review applies (see below). A general permit is effective for five years. Upon the expiration of a general permit, the Director must issue a new one. The bill authorizes the Director to issue an individual state isolated wetland permit for the filling of an isolated wetland that is subject to level two or three review (see below). An individual permit is effective for five years. (Sec. 6111.021(A).) The bill specifies that its provisions regarding the filling of wetlands do not apply to isolated wetlands created by previous coal mining activities where remining is proposed, except for wetlands created for mitigation purposes (sec. 6111.021(B)).

"Filling" is defined by the bill to mean the addition of fill material into a wetland for the purpose of creating upland, changing the bottom elevation of the wetland, or creating impoundments of water.[3] "Filling" includes the placement of the following in wetlands: fill material that is necessary for the construction of any structure; structures or impoundments requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands, property protection, or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill material for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and underwater utility lines; and artificial reefs. (Sec. 6111.02(E).)

Levels of review, criteria, and mitigation

Under the bill, the proposed filling of an isolated wetland requires either coverage under a general permit or the issuance of an individual permit. Whether a given filling activity will involve a general or individual permit depends on the category of isolated wetland that is impacted and its size. In addition, the bill establishes different levels of review, criteria for approval or disapproval, and mitigation requirements for an isolated wetland based on its assigned category and its size.

General state isolated wetland permits and level one review requirements

As discussed above, the bill establishes different levels of review for different sizes and categories of isolated wetlands. The first level of review is applicable to category 1 and category 2 isolated wetlands of ½ acre or less. The proposed filling of a category 1 or category 2 isolated wetland of ½ acre or less is covered under the bill by a general state isolated wetland permit and is subject to level one review requirements. (Sec. 6111.022(A).) Level one review requires the submission of a pre-activity notice that includes an application, an acceptable wetland delineation, a wetland categorization, a description of the project, a

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[3] *The bill defines "fill material" to mean any material that is used to fill an aquatic area, to replace an aquatic area with dry land, or to change the bottom elevation of a wetland for any purpose and that consists of suitable material that is free from toxic contaminants in other than trace quantities. "Fill material" does not include: (1) material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products, or (2) material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures. (Sec. 6111.02(D).)*

description of the acreage of the isolated wetland that will be subject to filling, site photographs, and a mitigation proposal for the impact to the isolated wetland (sec. 6111.022(B)).

Criteria for approval. Generally, a person that proposes the filling of an isolated wetland that is subject to level one review may conduct the dredging or filling of the wetland automatically without the application of specific criteria. The person may conduct the filling not earlier than 30 days after submission of the pre-activity notice unless the Director of Environmental Protection notifies the applicant within that 30-day period that the filling of the isolated wetland will result in a significant negative impact on state water quality. An applicant that receives such a notice may apply for an individual state isolated wetland permit (see below). (Sec. 6111.022(C).)

Under the bill, a person who has submitted a pre-activity notice for coverage under a general permit must complete the filling within two years after the end of the 30-day period following the Director's receipt of the notice. If the person does not complete the filling within that time, the person must submit a new pre-activity notice. (Sec. 6111.023(E).)

Mitigation requirements under level one review. Required mitigation for the proposed filling of an isolated wetland that is subject to level one review must be conducted by the applicant. Without the objection of the Director and at the discretion of the applicant, the applicant must conduct either on-site mitigation, mitigation at a wetland mitigation bank (see below) within the same United States Army Corps of Engineers district as the location of the proposed filling, or off-site mitigation (sec. 6111.022(D)).[4]

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[4] *"On-site mitigation" means wetland restoration, creation, enhancement, or preservation occurring within and not more than one mile from the project boundary and within the same watershed (sec. 6111.02(J)). "Off-site mitigation" means wetland restoration, creation, enhancement, or preservation occurring farther than one mile from a project boundary, but within the same watershed (sec. 6111.02(I)). The bill defines "watershed" to mean a common surface drainage area corresponding to one from the list of 37 adapted from the 44 cataloging units as depicted on the hydrologic unit map of Ohio, United States Geological Survey, 1988, as described in rules adopted under the Water Pollution Control Law or as otherwise shown on map number 1 found in rules adopted under that Law. "Watershed" is limited to those parts of the cataloging units that geographically lie within the borders of Ohio. (Sec. 6111.02(O).)*

Individual state isolated wetland permits and level two review requirements

The next level of review is level two review, which is applicable to the proposed filling of a category 1 isolated wetland of greater than ½ acre or the proposed filling of a category 2 isolated wetland of greater than ½ acre, but less than or equal to three acres. The filling of such a wetland requires an individual state wetland permit issued by the Director to the person proposing to conduct the filling. (Sec. 6111.023(A).)

Level two review requires all of the following:

(1) All of the information required to be submitted with a pre-activity notice under level one review (see above);

(2) Submission of an analysis of practicable on-site alternatives to the proposed filling that would have a less adverse impact on the isolated wetland ecosystem; and

(3) Submission of information indicating whether high quality waters, as defined in rules adopted under the Water Pollution Control Law, are to be avoided by the proposed filling of the isolated wetland. (Sec. 6111.023(B).)

Criteria for the issuance or denial of a permit under level two review. The Director must issue or deny an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level two review not later than 90 days after the receipt of an application for the permit. The Director must issue the permit unless the Director determines that the applicant has failed to demonstrate all of the following:

(1) There is no practicable on-site alternative to the proposed filling of the isolated wetland that would have a less adverse impact on the isolated wetland ecosystem.

(2) Reasonable buffers have been provided for any isolated wetland that will be avoided at the site where the proposed filling will take place.

(3) The isolated wetland that will be subject to filling is not locally or regionally scarce within the watershed in which it is located and does not contain rare, threatened, or endangered species.

(4) The impact would not result in significant degradation to the aquatic ecosystem.

(5) Appropriate mitigation has been proposed for any unavoidable impacts.

(6) Storm water and water quality controls will be installed to ensure that peak post-development rates of surface water runoff from the impacted isolated wetland do not exceed the peak pre-development rates of runoff from the on-site isolated wetland. Water quality improvement measures must be incorporated into the design of the storm water control measures to the maximum extent practicable; an example of these measures includes incorporating vegetated areas in a storm water control plan.

(7) Any additional, practicable, site-specific requirements that are determined necessary by the Director to protect water quality have been satisfied. (Sec. 6111.023(C).)

The Director may deny an application for such a permit if the Director determines that the proposed filling of the isolated wetland will result in an adverse short-term or long-term impact on water quality (sec. 6111.023(D)(1)). The bill authorizes the Director to impose any practicable terms and conditions on an individual state isolated wetland permit that is subject to level two review that are appropriate or necessary to ensure adequate protection of state water quality and to ensure adequate compliance with the Water Pollution Control Law and rules adopted under it. Prior to the issuance of such a permit, or prior to, during, or after the filling of the isolated wetland that is the subject of the permit, the Director may require that the applicant or permit holder perform various environmental quality tests, including chemical analyses of water, sediment, or fill material and bioassays, in order to ensure adequate protection of water quality. (Sec. 6111.023(D)(2) and (3).)

Mitigation requirements under level two review. Mitigation for the proposed filling of a category 1 isolated wetland that is subject to level two review may be conducted in the same manner as mitigation under a general permit (see above) (sec. 6111.023(E)(1)). Mitigation for the proposed filling of a category 2 isolated wetland that is subject to level two review must occur in the following preferred order:

(1) Practicable on-site mitigation;

(2) Reasonably identifiable, available, and practicable off-site mitigation within the same watershed;

(3) If the proposed filling will take place within a mitigation bank service area, within that mitigation bank service area. The bill defines "mitigation bank service area" to mean the designated area where a mitigation bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and other aquatic resources and that is designated as such in accordance with the

process established in the "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (1995)" (sec. 6111.02(H)); and

(4) If there is a significant ecological reason that the mitigation location should not be limited to the watershed in which the isolated wetland is located and if the proposed mitigation will result in a substantially greater ecological benefit, in a watershed that is adjacent to the watershed in which the isolated wetland is located. (Sec. 6111.023(E)(2).)

Individual state isolated wetland permits and level three review requirements

The final level of review, level three, is applicable to a proposed filling of a category 2 isolated wetland of greater than three acres or a category 3 isolated wetland. Such a filling requires an individual state isolated wetland permit. (Sec. 6111.024(A).)

Level three review requires all of the following:

(1) All of the information required to be submitted with a pre-activity notice under level one review (see above);

(2) A full antidegradation review conducted in accordance with rules adopted under the state antidegradation statute; and

(3) The submission of information indicating whether high quality waters are to be avoided by the proposed filling of the isolated wetland. (Sec. 6111.024(B).)

Criteria for the issuance or denial of a permit under level three review. The Director must issue or deny an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level three review not later than 180 days after the receipt of an application for the permit. The Director must not issue the permit unless the Director determines that the applicant has demonstrated that the proposed filling will not prevent or interfere with the attainment or maintenance of applicable state water quality standards. (Sec. 6111.024(C).) The Director also may deny an application for such a permit if the Director determines that the proposed filling of the isolated wetland will result in an adverse short-term or long-term impact on water quality (sec. 6111.024(D)(1)).

As with permits requiring level two review, the bill authorizes the Director to impose terms and conditions on an individual state isolated wetland permit that is subject to level three review and to require that an applicant or permit holder perform various environmental quality tests (see above). (Sec. 6111.024(D)(2) and (3).)

Mitigation requirements under level three review. Mitigation for the proposed dredging or filling of a category 2 or a category 3 isolated wetland that is subject to level three review must occur in the same preferred order as under level two review (see above) (sec. 6111.024(E)).

Permit completeness review; permit denial

Within 15 business days after the receipt of an application for an individual state isolated wetland permit or for coverage under a general permit, the Director must notify the applicant if the application is complete. If the application is not complete, the Director must include in the notice an itemized list of the information or materials that are necessary to complete the application. Time periods specified in the bill do not apply until the application is determined by the Director to be complete. If the applicant fails to provide information or materials that are necessary to complete the application within 60 days after the Director's receipt of the application, the Director may return the incomplete application to the applicant and take no further action on the application. (Sec. 6111.026(B).)

The bill requires the Director to provide an explanation to an applicant for an individual permit of the basis for the proposed denial of the application (sec. 6111.026(A)).

Public participation requirements

Except as discussed below, the Director must publish notice of the receipt of a complete application for an individual state isolated wetland permit in a newspaper of general circulation in the county in which the proposed filling of the isolated wetland that is the subject of the application is to take place. The Director must accept comments concerning the application and requests for a public hearing concerning it for not more than 20 days following the publication of notice concerning the application.

If a public hearing is requested during the 20-day comment period and the Director determines that there is significant public interest, the Director or the Director's representative must conduct a public hearing concerning the application. Notice of the public hearing must be published not later than 30 days prior to the date of the hearing in a newspaper of general circulation in the county in which the proposed filling of the isolated wetland that is the subject of the application is to take place. If a public hearing is requested, the Director must accept comments concerning the application until five business days after the public hearing. A public hearing must take place not later than 70 days after the receipt of the application. (Sec. 6111.026(C).)

Public participation and review for applications under level three review requirements

Rather than being subject to the above requirements, applications for individual state isolated wetland permits to which level three review requirements apply (category 2 wetlands of greater than three acres and category 3 wetlands; see above) and the issuance of a general state isolated wetland permit (see above) are subject to rules adopted under the state antidegradation statute governing public notice and participation (sec. 6111.026(D)).

Other public participation and review requirements

When an application for a state isolated wetland permit is changed, altered, or amended after a public hearing, a second hearing is not required for the changed, altered, or amended application if the scope of the proposed filling that is proposed by the original application has not changed or the proposed filling has been reduced from that proposed in the original application (sec. 6111.026(E)).

The bill authorizes the Director, if the isolated wetland that is the subject of an application for an individual state isolated wetland permit to which level two or level three review applies is part of a project that is subject to section 404 of the Federal Water Pollution Control Act (see above) and at the request of the applicant, to revise the bill's time periods for the public comment period and public hearing, if applicable to coincide with the time periods for an application for a 401 water quality certification. If the applicant so requests, the Director also may revise the time periods for the issuance of individual permits solely for the purpose of eliminating duplicative public comment and public hearing procedures. (Sec. 6111.026(F).)

Wetland mitigation banks

Under the bill, the Director of Natural Resources in consultation with the Director of Environmental Protection must establish a list of approved wetland mitigation banks that must be used by applicants for state isolated wetland permits for mitigation purposes and must submit the list to the Director of Environmental Protection (sec. 6111.025(A)). The bill defines "wetland mitigation bank" to mean a site where wetlands have been restored, created, enhanced, or, in exceptional circumstances, preserved expressly for the purpose of providing mitigation for impacts to wetlands and that has been approved in accordance with the process established in the "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (1995)" (sec. 6111.02(Q)).

In establishing the list of approved wetland mitigation banks, the Director of Natural Resources must give preference to wetland mitigation banks that are

comprised of areas involving the restoration of previously existing wetlands. In addition, the list must not exclude state or local agencies from developing wetland mitigation banks. (Sec. 6111.025(A).)

The Department of Natural Resources, the Division of Wildlife in that Department, or any other division in that Department that is designated by the Director of Natural Resources may establish and operate a wetland mitigation bank for purposes of the bill. A wetland mitigation bank so established may be used by any individual or entity, including any agency or department of the state, for mitigation purposes. (Sec. 6111.025(B).)

Discharge of dredged material

The bill provides that the discharge of dredged material into isolated wetlands is subject to the bill's provisions. It defines "discharge of dredged material" to have the same meaning as in a specified federal regulation as it was in effect on February 16, 2001. "Dredged material" means material that is excavated or dredged from isolated wetlands, but does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products. (Sec. 6111.028.)

Fees

The bill establishes application and review fees applicable to persons that apply for a state isolated wetland permit under the bill. First, a person must pay an application fee of $200 at the time of application. A person then must pay a review fee of $500 per acre of the wetlands to be impacted. However, the review fee cannot exceed $5,000 per application. In addition, if an application is denied, the Director must refund to the applicant one-half of the amount of the review fee paid by the applicant. (Sec. 3745.113(A).)

If a person conducts any activities for which an individual state isolated wetland permit is required without first obtaining such a permit, the person must pay twice the amount of the application and review fees that the person otherwise would have been required to pay, not to exceed $10,000 (sec. 3745.113(B)). The application and review fees do not apply to any agency or department of the state or to any county, township, or municipal corporation in Ohio (sec. 3745.113(D)). All moneys collected from the fees must be deposited in the state treasury to the credit of the Dredge and Fill Fund created in the bill, which must be used by the Director to administer the bill (secs. 3745.113(C) and 6111.029).

Report to the General Assembly

The Director annually must issue a report to the members of the General Assembly on the total number of acres of isolated wetlands that were subject to filling during the immediately preceding year as well as the total number of acres of isolated wetlands that were restored, created, enhanced, or preserved through mitigation that same year as a result of state isolated wetlands permits issued under the bill (sec. 6111.027(C)).

Zero-base budgets

The bill requires the Director of Budget and Management to prepare a full zero-base budget for the biennium ending June 30, 2005, for the Environmental Protection Agency and for one other state agency that the Director must select prior to January, 2002, that has fewer full-time equivalent personnel than any of the administrative departments represented on the Governor's cabinet. The Director must offer the two agencies substantial technical assistance throughout the process of preparing their zero-base budgets. Each of the agencies must prepare a full zero-base budget in the manner and according to the schedule that the Director requires. As the Director determines, the budgets must be in addition to or in place of the estimates of revenue and proposed expenditures that they otherwise would be required to prepare under the statute requiring the preparation of biennial budget estimates. (See **COMMENT**.) (Section 2.)

Declaration of emergency

Stating that the protection of isolated wetlands is of vital importance to the state's environment and natural resources, the bill declares an emergency, thus causing the bill to take immediate effect (Section 3).

COMMENT

Zero-base budgeting involves the identification of all substantive aspects of an organization's operations, the establishment of its funding priorities, and the provision of performance measures and need indicators. The purpose, ultimately, is to determine whether an activity should be continued at its current level or at a different level or whether it should be terminated.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-26-01	p. 321

Reported, H. Energy & Environment	06-20-01	p.	698
Passed House (94-0)	06-20-01	pp.	699-700
Reported, S. Energy, Natural Resources, & Environment	---		---

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