Ohio Legislative Service Commission

Bill Analysis

Bill Rowland

S.B. 186

129th General Assembly
(As Introduced)

Sens. Skindell, Turner, Kearney, Smith, Tavares

BILL SUMMARY

- Provides for the implementation of portions of the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact) related to water conservation and efficiency, withdrawals and diversions from and consumptive uses of waters of the Great Lakes basin in Ohio (in Ohio, the Lake Erie basin), and the establishment of a science-based assessment process to evaluate withdrawals and consumptive uses.

Water conservation and efficiency goals and program

- Requires the Chief of the Division of Soil and Water Resources to establish a water conservation and efficiency program, including the development of environmentally sound and economically feasible water conservation measures.

Science-based assessment process

- Requires the Chief to adopt rules establishing a science-based assessment process for determining whether a withdrawal or consumptive use will cause significant individual or cumulative adverse resource impacts.

- Requires the science-based assessment process to take into account quantitative standards to determine impacts to resources, quantitative standards to maintain stream flows protective of aquatic life, source water quality, and impacts of cumulative withdrawals.

Permits for existing withdrawals

- Requires the owner of a facility making a withdrawal from the Great Lakes basin as of the bill's effective date to obtain a permit for the withdrawal capacity based on the following thresholds:

--A capacity of 10,000 gallons per day averaged over any 30-day period for a withdrawal from a high-quality stream or river in a small watershed;

--A capacity of 25,000 gallons per day averaged over any 30-day period for a withdrawal from a high-quality stream or river in a medium watershed; or

--A capacity of 100,000 gallons per day averaged over any 30-day period for a withdrawal from any other source of water.

- Establishes permit application and renewal requirements.

Permits for new and increased withdrawals and consumptive uses

- Requires the Chief to establish a permitting program for new or increased withdrawals or consumptive uses of water from the area comprising the Great Lakes basin in Ohio.

- Establishes withdrawal and consumptive use thresholds that are determinative as to whether the owner of a facility is required to obtain a permit under the bill.

- Specifies that a permit is required for a person who proposes to develop the capacity at a facility to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from a stream or river that *is not* a high-quality stream or river if the following thresholds are met:

  --The withdrawal is greater than 100,000 gallons per day averaged over any 30-day period if the capacity will be to make a withdrawal from a stream or river within a small watershed;

  --The withdrawal is greater than 250,000 gallons per day averaged over any 30-day period if the capacity will be to make a withdrawal from a stream or river within a medium watershed;

  --The withdrawal is greater than 1,000,000 gallons per day averaged over any 30-day period if the capacity will be to make a withdrawal from a stream or river within a large watershed.

- Specifies that a permit is required for a person who proposes to develop the capacity at a facility to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from a stream or river that *is* a high-quality stream or river if the following thresholds are met:

--The withdrawal is greater than 10,000 gallons per day averaged over any 30-day period if the capacity will be to make a withdrawal from a stream or river within a small watershed;

--The withdrawal is greater than 25,000 gallons per day averaged over any 30-day period if the capacity will be to make a withdrawal from a stream or river within a medium watershed;

--The withdrawal is greater than 100,000 gallons per day averaged over any 30-day period if the capacity will be to make a withdrawal from a stream or river within a large watershed.

- Specifies that a permit is required for a person who proposes to develop the capacity at a facility to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from ground water if the following thresholds are met:

  --The withdrawal is greater than 500,000 gallons per day averaged over any 30-day period during the period until one year after the bill's effective date;

  --Following one year after that date, an amount established in rules using the science-based assessment process developed in rules adopted under the bill.

- Specifies that a permit is required for a person who proposes to develop the capacity at a facility to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from Lake Erie if the withdrawal is greater than 2,500,000 gallons per day averaged over any 30-day period.

- Specifies that a permit is required for a person who owns a facility with a capacity to make a new consumptive use or to increase a consumptive use beyond the baseline capacity of the facility if the consumptive use capacity of the facility will be greater than 2,000,000 gallons per day averaged over any 30-day period.

- Establishes permit application requirements, including the information that must be included in an application.

- Establishes a permit fee that ranges from $0 for persons with capacities for withdrawals of 250,000 gallons per day or less to $1,000 for persons with the capacity to withdraw greater than 100,000,000 gallons per day.

- Requires public notice of permit applications, a public comment period, and requirements related to public accessibility to all relevant documentation.

- Requires the Chief to apply the Compact's decision-making standard when approving or disapproving a permit.

- Specifies that a permit is valid for a period of time specified by the Chief, not to exceed ten years.

- Establishes procedures for the renewal of a permit, provided that the permittee is in compliance with all terms and conditions of the permit and the permittee demonstrates that the permittee has implemented environmentally sound and economically feasible water conservation practices.

- Specifies that a permit renewal is valid for a period of time specified by the Chief, not to exceed ten years.

- Exempts the following withdrawals from the bill's withdrawal and consumptive use permitting requirements:

  --Withdrawals used to supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles;

  --Withdrawals used in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes;

  --Withdrawals used for general residential purposes and serving fewer than 25 persons; and

  --Withdrawals from diffused surface water, including storm water retention ponds, private ponds, farm ponds, golf course ponds, nursery ponds, and those private waters that do not combine or effect a junction with natural surface or ground water.

Permits for diversions

- Requires a diversion permit for a person who develops the capacity to make a new or increased diversion from the area of the state within the Great Lakes basin to another basin, and establishes an application fee of $5,000.

- Requires a diversion permit application to meet the Compact's exception to the general prohibition against diversions, and requires the applicant to provide certain demonstrations to justify the diversion.

- Requires a public hearing, public notice, and a public comment period regarding all applications for diversion permits, and requires the Chief to adopt rules regarding diversion permits.

- Requires the Chief to issue a diversion permit to any person who had the capacity to make a diversion prior to December 9, 2008.

Property right

- States that a permit issued under the bill does not grant a property right to withdraw water nor does it grant a property right in the reasonable use of water.

Report on water supply

- Requires the Chief to issue a report on the status of the water supply potential of the area of the state within the Great Lakes basin, the locations of individual or cumulative adverse impacts, the methods that the Chief plans to use to address adverse impacts, and the number of distressed water resource areas.

- Requires the report to be submitted to the members of the General Assembly, disseminated to the public via the Department of Natural Resources' web site, and updated at least every five years.

Enforcement

- Authorizes the Chief of the Division of Soil and Water Resources to issue enforcement orders to persons violating the bill, the Compact, rules adopted under the bill, or the terms and conditions of a permit issued under the bill.

- Authorizes the Chief to issue an order suspending a permit if the Chief determines that a water withdrawal, consumptive use, or diversion will endanger the public health, safety, or welfare and to temporarily suspend permits for facilities that are located in distressed water resource areas under specified circumstances.

- Authorizes an elected official of a political subdivision to petition the Chief for an investigation of an unlawful withdrawal, consumptive use, or diversion of water resources.

- Authorizes the Attorney General to commence a civil action against a person violating the bill, the Compact, rules adopted under the bill, or the terms and conditions of a permit issued under the bill.

- Establishes a civil penalty of up to $2,500 for a violation and an additional civil penalty of up to $500 for each day that a violation continues.

- Declares that the submission of certain false information under the bill is a fourth degree misdemeanor.

Water Resources Commission

- Creates the Water Resources Commission for the purpose of hearing appeals from a person that is or may be aggrieved or adversely affected by an order or decision of the Chief under the bill, the Compact, or other applicable laws.

- Establishes procedures for appeals.

- Provides that decisions of the Commission may be appealed to the Franklin County Court of Appeals.

Changes to existing law

- Requires that the existing 100,000 gallons per day water withdrawal registration requirement be triggered by a capacity to withdraw 100,000 gallons per day averaged over any 30-day period.

- Requires a person who owns a facility that has the capacity to divert any amount of water from the area of the Great Lakes basin within Ohio to another basin to register the facility within three months of the bill's effective date or within three months after the facility is completed.

- Defines "distressed water resource area," and authorizes the Chief of the Division of Soil and Water Resources to require a facility in a distressed water resource area to submit additional information regarding withdrawals and increase the frequency of reporting.

- Requires the Chief to adopt rules establishing standards and criteria for determining when an area of ground water or surface water is a distressed water resource area, the geographical limits of such an area, and a threshold withdrawal capacity for the area below which registration of a facility is not required.

- Authorizes an elected official of a political subdivision to petition the Chief to issue an order designating an area of ground water or surface water a distressed water resource area.

- Requires the existing annual report required to be filed by the owner of a registered facility to include the amount of water diverted per day, if applicable.

- Requires the owner of a registered facility to review the environmentally sound and economically feasible water conservation measures developed for the facility's water use sector in rules adopted under the bill.

- Requires the payment of an annual fee by a person who owns a registered facility, and establishes the amount of the fee from $0 for persons with capacities for withdrawals of 250,000 gallons per day or less to $10,000 for persons with the capacity to withdraw greater than 100,000,000 gallons per day.

- Requires the proceeds of all fees collected under the bill to be credited to the existing Water Management Fund, and expands the uses of the Fund to include the administration of the Compact and the bill.

- Authorizes an elected official to petition the Director of Natural Resources for an investigation of alleged unlawful diversions of water resources.

- Repeals provisions of current law prohibiting specified actions by the Governor, the Department of Natural Resources, or any other state agency under the Compact because those prohibitions are rendered moot by the new regulatory program established by the bill.

- Requires the Chief of the Division of Soil and Water Resources rather than the Director of Natural Resources as in current law to take certain actions under the Compact, including adopting rules to implement the Compact and enforcing the Compact.

- Makes other changes to current law.

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CONTENT AND OPERATION

References in this analysis to the "Compact" refer to the Great Lakes-St. Lawrence River Basin Water Resources Compact.

The intent of the bill is to provide for the implementation of portions of the Great Lakes-St. Lawrence River Basin Water Resources Compact. The bill does so by establishing a program for the issuance of permits for withdrawals, consumptive uses, and diversions of water in the Lake Erie watershed over certain thresholds, establishing a water conservation and efficiency program, and requiring science-based assessment of cumulative impacts of withdrawals and consumptive uses from the Lake Erie watershed.

BACKGROUND

Great Lakes-St. Lawrence River Basin Water Resources Compact

The eight Great Lakes states, which are Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Wisconsin, and Pennsylvania, together with the Canadian provinces of Ontario and Quebec entered into the Great Lakes-St. Lawrence River Basin Water Resources Compact (codified in Ohio in R.C. 1522.01) for the purpose of protecting the watershed of the Great Lakes and certain portions of the St. Lawrence River. The eight Great Lakes states endorsed the Compact on December 13, 2005, and the Compact was enacted in each of the Great Lakes states in 2007 and 2008. Subsequently, in 2008, the

Compact was ratified by Congress and signed by President George W. Bush. The eight Great Lakes states are considered to be parties to the Compact.

Ontario and Quebec are not parties to the Compact, but the Compact requires the states that are parties to it to consult and cooperate with those provinces concerning certain matters. In addition, the Compact provides that the premiers of Ontario and Quebec together with the governors of the Great Lakes states are to serve on a regional body that is to be responsible for receiving certain information and for approving or disapproving certain proposals regarding the withdrawal, diversion, or consumptive use of water in the Great Lakes-St. Lawrence River Basin.[1]

The Compact prohibits, with certain exceptions, all new or increased diversions of water resources from the watershed of the Great Lakes and certain portions of the St. Lawrence River into another watershed. In addition, it establishes a decision-making standard for the management and regulation of new or increased withdrawals and consumptive uses of such water resources. The decision-making standard is designed to ensure that such withdrawals and consumptive uses will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the source watershed.[2]

Withdrawals and consumptive uses under the Compact

Each of the Great Lakes states must create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard.[3] Each party, through a considered process, must set and may modify threshold levels for the regulation of new or increased withdrawals in order to assure an effective and efficient water management program that will ensure that uses overall are reasonable, that withdrawals overall will not result in significant impacts to the waters and water dependent natural resources of the basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of source watersheds, and that all other objectives of the Compact are achieved. Each party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptive uses will be subject to the program.

Under the Compact, consumptive use means that portion of water withdrawn or withheld from a basin (of a Great Lake or the St. Lawrence River) that is lost or

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[1] R.C. 1522.01 – Section 1.2 and Section 4.

[2] R.C. 1522.01 – Section 4.

[3] R.C. 1522.01 – Section 4.10.1.

otherwise not returned to the basin due to evaporation, incorporation into products, or other processes. Withdrawal means the taking of water from surface water or ground water.[4]

Water conservation and efficiency programs and other provisions

Each state that is a party to the Compact also must develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction. The program must be consistent with basin-wide goals and objectives.[5]

The Compact provides for public notice and participation in many matters. It also requires the parties to the Compact, together with the provinces of Ontario and Quebec, to conduct a periodic assessment of the cumulative impacts of withdrawals, diversions, and consumptive uses from waters of the Basin for purposes of future implementation of the Compact.[6]

THE BILL

Water conservation and efficiency goals and program

Not later than six months after the bill's effective date, the Chief of the Division of Soil and Water Resources in the Department of Natural Resources must establish by rule conservation and efficiency goals and objectives in accordance with the Compact.[7] Under the bill, rules are required to be adopted in accordance with the Administrative Procedure Act.[8] Not later than one year after the bill's effective date, the Chief, following public notice and comment, must adopt rules establishing a water conservation and efficiency program in accordance with the Compact's provisions regarding water conservation and efficiency programs (Section 4.2) that is consistent with the goals and objectives established in rules adopted by the Chief. The program must include, without limitation, development of environmentally sound and economically feasible water conservation measures for each water use sector and promotion of those measures. The measures for each sector must be reviewed at least every ten years. In implementing the program, the Chief must give consideration to the Ohio Great Lakes Compact Advisory Board's recommendations in its December 15, 2010, final report. Not later than three months after completion of a review required by

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[4] R.C. 1522.01 – Section 1.2.

[5] R.C. 1522.01 – Section 4.2.

[6] R.C. 1522.01 – Section 4.15.

[7] R.C. 1522.11 and 1522.01 – Section 4.2.1. (Note: R.C. 1522.01 is not in the bill.)

[8] R.C. 1522.10(J).

the Compact by the Great Lakes-St. Lawrence River Basin Water Resources Council, the Chief must conduct a review of the goals and objectives and the program established under the bill.[9]

Under the bill, "environmentally sound and economically feasible water conservation measures" has the same meaning as in the Compact. The term is defined in the Compact to mean those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that: (1) are environmentally sound, (2) reflect best practices applicable to the water use sector, (3) are technically feasible and available, (4) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs, and (5) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts, and other appropriate factors.[10]

Science-based assessment process

Not later than one year after the bill's effective date, the Chief must establish by rule a science-based assessment process for determining whether a withdrawal or consumptive use will cause significant individual or cumulative adverse resource impacts. The assessment process must take into account all of the following:

--Quantitative standards to determine the impacts of ground water withdrawals on surface water, ground water, and water dependent natural resources;

--Quantitative standards that maintain stream flows protective of aquatic life;

--Source water quality; and

--Impacts of cumulative withdrawals.[11]

The bill defines "ground water" to mean all water occurring in an aquifer. "Aquifer" is defined to mean a consolidated or unconsolidated geologic formation or series of formations that are hydraulically interconnected and that have the ability to receive, store, or transmit water.[12] "Surface water" includes all streams, lakes,

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[9] R.C. 1522.11.

[10] R.C. 1522.10(D) and 1522.01 – Section 1.2.

[11] R.C. 1522.12.

[12] R.C. 1522.10(A) and (F).

reservoirs, ponds, marshes, wetlands, bays, estuaries, or other waterways that are situated wholly or partially within the boundaries of Ohio except those private waters that do not combine or effect a junction with natural surface or underground waters.[13]

Further, the bill defines "withdrawal" to have the same meaning as in the Compact, which is the taking of water from surface water or ground water, and also defines it to mean one or more cumulative withdrawals of water that supply a common distribution system. "Consumptive use" is defined to have the same meaning as in the Compact, which is that portion of the water withdrawn or withheld from the Lake Erie basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into products, or other processes.[14]

Permits for existing withdrawals

Not later than six months after the bill's effective date, a person who, as of that date, is the owner of a facility with the capacity to make a withdrawal of water from the area of the state within the Great Lakes basin must obtain a permit for the withdrawal capacity from the Chief if any of the following applies:

(1) The capacity is to make a withdrawal from a high-quality stream or river in a small watershed, and the withdrawal capacity is greater than 10,000 gallons per day averaged over any 30-day period;

(2) The capacity is to make a withdrawal from a high-quality stream or river in a medium watershed, and the withdrawal capacity is greater than 25,000 gallons per day averaged over any 30-day period; or

(3) The capacity is to make a withdrawal from any other source of water, and the withdrawal capacity is greater than 100,000 gallons per day averaged over any 30-day period.[15]

Under the bill, "stream or river" means a water body having a channel with a well defined bed and banks, either natural or artificial, that confine and conduct continuous or periodic flowing water.[16] "High-quality streams and rivers" means those stream and river segments to which either of the following applies:

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[13] R.C. 1522.10(M).

[14] R.C. 1522.10(D) and (N) and 1522.01 – Section 1.2.

[15] R.C. 1522.13(A).

[16] R.C. 1522.10(L).

--The stream or river segment is designated by the Director of Environmental Protection under the Water Pollution Control Law as a beneficial use for exceptional warmwater aquatic life habitat or coldwater aquatic life habitat; or

--The stream or river segment is categorized by the Director under antidegradation provisions of the Water Pollution Control Law as an outstanding state water or superior high-quality water.[17]

The bill defines "small watershed" to mean any watershed that is less than 100 square miles in size as determined by the Chief of the Division of Soil and Water Resources. "Medium watershed" means any watershed that is at least 100 square miles in size, but not greater than 300 square miles in size as determined by the Chief.[18]

The Chief must issue the permits required by the bill to each existing facility in Ohio for which a permit is required. A permit issued by the Chief must be for the baseline capacity (see "**Baseline capacity**," below) of a facility and is subject to appropriate terms and conditions prescribed by the Chief. A permit is valid for a period of time specified by the Chief, not to exceed ten years. A person who is issued a permit must submit an annual report to the Chief with information that the Chief may require by rule.[19] The capacity to make a withdrawal of water may not be transferred by the owner of a facility to another facility without obtaining a new permit under the bill (see "**Permits for new or increased withdrawals and consumptive uses**," below).[20]

Prior to the expiration date of a permit and in accordance with rules, the permittee may submit an application for a renewal of the permit to the Chief. The Chief must grant a permit renewal if the proposed withdrawal specified in the permit renewal application does not exceed the baseline capacity of the facility. However, the Chief may grant a permit renewal if the proposed withdrawal exceeds the baseline capacity of the facility if all of the following apply:

(1) The withdrawal does not equal or exceed the threshold for an increased withdrawal under the bill;

(2) The applicant demonstrates environmentally sound and economically feasible water conservation measures to be utilized at the facility; and

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[17] R.C. 1522.10(G).

[18] R.C. 1522.10(I) and (K).

[19] R.C. 1522.13(B), (C), and (D).

[20] R.C. 1522.13(F).

(3) The applicant complies with any other criteria that the Chief may require by rule.

The renewal of a permit that authorizes a facility to exceed the baseline capacity of the facility does not constitute a modification of the baseline capacity for that facility. A renewal is valid for a period of time specified by the Chief, not to exceed ten years. A permit renewal must not be granted if the permitted capacity has not been utilized for the eight years prior to the application for the renewal.[21]

Baseline capacity

Under the bill, "baseline capacity" means all of the following:

(1) For a facility with the capacity to make a withdrawal, consumptive use, or diversion as of December 8, 2008, the capacity of the facility as reported in the baseline list submitted by the Department of Natural Resources to the Great Lakes-St. Lawrence River Basin Water Resources Council on December 8, 2009, or as determined by the Chief of the Division of Soil and Water Resources on the basis of sufficient documentation prescribed by the Chief;

(2) For a facility that developed the capacity to make a withdrawal or consumptive use after December 8, 2008, but before the bill's effective date, the capacity of the facility as determined by the Chief on the basis of sufficient documentation prescribed by the Chief;

(3) For a facility that develops the capacity to make a withdrawal or consumptive use after the bill's effective date, the capacity of the facility specified in a permit issued for the facility under the bill; and

(4) For a facility that developed or develops the capacity to make a diversion after December 8, 2008, the capacity of the facility specified in a permit issued for the facility under the bill.

"Baseline capacity" includes only the capacity of a facility that is representative of the state of the systems at the facility and that is based on approved withdrawal or consumptive use limits for the facility or the most restrictive capacity information available for the facility.[22]

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[21] R.C. 1522.13(G) and (H).

[22] R.C. 1522.10(B).

Exemptions

Under the bill, the following withdrawals are exempt from the requirement to obtain a permit for existing withdrawals:

(1) Withdrawals used to supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles;

(2) Withdrawals used in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes;

(3) Withdrawals used for general residential purposes and serving fewer than 25 persons; and

(4) Withdrawals from diffused surface water, including storm water retention ponds, private ponds, farm ponds, golf course ponds, nursery ponds, and those private waters that do not combine or effect a junction with natural surface or ground water.[23]

Permits for new and increased withdrawals and consumptive uses

Not later than six months after the bill's effective date, the Chief must establish a permitting program for new or increased withdrawals or consumptive uses of water from the area of the state within the Great Lakes basin. After the establishment of the program, certain persons specified by the bill must obtain a permit. Whether a person must obtain a permit is dependent on whether the new or increased withdrawal or consumptive use exceeds certain thresholds.[24]

Permit thresholds

Withdrawals from non-high-quality waters: A person who proposes to develop the capacity at a facility to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from a stream or river that is not a high-quality stream or river must obtain a permit if any of the following applies:

--The capacity will be to make a withdrawal from a stream or river within a small watershed, and the withdrawal capacity of the facility will be greater than 100,000 gallons per day averaged over any 30-day period.

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[23] R.C. 1522.13(E).

[24] R.C. 1522.14(A).

--The capacity will be to make a withdrawal from a stream or river within a medium watershed, and the withdrawal capacity of the facility will be greater than 250,000 gallons per day averaged over any 30-day period.

--The capacity will be to make a withdrawal from a stream or river within a large watershed, and the withdrawal capacity of the facility will be greater than 1,000,000 gallons per day averaged over any 30-day period.[25] "Large watershed" means any watershed that is greater than 300 square miles in size as determined by the Chief.[26]

Withdrawals from high-quality waters: A person who proposes to develop the capacity at a facility to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from a stream or river that is a high-quality stream or river must obtain a permit if any of the following applies:

--The capacity will be to make a withdrawal from a stream or river within a small watershed, and the withdrawal capacity of the facility will be greater than 10,000 gallons per day averaged over any 30-day period.

--The capacity will be to make a withdrawal from a stream or river within a medium watershed, and the withdrawal capacity of the facility will be greater than 25,000 gallons per day averaged over any 30-day period.

--The capacity will be to make a withdrawal from a stream or river within a large watershed, and the withdrawal capacity of the facility will be greater than 100,000 gallons per day averaged over any 30-day period.[27]

Withdrawals from ground water: A person who proposes to develop the capacity at a facility to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from ground water must obtain a permit if either of the following applies:

--During the period from the bill's effective date until one year after that date, the capacity will be to make a withdrawal from ground water, and the withdrawal capacity of the facility will be greater than 500,000 gallons per day averaged over any 30-day period.

--Beginning one year after the bill's effective date, the capacity will be to make a withdrawal from ground water, and the withdrawal capacity of the facility will be

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[25] R.C. 1522.14(A)(1).

[26] R.C. 1522.10(H).

[27] R.C. 1522.14(A)(2).

above the threshold or thresholds established in rules. The rules must be adopted not later than one year after the bill's effective date. In adopting the rules, the Chief must use the science-based assessment process developed under the bill (see above).[28]

Withdrawals from Lake Erie: A person who owns a facility with a capacity to make a new withdrawal or to increase a withdrawal beyond the baseline capacity of the facility from Lake Erie must obtain a permit if the withdrawal capacity of the facility will be greater than 2,500,000 gallons per day averaged over any 30-day period.[29]

Withdrawals for consumptive uses beyond the baseline capacity of a facility: A person who owns a facility with a capacity to make a new consumptive use or to increase a consumptive use beyond the baseline capacity of the facility must obtain a permit if the consumptive use capacity of the facility will be greater than 2,000,000 gallons per day averaged over any 30-day period.[30]

Application requirements

A person must apply for a permit by submitting an application to the Chief. The permit application must contain the following information, as applicable:

(1) The withdrawal capacity per day of the facility for which a permit is sought if the withdrawal is to occur at a facility already in operation;

(2) The total new or increased daily withdrawal capacity proposed for the facility;

(3) The locations and sources of water proposed to be withdrawn;

(4) The locations of proposed discharges or return flows;

(5) The locations and nature of proposed consumptive uses;

(6) The estimated average annual and monthly volumes and rates of withdrawal;

(7) The estimated average annual and monthly volumes and rates of consumptive use;

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[28] R.C. 1522.14(A)(3).

[29] R.C. 1522.14(A)(4).

[30] R.C. 1522.14(A)(5).

(8) The effects the withdrawal is anticipated to have with respect to water resources;

(9) A description of alternative sources of water, if any, available to satisfy an applicant's withdrawal or consumptive use needs if the application is denied or modified;

(10) A description of the water conservation practices the applicant intends to utilize; and

(11) Any other information the Chief may require by rule.[31]

An applicant must submit a permit fee in the following amount with the application:

(1) $400 for the capacity to withdraw greater than 250,000 per day up to and including 500,000 gallons per day;

(2) $500 for the capacity to withdraw greater than 500,000 gallons per day up to and including 1,000,000 gallons per day;

(3) $600 for the capacity to withdraw greater than 1,000,000 gallons per day up to and including 5,000,000 gallons per day;

(4) $700 for the capacity to withdraw greater than 5,000,000 gallons per day up to and including 10,000,000 gallons per day;

(5) $800 for the capacity to withdraw greater than 10,000,000 gallons per day up to and including 50,000,000 gallons per day;

(6) $900 for the capacity to withdraw greater than 50,000,000 gallons per day up to and including 100,000,000 gallons per day; and

(7) $1,000 for the capacity to withdraw greater than 100,000,000 gallons per day.

The fees assessed must be annually indexed to inflation. The fees are required to be credited to the Water Management Fund created in current law (see "**Water Management Fund**," below).

[31] R.C. 1522.14(B).

A person that has the capacity to withdraw 250,000 gallons per day or less is not required to submit a permit fee.[32]

The Chief must provide public notice in a newspaper of local circulation and on the Internet web site of the Department of Natural Resources of the receipt of an application for a permit. The Chief must provide a public comment period of not less than 45 days prior to acting on the application. In accordance with the Compact, the Chief must assure public accessibility to all documents relevant to the application and must make the record of decision available for public inspection.[33]

Permit issuance

The Chief must issue a permit if all of the following conditions, which are a restatement of the Compact's decision-making standard, are met:

(1) All water withdrawn will be returned, either naturally or after use, to the source watershed less an allowance for consumptive use.

(2) The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts.

(3) The withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures.

(4) The withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable local, state, and federal laws as well as regional, interstate, and international agreements, including the Boundary Waters Treaty of 1909.

(5) The proposed use is reasonable based on a consideration of the following factors:

--Whether the proposed withdrawal or consumptive use is planned in a fashion that provides for the efficient use of the water and will avoid or minimize the waste of water;

--If the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies;

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[32] R.C. 1522.14(C).

[33] R.C. 1522.14(D).

--The balance between economic development, social development, and environmental protection of the proposed withdrawal or consumptive use and other existing or planned withdrawals and water uses sharing the water source;

--The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

--The probable degree of any adverse impacts caused or expected to be caused by the proposed withdrawal or consumptive use under foreseeable conditions to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water dependent natural resources of the basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and

--Whether the proposal includes restoration of hydrologic conditions and functions of the source watershed.[34]

In determining whether to issue a permit or permit renewal, the Chief must consider the permit application in light of the cumulative effect on the water source of other permit applications for withdrawals and consumptive uses submitted during the ten years prior to the submission of the application.[35]

A permit is valid for a period of time specified by the Chief, not to exceed ten years. A person who is issued a permit must submit an annual report to the Chief with information the Chief may require by rule. The capacity to make a withdrawal of water may not be transferred by the owner of a facility to another facility without obtaining a new permit for the facility prior to the transfer.[36]

Prior to the expiration of a permit and in accordance with rules, the permittee may submit an application for renewal of the permit to the Chief. The Chief must grant a permit renewal without further review if a permittee demonstrates that the permittee is in compliance with all terms and conditions of the permit, and the permittee demonstrates through third-party verification that the permittee has implemented environmentally sound and economically feasible water conservation practices that result in measurable conservation as defined by rule. A renewal is valid for a period of time specified by the Chief, not to exceed ten years.[37]

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[34] R.C. 1522.14(E).

[35] R.C. 1522.14(F).

[36] R.C. 1522.14(G), (H), and (J).

[37] R.C. 1522.14(K) and (L).

The Chief must adopt rules necessary to administer the bill's permitting requirements, including rules that do all of the following:

(1) Provide guidance on standards for determining whether and when to conduct a public meeting or hearing concerning a permit application;

(2) Establish environmentally sound and economically feasible conservation measures required for permittees in each water use sector; and

(3) Require permittees to improve water conservation as the adverse resource impact of a withdrawal or consumptive use increases.[38]

Exemptions

The following withdrawals are exempt from the requirement to obtain a permit for new or increased withdrawals or consumptive uses:

(1) Withdrawals used to supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles;

(2) Withdrawals used in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes;

(3) Withdrawals used for general residential purposes and serving fewer than 25 persons; and

(4) Withdrawals from diffused surface water, including storm water retention ponds, private ponds, farm ponds, golf course ponds, nursery ponds, and those private waters that do not combine or effect a junction with natural surface or ground water.[39]

Permits for diversions

A person who develops the capacity to make a new diversion from the area of the state within the Great Lakes basin to another basin, or develops the capacity to increase a diversion above the baseline capacity of the diversion from that area to another basin, must obtain a permit from the Chief of the Division of Soil and Water Resources. The person must submit an application for the permit to the Chief in a manner prescribed by the Chief. An application for a permit must be accompanied by a permit fee of $5,000. The applicant also must pay an amount equal to any fees imposed

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[38] R.C. 1522.14(M).

[39] R.C. 1522.14(I).

on Ohio related to review of the proposed diversion by the Great Lakes-St. Lawrence River Basin Water Resources Council or the regional body under the Compact.[40]

The Chief cannot approve a permit application unless the application meets specified requirements of the Compact (the Compact generally forbids diversions except in limited circumstances, e.g., straddling communities). The Chief also must not approve such a permit application unless the applicant demonstrates all of the following:

(1) The need for all or part of the proposed diversion cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

(2) The diversion will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures; and

(3) The diversion, as demonstrated through third-party verification, will not introduce invasive species into the basin in which water is diverted.[41]

The Chief must hold a public hearing on a permit application. The Chief must provide public notice in a newspaper of local circulation and on the Internet web site of the Department of the receipt of the application and the date and location of the public hearing regarding the application. The Chief must provide a public comment period of not less than 45 days prior to acting on the application. In accordance with the Compact, the Chief must assure public accessibility to all documents relevant to the application and must make the record of decision available for public inspection.[42]

The Chief must adopt rules establishing criteria and standards governing diversion permits. The rules must include the establishment of standards for environmentally sound and economically feasible water conservation practices. Permits are valid for a period of time specified by the Chief, not to exceed ten years from the date of issuance.[43]

The Chief must issue a permit to any person who had the capacity to make a diversion from the area of the state within the Great Lakes basin to another basin prior to December 9, 2008. The permit must be for the baseline capacity (see above) of the diversion. A person who is eligible for a permit must file an application not later than

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[40] R.C. 1522.15(A) and (B).

[41] R.C. 1522.15(C).

[42] R.C. 1522.15(D).

[43] R.C. 1522.15(E).

three months after the bill's effective date. Such a person need not pay the application fee that is otherwise required by the bill.[44]

Exemption from existing permit requirements

The bill exempts persons who are required to obtain a permit under the bill from the requirements governing permits for diversions and withdrawals and consumptive uses under current law.[45] The bill also eliminates from those existing requirements provisions of law that require the Director of Natural Resources to notify the governors and premiers of the Great Lakes states and provinces of applications for diversions. Notification procedures under the Compact will apply to diversions from the Lake Erie basin.[46]

Property right

The bill states that a permit issued under the bill does not grant a property right to withdraw water nor does it grant a property right in the reasonable use of water. In any determination of the reasonable use of water under common law or applicable provisions of state law, the issuance of a permit may only be conclusive as to whether a use is prior to another in the quantity claimed.[47]

Report on water supply

Not later than three months after the Department of Natural Resources participates in an assessment of cumulative impacts under the Compact, the Chief must issue a report on the status of the water supply potential of the area of the state within the Great Lakes basin, the locations of individual or cumulative adverse impacts, the methods that the Chief plans to use to address adverse impacts, and the number of distressed water resource areas (see "**Changes to existing law**; **Facility registration requirements**," below). The report must be submitted to the members of the General Assembly and disseminated to the public through the Department's web site. The report must be updated at least every five years.[48]

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[44] R.C. 1522.15(F).

[45] R.C. 1501.32(I) and 1501.33(B).

[46] R.C. 1501.32(C).

[47] R.C. 1522.16.

[48] R.C. 1522.17.

Enforcement

Orders

If the Chief of the Division of Soil and Water Resources finds that a person who makes a water withdrawal, consumptive use, or diversion has violated any requirement of the Compact, the bill, rules adopted under the bill, or the terms and conditions of a permit issued under the bill, the Chief may issue an order directing the person to cease the violation. The order must identify the facility where the violation has occurred or is occurring and the specific requirement violated and, when practicable, prescribe what action the person may take to comply with the order. The Chief must fix and specify in the order a reasonable date or time by which the person must comply.[49]

The Chief may issue an order immediately suspending a permit if the Chief determines that a water withdrawal, consumptive use, or diversion will endanger the public health, safety, or welfare. In addition, the Chief may temporarily suspend permits for facilities that are located in a distressed water resource area designated by the Chief under the bill (see below) because of significant adverse impacts to water resources or water dependent natural resources. Before suspending a permit, the Chief must make a reasonable attempt to notify the permittee that the Chief intends to suspend the permit. If the attempt fails, notification must be given as soon as practicable following the suspension. In accordance with the bill's appeal provisions (see "**Water Resources Commission**," below), the permittee may appeal the suspension to the Water Resources Commission, and the decision of the Commission must be issued not later than ten days after receipt of the notice of appeal. If the Chief determines before the expiration date of a suspension that the water withdrawal, consumptive use, or diversion can be resumed without significant adverse impacts to water resources or water dependent natural resources in a distressed water resource area, the Chief, upon request of the permittee, must reinstate the permit.[50]

An order of the Chief affecting the rights, duties, or privileges of a person who makes a water withdrawal, consumptive use, or diversion or of an applicant for a water withdrawal, consumptive use, or diversion permit under the bill or the Compact must be in writing and contain a finding by the Chief of the facts on which the order is based. Notice of the order must be given by certified mail to each person whose rights, duties,

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[49] R.C. 1522.18(A).

[50] R.C. 1522.18(B).

or privileges are affected. Notice also must be provided to interested parties and neighboring water users in a manner prescribed by the Chief.[51]

Investigations

Under the bill, an elected official of a political subdivision may petition the Chief for an investigation of a withdrawal, consumptive use, or diversion of water resources alleged to be in violation of any requirements of the bill or the Compact, a rule adopted under the bill, or the terms and conditions of a permit issued under bill. The petition must identify the permittee and specify the reasons why the official believes that grounds exist for an order to be issued by the Chief to the violator to cease the violation. Upon receipt of the petition, the Chief must send a copy to the permittee and, within 60 days, make a determination as to whether grounds exist to issue an order.[52]

Civil actions

At the request of the Chief, the Attorney General may commence a civil action in a court of common pleas against a person who has violated or is violating the bill or the Compact or a rule adopted or an order or term or condition of a permit issued under the bill. The civil action is governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

A person who has violated or is violating the bill or the Compact or a rule adopted or an order or term or condition of a permit issued under the bill is liable for a civil penalty of not more than $2,500 for the violation and an additional civil penalty of not more than $500 for each day during which the violation continues. In addition, the person may be enjoined from continuing the violation.[53]

Any aggrieved person may commence a civil action in a court of competent jurisdiction to compel a person to comply with the bill or the Compact if that person made a withdrawal, consumptive use, or diversion that is prohibited under the bill or the Compact or failed to obtain a permit for a withdrawal or consumptive use under the bill or the Compact. Not later than 60 days before commencing the action, the aggrieved person must provide notice to the Chief, the Great Lakes-St. Lawrence River Basin Water Resources Compact Council, and the person alleged to be in noncompliance. No civil action may be taken if the Chief or the Council has commenced and is diligently pursuing appropriate enforcement actions to compel

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[51] R.C. 1522.18(C).

[52] R.C. 1522.19(A).

[53] R.C. 1522.23(A).

compliance. The prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.[54]

In addition, under the bill, any aggrieved person, in accordance with the Compact, may commence a civil action in a court of competent jurisdiction to compel a person to comply with the bill or the Compact, a rule adopted under the bill, or the terms and conditions of a permit issued under the bill.[55]

Criminal penalties

Under the bill, a person who knowingly files a false report that is required under the bill or otherwise submits to the Chief a document pursuant to the bill that contains false information is guilty of a fourth degree misdemeanor, which is punishable by a fine of not more than $250, 30 days in jail, or both.[56]

Water Resources Commission

The bill creates the Water Resources Commission to hear appeals as discussed below. The Commission consists of three members appointed by the Governor with the advice and consent of the Senate. A member must have knowledge of or experience in water withdrawal technology, ecology, hydrology, or environmental or natural resources laws of Ohio. At least one member of the Commission must have a background in economic development or job creation. At least two members must represent the public interest. Not more than two members can belong to the same political party. A member cannot be currently on the payroll of, or receiving pension or other benefits from, a user of waters of the state registered with the Chief or the owner of a facility for which a permit has been issued under the bill.[57] The bill provides for staggered six-year terms of office for members of the Commission and establishes standard appointment procedures.[58]

Annually one member must be elected as chairperson of the Commission and another member must be elected as vice-chairperson.[59] The Commission may appoint a

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[54] R.C. 1522.23(B).

[55] R.C. 1522.19(B).

[56] R.C. 1522.99.

[57] R.C. 1522.20(A).

[58] R.C. 1522.20(B).

[59] R.C. 1522.20(E).

secretary to hold office at the Commission's pleasure and must appoint one or more hearing officers to assist the Commission who must be attorneys admitted to practice in this state. A Commission member may serve as secretary. The secretary and hearing officers must perform duties prescribed by the Commission and receive compensation fixed by the Commission in accordance with schedules that are established by law for the compensation of state employees.[60]

A member of the Commission must be reimbursed for all travel, hotel, and other expenses necessarily incurred in the performance of the member's work as a member. Those expenses must be paid in accordance with rules of the Office of Budget and Management. Members of the Commission must receive no other compensation.[61]

The Governor may remove a member of the Commission from office for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance. Prior to removing a member, the Governor must deliver to the member the charges against the member in writing with at least ten days' written notice of the time and place at which the Governor will publicly hear the member and the charges against the member. If the member is removed from office, the Governor must file in the Office of the Secretary of State a complete statement of the charges made against the member and a complete report of the proceedings. The action of the Governor removing a member from office is final.[62]

The Commission must adopt rules governing procedures of appeals and practice before the Commission and may adopt rules for its own internal management that do not affect private rights. The Commission must have its own operating budget independent of any state agency or other commission.[63]

Appeals

Appeals of Chief's orders

Any person that is or may be aggrieved or adversely affected by an order or decision of the Chief under the bill, the Compact, or other laws associated with the Compact may appeal the order or decision. An order includes a modification, vacation, or termination of an order, but does not include an order that adopts a rule. The appeal must be made by filing a notice of appeal with the Water Resources Commission for

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[60] R.C. 1522.20(C).

[61] R.C. 1522.20(D).

[62] R.C. 1522.20(F).

[63] R.C. 1522.20(G) and (H).

review of the order or decision not later than 30 days after the order is issued or the decision is made.[64]

The person also must file a copy of the notice of appeal with the Chief not later than three days after filing the notice of appeal with the Commission. The notice of appeal must contain a copy of the order or decision complained of and the grounds on which the appeal is based. The Commission has exclusive original jurisdiction to hear and decide such appeals. The filing of a notice of appeal does not operate as a stay of any order or decision of the Chief.[65]

Upon the filing of a notice of appeal, the Commission must conduct a hearing de novo and render a decision in a timely fashion. The appellant, the Chief, and other interested persons must be given written notice of the time and place of the hearing at least 30 days prior to the hearing. The hearing must be of record. For the purpose of conducting a de novo hearing, the Commission must hear evidence and testimony from witnesses and may require the attendance of witnesses and the production of written or printed materials.[66]

If, upon completion of a hearing, the Commission finds that the order or decision of the Chief was lawful and reasonable, it must issue a written order affirming the order or decision of the Chief. If the Commission finds that the order or decision was unlawful or unreasonable, it must issue a written order vacating or modifying the order or decision of the Chief or remanding the action to the Chief for further proceedings consistent with its order.[67]

The Commission may grant appropriate interim relief pending final determination of an appeal if all of the following conditions are met:

(1) All parties to the appeal have been notified and given an opportunity to be heard on a request for interim relief;

(2) The person requesting the relief shows that there is a substantial likelihood that the person will prevail on the merits; and

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[64] R.C. 1522.21(A)(1) and (2).

[65] R.C. 1522.21(A)(2).

[66] R.C. 1522.21(A)(3).

[67] R.C. 1522.21(B).

(3) The relief will not adversely affect public health or safety or cause significant imminent environmental harm to water resources or water dependent natural resources.[68]

Appeals of Commission's decisions

Under the bill, any party aggrieved or adversely affected by a decision of the Water Resources Commission, including a decision granting or denying interim relief, may appeal the decision. The appeal must be made to the Franklin County Court of Appeals, which has exclusive jurisdiction to hear appeals of decisions rendered by the Commission.[69]

Any party desiring to make an appeal must file with the Commission a notice of appeal designating the order appealed. A copy of the notice also must be filed by the appellant with the court, and a copy must be sent by certified mail to the Chief unless the Chief is the party appealing the order. Notices must be filed and mailed not later than 30 days after the date on which the appellant received notice from the Commission by certified mail of the issuance of the order appealed. No appeal bond is required to make an appeal effective.[70]

The filing of a notice of appeal does not automatically operate as a suspension of the Commission's order. If it appears to the court that an unjust hardship to the appellant will result from the execution of the Commission's order pending determination of the appeal, the court may grant a suspension of the order and fix its terms.[71]

Not later than 20 days after receipt of the notice of appeal, the Commission must prepare and file in the court the complete record of proceedings out of which the appeal arises, including any transcript of the testimony and any other evidence that has been submitted before the Commission. The expense of preparing and transcribing the record must be taxed as a part of the costs of the appeal. The appellant, other than the state or a political subdivision, or an agency of either, or any officer of either acting in a representative capacity, must provide security for costs satisfactory to the court. Upon demand by a party, the Commission must furnish at the cost of the party requesting the record a copy of the record. If the complete record is not filed within the time provided

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[68] R.C. 1522.21(C).

[69] R.C. 1522.22(A).

[70] R.C. 1522.22(B).

[71] R.C. 1522.22(C).

for in the bill, any party may apply to the court to have the case docketed, and the court must order the record filed.[72]

In hearing the appeal, the court is confined to the record as certified to it by the Commission. The court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the Commission. At the hearing, counsel may be heard on oral argument, briefs may be submitted, and evidence may be introduced if the court has granted a request for the presentation of additional evidence.[73]

The court must affirm the order complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence that the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it must reverse, vacate, or modify the order or make another ruling that is supported by reliable, probative, and substantial evidence and is in accordance with law.[74]

Changes to existing law

Facility registration requirements

Current law requires any person who owns a facility that has the capacity to withdraw waters of the state in an amount greater than 100,000 gallons per day to register the facility with the Chief of the Division of Soil and Water Resources. The bill requires that the registration requirement be triggered by a capacity to withdraw 100,000 gallons per day averaged over a 30-day period. Further, the bill provides that any person who owns a facility that has the capacity to divert any amount of water from the area of the Great Lakes basin within Ohio to another basin must register the facility within three months of the bill's effective date or within three months after the facility is completed. For purposes of collecting information relating to the future cumulative impact of withdrawals from certain watersheds, the Chief may lower the threshold for registration of withdrawals in distressed water resource areas. The Chief also may require a facility in a distressed water resource area to submit additional information on the withdrawal and increase the frequency of reporting. Under the bill, a distressed water resource area is a definable geographic area in which ground water or surface water is being affected by human activity or natural forces to the extent that

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[72] R.C. 1522.22(D).

[73] R.C. 1522.22(E) and (F).

[74] R.C. 1522.22(G).

there are or may be significant individual or cumulative adverse resource impacts from withdrawals or consumptive uses.[75]

Current law requires the person registering a withdrawal to use a form prescribed by the Chief and include certain information on the form. The bill requires that the information include, where applicable, the facility's diversion capacity per day and the amount diverted from each source.[76] With respect to withdrawals from distressed water resource areas, the person also must submit any additional information at intervals established by the Chief. The bill also requires the Chief to adopt rules establishing standards and criteria for determining when an area of ground water or surface water is a distressed water resource area, the geographic limits of such an area, and a threshold withdrawal capacity for the area below which registration is not required. Current law refers instead to a ground water stress area. The bill requires the Chief to establish the standards and criteria by utilizing the science-based assessment process developed under the bill (see above).

Under current law, with respect to ground water stress areas, the Chief may by order designate an area of ground water as a ground water stress area and must establish in any such order a threshold withdrawal capacity for the area below which registration is not required. As discussed above, the bill applies those requirements instead to distressed water resource areas and, thus, also to surface waters. The bill also provides that the order must establish any reporting requirements for facilities in the designated area. Required notice of the distressed water resource area must include any reporting requirements for facilities within the area.[77]

Under the bill, an elected official of a political subdivision may petition the Chief to issue an order designating an area of ground water or surface water as a distressed water resource area. The petition must specify the reasons why the official believes that grounds exist for the designation. Within 60 days after receiving such a petition, the Chief must make a determination on the petition. If the Chief determines that grounds exist for the petition to be granted, the Chief must issue an order designating a distressed water resource area and establish the threshold capacity for registration and any other reporting requirements for facilities within the area. Such a decision may be appealed to the Water Resources Commission established by the bill (see above).[78]

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[75] R.C. 1521.01(E) and 1521.16(A).

[76] R.C. 1521.16(A).

[77] R.C. 1521.16(B).

[78] R.C. 1521.16(B).

Annual report and fee

Current law requires a person who owns a facility subject to registration to file an annual report with the Chief listing the amount of water withdrawn per day, the return flow per day, and any other information the Chief may require by rule. The bill also requires the report to include the amount of water diverted per day, if applicable. Further, under the bill, a person who owns a facility that is within the area of the state in the Great Lakes basin must certify that the person has reviewed the environmentally sound and economically feasible water conservation measures developed for the facility's water use sector in rules adopted under the bill. The person also must list the general categories of environmentally sound and economically feasible water conservation measures adopted by the person and the amount of water conserved per day by category.[79]

The bill requires a person who owns a registered facility to submit a fee annually to the Chief in the following amount:

(1) $250 for the capacity to withdraw 250,001 gallons to 500,000 gallons per day;

(2) $500 for the capacity to withdraw 500,001 gallons to 1,000,000 gallons per day;

(3) $4,000 for the capacity to withdraw 1,000,001 gallons to 5,000,000 gallons per day;

(4) $5,500 for the capacity to withdraw 5,000,001 gallons to 10,000,000 gallons per day;

(5) $7,000 for the capacity to withdraw 10,000,001 gallons to 50,000,000 gallons per day;

(6) $8,500 for the capacity to withdraw 50,000,001 gallons to 100,000,000 gallons per day; or

(7) $10,000 for the capacity to withdraw greater than 100,000,000 gallons per day.[80]

The fees assessed must be annually indexed to inflation. The fees must be credited to the existing Water Management Fund (see below). A person who owns a

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[79] R.C. 1521.16(C).

[80] R.C. 1521.16(D).

registered facility that has the capacity to withdraw 250,000 gallons per day or less is not required to submit a fee.[81]

Water Management Fund

The bill requires the proceeds of all fees collected under the bill to be credited to the existing Water Management Fund. The Chief is required to use money in the Fund for the purposes of administering activities to implement the Compact and the bill in addition to the existing water diversion and consumptive use permit programs as in current law.[82]

Existing diversion permit program

Under current law related to water diversion permits, any six or more residents of Ohio may petition the Director of Natural Resources for an investigation of a withdrawal of water resources that they allege is in violation of a diversion permit. The bill provides instead that an elected official of a political subdivision may petition the Director for an investigation of a diversion of water resources that the official alleges is in violation of a diversion permit.[83]

The bill also repeals a provision requiring the Director to notify officials from other states and provinces regarding applications for diversion permits. The language appears to be unnecessary due to provisions in the Compact that address communications between Ohio and other states and provinces.[84]

The bill defines "baseline capacity of the diversion" (see **COMMENT**) for purposes of the existing diversion permit program to mean either of the following:

(1) For a facility with a capacity to make a diversion as of December 8, 2008, the capacity as reported in the baseline list submitted by the Department of Natural resources to the Great Lakes-St. Lawrence River Basin Water Resources Council on December 8, 2009, or as otherwise determined by the Chief of the Division of Soil and Water Resources on the basis of sufficient documentation prescribed by the Chief; or

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[81] R.C. 1521.16(D).

[82] R.C. 1521.04.

[83] R.C. 1501.32(F).

[84] R.C. 1501.32(C).

(2) For a facility with a capacity to make a new diversion on and after the bill's effective date, the capacity specified in the permit issued for the facility by the Chief under the existing diversion permit program.[85]

Compact implementation language

The bill repeals both of the following provisions of current law, which appear to be either unnecessary as a result of the bill or conflict with provisions of the bill:

(1) A provision that specifies that the Governor, the Department of Natural Resources, or any other state agency cannot adopt rules or implement any program regulating the use, withdrawal, consumptive use, or diversion of water under the Compact unless the General Assembly enacts legislation authorizing the implementation of the program or adoption of rules; and

(2) A provision that specifies that the Governor, the Department of Natural Resources, or any other state agency cannot adopt rules or implement any mandatory program governing water conservation and efficiency pursuant to applicable provisions of the Compact unless the General Assembly enacts legislation authorizing the implementation of the program or adoption of rules.[86]

The bill requires the Chief of the Division of Soil and Water Resources to adopt rules to implement the Compact and to enforce the Compact rather than the Director of Natural Resources as under current law.[87]

COMMENT

The bill defines "baseline capacity of the diversion" for purposes of the existing state water diversion permit program. However, that term is not used in the law related to that program. Thus, the inclusion of the definition does not appear to have any legal significance.

HISTORY

ACTION	DATE
Introduced	06-09-11

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[85] R.C. 1501.30(A).

[86] R.C. 1522.03 and 1522.05.

[87] R.C. 1522.03(A).