



H.B. 320

124th General Assembly
(As Introduced)

Rep. Faber

BILL SUMMARY

- Requires persons proposing the dredging or filling of waters of the state, including wetlands, to obtain coverage under a general state dredge and fill permit issued by the Director of Environmental Protection or to obtain an individual state dredge and fill permit from the Director.
- Establishes three different categories of wetlands of varying levels of ecological significance.
- Depending on the category and size of the wetland that is subject to dredging or filling, establishes different levels of review, different criteria for the approval or disapproval of a state dredge and fill permit, and different mitigation requirements.
- Requires coverage under a general state dredge and fill permit for a proposed dredging or filling of a category 1 or category 2 wetland of $\frac{1}{2}$ acre or less, and applies level one review requirements to the proposed dredging or filling, including the submission of a pre-activity notice prior to the dredging or filling.
- Requires persons proposing the dredging or filling of a category 1 wetland of more than $\frac{1}{2}$ acre or a category 2 wetland of between $\frac{1}{2}$ acre and three acres to apply for an individual state dredge and fill permit, and applies level two review requirements to such an application.
- Requires persons proposing the dredging or filling of a category 2 wetland of more than three acres or a category 3 wetland to apply for an individual state dredge and fill 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 dredge and fill 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.
- Requires the Director of Environmental Protection to adopt rules establishing review procedures for applications for dredge and fill permits for impacts to waters of the state other than wetlands that are consistent with procedures established by the bill for wetlands.
- Establishes a permit application fee of \$200 and specified review fees for permits issued under the bill, and establishes the Dredge and Fill Fund to be used for the purpose of administering the bill.
- 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.

In June 2001, the General Assembly enacted Sub. H.B. 231, which took effect on July 17, 2001, and provided for the issuance of state isolated wetland

¹ *121 S. Ct. 675 (2001)*.

permits. That act clarified that the OEPA has permitting authority over dredging and filling operations in isolated wetlands. As a result of the enactment of Sub. H.B. 231, dredging and filling operations in the state are regulated in two different ways. Dredging and filling operations in isolated wetlands are regulated in accordance with the provisions of Sub. H.B. 231, and dredging and filling operations in all other wetlands and waters of the state are regulated under the system established by rule that was in existence prior to the enactment of Sub. H.B. 231. The bill eliminates the differences between the regulation of isolated wetlands and the regulation of other wetlands and waters of the state. Many of the provisions of Sub. H.B. 231 are similar in nature to the provisions of the bill. However, the scope of Sub. H.B. 231 is narrower than the bill. The act, which is current law, dealt solely with isolated wetlands; the bill addresses all wetlands and other waters of the state.

If the bill is enacted, its provisions apparently would replace those enacted by Sub. H.B. 231. Thus, this analysis treats the permitting program created by the bill as new rather than as a revision of an existing program.

Introduction

The bill establishes requirements for persons conducting dredging and filling of wetlands and other waters of the state. Generally, a person that seeks to dredge or fill a wetland or other water of the state must obtain an individual state dredge and fill permit or be covered by a general state dredge and fill permit. With respect to wetlands, negative impacts to wetlands resulting from the dredging or filling operations 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 dredging or filling of a wetland all depend on the size and category of wetland that is impacted. The bill establishes three different categories of wetlands: category 1, category 2, and category 3. A category 1 wetland is generally the lowest category of wetland whereas a category 3 wetland is the highest quality wetland. The bill also establishes public notice and participation requirements, fees, and requirements related to wetland mitigation banks.

Definition of "wetlands"

As stated above, the bill governs the issuance of permits for the dredging and filling of a 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. 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(Q).)

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 dredging or filling of a wetland must provide compensation for any wetland loss that results from the dredging or 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(H)).² Mitigation must be conducted in accordance with certain ratios. Under the bill, for category 1 and category 2 wetlands, other than forested category 2 wetlands, mitigation located at an approved wetland mitigation bank (see below) must be conducted at a ratio of 2 to 1. In other words, two acres of wetland must be restored, created, or enhanced for each acre that is being impacted. For forested category 2 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

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(N)); "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(D)); 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(M)).

under the Water Pollution Control Law. In addition, mitigation involving the enhancement or preservation of 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 dredge and fill permit or for an individual state dredge and fill 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(L)).

State dredge and fill permits

The bill establishes requirements for the issuance of general and individual state dredge and fill permits. A person that proposes to engage in an activity that involves the dredging or filling of waters of the state must apply to the Director of Environmental Protection for coverage under a general state dredge and fill permit or must apply for an individual state dredge and fill permit in accordance with the bill (see below). The bill specifies that the issuance of a general or individual state dredge and fill 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 dredging or filling of waters of the state unless authorized to do so by a general or individual state dredge and fill permit. (Sec. 6111.021(B) and (C).)

The bill specifies that its provisions regarding the dredging and filling of waters of the state do not apply to isolated wetlands created by previous coal mining activities where re-mining is proposed, except for wetlands created for mitigation purposes (sec. 6111.021(B)). "Isolated wetland" is defined as a wetland that is not subject to regulation under the Federal Water Pollution Control Act (sec. 6111.02(G)).

The bill requires the Director to issue a general state dredge and fill 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 dredge and fill permit for the dredging or filling of a wetland that is subject to level two or three review (see below). An individual permit is effective for five years. (Sec. 6111.021(A).)

"Dredging" is defined by the bill to mean the removal or redistribution of any material within waters of the state that changes the bottom elevation of waters of the state (sec. 6111.02(C)).

"Filling" is defined by the bill to mean the addition of fill material into waters of the state for the purpose of creating upland, changing the bottom elevation of waters of the state, or creating impoundments of water.³ "Filling" includes at least the placement of the following in waters of the state: 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(F).)

Levels of review, criteria, and mitigation regarding wetlands

Under the bill, the proposed dredging or filling of a wetland requires either coverage under a general permit or the issuance of an individual permit. Whether a given dredging or filling activity will involve a general or individual permit depends on the category of 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 a wetland based on its assigned category and its size.

General state dredge and fill permits and level one review requirements

As discussed above, the bill establishes different levels of review for different sizes and categories of wetlands. The first level of review is applicable to category 1 and category 2 wetlands of ½ acre or less. The proposed dredging or filling of a category 1 or category 2 wetland of ½ acre or less is covered under the bill by a general state dredge and fill permit and is subject to level one review requirements. (Sec. 6111.022(A).) Level one review requires the submission of a

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. "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(E).)*

pre-activity notice that includes an application, an acceptable wetland delineation, a wetland categorization, a description of the project, a description of the acreage of the wetland that will be subject to dredging or filling, site photographs, and a mitigation proposal for the impact to the wetland (sec. 6111.022(B)).

Criteria for approval. Generally, a person that proposes the dredging or filling of a 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 dredging or 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 dredging or filling of the 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 dredge and fill 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 dredging or 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 dredging or 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 dredging or filling of a 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 dredging or filling, or off-site mitigation (sec. 6111.022(D)).⁴

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(K)). "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(J)). 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, and 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(P).)

Individual state dredge and fill permits and level two review requirements

The next level of review is level two review, which is applicable to the proposed dredging or filling of a category 1 wetland of greater than ½ acre or the proposed dredging or filling of a category 2 wetland of greater than ½ acre, but less than or equal to three acres. The dredging or filling of such a wetland requires an individual state dredge and fill permit issued by the Director to the person proposing to conduct the dredging or 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) If applicable, the United States Army Corps of Engineers public notice of a receipt of a section 404 application (not defined);

(3) Identification of the source of the fill material to be used for the filling, if applicable;

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

(5) 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 dredging or filling of the 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 dredge and fill permit for the proposed dredging or filling of a 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) Except with regard to isolated wetlands, the proposed dredging or filling will not result in a violation of specified environmental requirements established under the Federal Water Pollution Control Act.

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

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

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

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

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

(7) Storm water and water quality controls will be installed to ensure that peak post-development rates of surface water runoff from the impacted wetland do not exceed the peak pre-development rates of runoff from the on-site 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.

(8) 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 dredging or filling of the 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 dredge and fill 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 state or federal environmental laws administered by the OEPA. Prior to the issuance of such a permit, or prior to, during, or after the dredging or filling of the 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 dredging or filling of a category 1 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 dredging or filling of a category 2 wetland that is subject to level two review must be conducted by the applicant and 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 dredging or 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(I)); and

(4) If there is a significant ecological reason that the mitigation location should not be limited to the watershed in which the 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 wetland is located. (Sec. 6111.023(E)(2).)

Individual state dredge and fill permits and level three review requirements

The final level of review, level three, is applicable to a proposed dredging or filling of a category 2 wetland of greater than three acres or a category 3 wetland. Such a dredging or filling requires an individual state dredge and fill 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) If applicable, the United States Army Corps of Engineers public notice of a receipt of a section 404 application;

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

(4) The submission of information indicating whether high quality waters are to be avoided by the proposed dredging or filling of the 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 dredge and fill permit for the proposed dredging or filling of a 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 dredging or filling will not prevent or interfere with the attainment or maintenance of applicable state water quality standards and, except with regard to isolated wetlands, will not result in a violation of specified environmental requirements established under the Federal Water Pollution Control Act. (Sec. 6111.024(C).) The Director also may deny an application for such a permit if the Director determines that the proposed dredging or filling of the 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 dredge and fill 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 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 dredge and fill 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)(2)).

Public participation requirements

Except as discussed below, the Director must publish notice of the receipt of a complete application for an individual state dredge and fill permit in a newspaper of general circulation in the county in which the proposed dredging or filling of the 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 14 days following the publication of notice concerning the application.

If a public hearing is requested during the 14-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 dredging or filling of the 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 dredge and fill 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 dredge and fill 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 dredge and fill 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 dredging or filling that is proposed by the original application has not changed or the proposed dredging or filling has been reduced from that proposed in the original application (sec. 6111.026(E)).

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 dredge and fill 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(R)).

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 and fill material in other waters of the state

Not later than July 1, 2002, the Director of Environmental Protection must adopt rules in accordance with the Administrative Procedure Act that establish practicable review procedures for applications for dredge and fill permits for impacts to waters of the state other than wetlands that are consistent with the review procedures established for applications for state dredge and fill permits for wetlands under the bill, including the issuance of general permits and different levels of review based on the quality of waters of the state impacted and the amount of the impact (sec. 6111.028).

Fees

The bill requires a person that applies for a state dredge and fill permit or a section 401 water quality certification under the state Water Pollution Control Law and rules adopted under it to pay an application fee of \$200 at the time of the application (sec. 3745.113(A)).

Further, a person that applies for an individual state dredge and fill permit or a section 401 water quality certification must pay, at the time of the application, a review fee as follows:

- (1) If the subject of the application is a wetland, \$500 per acre of wetlands to be impacted;
- (2) If the subject of the application is a stream, \$1 per linear foot of stream to be impacted;

(3) If the subject of the application is a lake, \$1 per linear foot of the lake to be impacted, calculated for both shoreline and in-water;

(4) If the application is for maintenance dredging, 10¢ per cubic yard to be dredged;

(5) If the application is for dredging related to in-stream mining, \$1 per cubic yard of the material that is to be removed or redistributed. (Sec. 3745.113(B).)

The bill specifies that the review fee cannot exceed \$5,000 per application. In addition, if the application is denied, the Director must refund to the applicant ½ of the amount of the review fee paid by the applicant. (Sec. 3745.113(B).) The fees are not permitted to be charged to any agency or department of the state (sec. 3745.113(E)).

If a person conducts any activities for which an individual state dredge and fill permit or a section 401 water quality certification is required without first obtaining such a permit or certification, 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(C)).

Dredge and Fill Fund

All moneys collected from fees established under the bill are required to be deposited in the state treasury to the credit of the Dredge and Fill Fund, which the bill creates for the purposes of administering the bill (secs. 3745.113(D) 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 wetlands that were subject to dredging or filling during the immediately preceding year as well as the total number of acres of wetlands that were restored, created, enhanced, or preserved through mitigation that same year as a result of dredge and fill permits issued under the bill (sec. 6111.025(C)).

Declaration of emergency

Stating that the protection of 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 2).

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|------------|----------|---------------|
| Introduced | 06-27-01 | p. 718 |

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