



Ohio Legislative Service Commission

Bill Analysis

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(As Reported by H. Agriculture and Natural Resources)

Reps. Hall and Thompson

BILL SUMMARY

Agricultural pollution abatement

- Transfers, effective January 1, 2017, the administration of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.
- Does all of the following to effect the transfer:
 - Authorizes a person that owns or operates agricultural land or an animal feeding operation (AFO) to develop and operate under a nutrient utilization plan rather than an operation and management plan as in current law;
 - Revises rule-making authority regarding the abatement of water degradation by agricultural pollutants, including requiring the Director of Agriculture to adopt the rules rather than the Chief of the Division of Soil and Water Resources and requiring the rules to establish abatement standards;
 - Authorizes the supervisors of soil and water conservation districts to develop nutrient utilization plans as necessary and to determine whether nutrient utilization plans that are developed by persons who own or operate agricultural land or AFOs comply with the abatement standards;

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

--Applies the program to animal feeding operations rather than concentrated animal feeding operations; and

--Establishes other provisions governing the administration and enforcement of the Agricultural Pollution Abatement Program.

- Requires the Directors of Natural Resources and Agriculture to enter into a memorandum of understanding regarding the transfer of the Program.
- States that operation and management plans that were developed or approved under existing law continue as nutrient utilization plans under the bill, as applicable.
- States that it is an affirmative defense in a private civil action for nuisances involving agricultural pollution if the person owning, operating, or otherwise responsible for agricultural land or an AFO is operating under a nutrient utilization plan, subject to certain conditions.
- Authorizes the Director to require a person that owns or operates agricultural land or an AFO, has not developed a nutrient utilization plan, and has caused agricultural pollution by failure to comply with abatement standards to operate under a nutrient utilization plan rather than an operation and management plan as in existing law.
- Provides for enforcement of its provisions governing nutrient utilization plans, including corrective actions, civil and administrative penalties, and injunctive relief.
- Narrows the scope of operation and management plans in current law and the statutes governing those plans to address only soil erosion and sediment control.
- Specifies that such an operation and management plan may include a soil erosion management plan, a timber harvest plan, or both.
- Generally prohibits specified state and local government officials from disclosing certain information provided by or regarding a person who operates under a nutrient utilization plan.
- Requires the Chief of the Division of Soil and Water Resources to adopt rules governing watersheds in distress notwithstanding any other statute to the contrary.
- Requires those rules to address specified topics, including a definition of "watersheds in distress" and establishment of abatement standards within such watersheds.



- States that a nutrient utilization plan that is approved by the Chief under those rules constitutes an approved nutrient utilization plan for purposes of the bill's provisions governing agricultural pollution abatement.

Application of fertilizer and manure

- Prohibits, with certain exceptions, the application of fertilizer or manure in the western basin of Lake Erie on frozen ground, saturated soil, and during certain weather conditions.
- Requires the Director of Agriculture to administer the fertilizer provisions and the Chief of the Division of Soil and Water Resources to administer the manure provisions, but transfers that authority from the Chief to the Director of Agriculture on January 1, 2017.
- States that the prohibition does not affect any restrictions established in the Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.
- Exempts a person in the western basin of Lake Erie from the prohibition if the person applies the fertilizer or manure, as applicable, under specified circumstances, including injecting the fertilizer or manure into the ground and incorporating the fertilizer or manure within 24 hours of surface application.
- Authorizes the Director of Agriculture or the Director's designee or the Chief or the Chief's designee to investigate complaints filed against a person that violates the above prohibition, including applying for a search warrant.
- Authorizes the Director or Chief, as applicable, to assess a civil penalty against a person that violates the prohibition only if the person is afforded an opportunity for an adjudication hearing.
- Requires a violator of the prohibition to pay a civil penalty in an amount determined in rules, but prohibits the penalty from being more than \$10,000.

Enforcement of Oil and Gas Law

Material and substantial violations

- Expands the definition of "material and substantial violation" in the Oil and Gas Law to include submission of information that is knowingly falsified.



Registration containing background information

- Requires a person who intends to engage in an activity regulated under the Oil and Gas Law to register with the Division of Oil and Gas Resources Management and disclose all felony convictions of or felony guilty pleas to specified water pollution control laws that have occurred within the previous three years previous from the date of registration.
- Authorizes the Chief of the Division of Oil and Gas Resources Management to request additional information regarding such a felony conviction or felony guilty plea, except for information extending to the person's corporate parent entities.
- Authorizes the Chief to deny a person's registration after reviewing the information submitted and any additional information requested.
- Prohibits the Chief from issuing a permit, registration certificate, or order authorizing an activity under the Oil and Gas Law to a person whose registration was denied.
- Excludes specific types of individuals from the registration requirement.
- Allows a person denied a registration to re-apply for a registration.

Brine transportation

- Prohibits anyone from transporting brine in any manner, rather than just by vehicle as in current law, without being registered by the Chief.
- Requires an applicant for a registration certificate to transport brine to list each pipeline that will be used to transport brine.
- Prohibits a registered transporter from allowing any other person to use the transporter's registration certificate to transport brine.
- Prohibits a permit holder or owner of a well for which a permit has been issued under the Oil and Gas Law from entering into an agreement with a person who is not registered to transport brine to dispose of brine at the well.
- Requires a registered transporter to keep on each vessel, railcar, and container used to transport brine, in addition to each vehicle as in current law, a daily log and keep a daily log for each pipeline used to transport brine, and requires all logs to be made available upon request of the Chief, the Chief's authorized representative, or a peace officer.

- Requires registered transporters to legibly identify vessels, railcars, and containers employed in transporting or disposing of brine with reflective paint in addition to vehicles as in current law.
- Requires registered transporters to legibly identify pipelines so used in a manner similar to the identification of underground gas lines and to include specified information.

Penalties

- Eliminates minimum civil penalties for certain violations of the Oil and Gas Law, and eliminates the civil penalty for violations of rules governing a well owner's duty to restore disturbed surface land.
- Revises criminal penalties for certain violations of the Oil and Gas Law, and specifies that a knowing violation of the provisions of the Oil and Gas Law specifically relating to the improper placement of brine and governing permits to inject brine or other waste substances is a felony.
- Eliminates the requirement that the Attorney General, upon request of the Chief, commence a civil action against a person who violates rules adopted under the Oil and Gas Law.
- States that for purposes of imposing civil and criminal penalties, each day of a purposeful violation constitutes a separate offense rather than each day of violation as in current law.

Response costs and liability

- Specifies that a person who violates the permit requirements for brine disposal or registration requirements for brine transportation is liable for the actual cost of rectifying the violation and conditions caused by the violation, rather than the cost, as in current law.
- Specifies that if a person is convicted of or pleads guilty to a purposeful violation of provisions of the Oil and Gas Law specifically relating to the improper placement of brine and governing permits to inject brine or other waste substances, the person may be ordered to reimburse the state agency or political subdivision for actual response costs incurred in responding to the violation.

Mandatory pooling and unit operation

Mineral rights owned by Department of Transportation

- Requires the Chief of the Division of Oil and Gas Resources Management, notwithstanding the authority of the Oil and Gas Leasing Commission, to do both of the following:
 - (1) Issue an order for mandatory pooling that encompasses a tract for which all of the mineral rights for oil or gas are owned by the Department of Transportation; and
 - (2) Issue an order for the unit operation of a pool or a part of a pool that encompasses a unit area for which all of the mineral rights for oil or gas are owned by that Department.

Mandatory pooling procedures

- Authorizes the owner who has the right to drill to request a mandatory pooling order under the Oil and Gas Law rather than the owner of the tract of land who is also the owner of the mineral interest as in current law.
- Allows an application for a mandatory pooling order to be submitted if a tract or tracts, rather than a single tract of land, are of insufficient size or shape to meet the statutory minimum acreage requirements for drilling a proposed well, including a proposed horizontal well, rather than for drilling a well.
- Revises that Law regarding mandatory pooling to distinguish between mineral rights owners and surface rights owners, including by requiring the Chief to notify all mineral rights owners of tracts proposed to be pooled and included in the drilling unit of the filing of the application for a mandatory pooling order and their right to a hearing rather than all owners of land within the area proposed to be included in the drilling unit.
- Requires the Chief, if the Chief makes certain findings, to issue an order for mandatory pooling not later than 30 days after a hearing on the application for the order instead of after the hearing with no specified deadline.
- Increases from five to ten the maximum number of applications for mandatory pooling orders that a person may submit each year unless otherwise approved by the Chief.

Unit operation procedures

- Requires the Chief to hold a hearing required under current law to consider the need for the operation as a unit of an entire pool or part of a pool not later than 45 days after the Chief's motion or receipt of an application by the owners of 65% of the land area overlying the pool.
- Specifies that an order of the Chief providing for unit operation must be made not later than 30 days after the date of the hearing if the Chief makes certain findings.
- Retains a requirement that the plan prescribed in the Chief's order for unit operation contain a provision for carrying or otherwise financing any person who is unable to meet the person's financial obligations in connection with the unit, allowing a reasonable interest charge for that service, and adds that the interest rate must be not less than 200%.
- Stipulates that if the Chief adopts rules or establishes guideline for purposes of the statute governing unit operation, both of the following apply:
 - The rules or guidelines cannot establish a prehearing publication notice requirement of more than three publications in a newspaper of daily circulation in the applicable county or counties and cannot require the last date of publication to occur not more than five days prior to the hearing; and
 - Any publication requirement established in the rules or guidelines must allow for publication in the newspaper of daily circulation that is nearest to the proposed area of unit operation if a newspaper of daily circulation is not available in the county in which the proposed area of unit operation is located.

Application of certain Oil and Gas Law provisions to public land

- Applies to public land provisions in the Oil and Gas Law governing minimum distances of wells from boundaries of tracts, voluntary and mandatory pooling, special drilling units, establishment of exception tracts to which minimum acreage and distance requirements do not apply, unit operation of a pool, and revision of an existing tract by a person holding a permit under that Law.
- Accomplishes the above change by revising the definition of "tract" in that Law by including land that is not taxed.



Property tax valuation of oil and gas reserves

- Specifies that a discounted cash flow formula used to value certain producing oil and gas reserves for property tax purposes be the only method for valuing all oil and gas reserves.

Application fee for permit to plug back an existing oil or gas well

- Requires an application for a permit to plug back an existing oil or gas well to be accompanied by a nonrefundable fee by removing the exemption in current law under which such an application need not be accompanied by a fee.

Emergency planning reporting requirements pertaining to oil and gas facilities

- Requires all persons that are regulated under the Oil and Gas Law and rules adopted under it, rather than only owners or operators of facilities that are regulated under the Law, to submit specified information to the Chief of the Division of Oil and Gas Resources Management for inclusion in a database.
- Modifies provisions to be included in the rules governing the database by requiring the rules to ensure both of the following:
 - That the Emergency Response Commission, the local emergency planning committee of the emergency planning district in which a facility is located, and the fire department that has jurisdiction over a facility, rather than the Commission and every local emergency planning committee and fire department in Ohio as in current law, have access to the database; and
 - That the information submitted for the database be made immediately available, rather than available via the Internet or a system of computer disks as in current law, to the above entities.
- Revises current law by stipulating that an owner or operator is deemed to have satisfied all of the inventory requirements established under the Emergency Planning Law by complying with the bill's submission requirements rather than by filing a log and production statement with the Chief as in current law.

Brine storage permit financial assurance and insurance requirements

Financial assurance requirement

- Requires an applicant for a permit or order to store, recycle, treat, or process brine or other waste substances (hereafter brine storage permit) to file with the Chief a surety



bond in an amount established in rules, not to exceed \$250,000, and conditioned on compliance with the Oil and Gas Law and rules adopted under it, and establishes requirements and procedures governing the issuance and deposit of such bonds.

- Authorizes a brine storage permit applicant to deposit cash, negotiable certificates of deposit, or irrevocable letters of credit in lieu of a surety bond, and establishes requirements and procedures governing their issuance and deposit.
- Requires such a person to maintain the surety bond or other financial assurance until the person complies with rules governing the closure of the location for which a brine storage permit or order was issued or, if no such rules are adopted, until the Chief inspects the location and issues a written approval of closure.

Bond forfeiture order

- Authorizes the Chief to issue a bond forfeiture order to a person who has been issued a brine storage permit if the Chief finds that the person has failed to comply with a final nonappealable enforcement order or a compliance agreement.
- Requires the Chief to certify the total forfeiture to the Attorney General who must collect it, and requires all money collected from such forfeitures to be deposited in the existing Oil and Gas Well Fund.

Liability insurance requirement

- Requires an applicant for a brine storage permit to obtain liability insurance coverage in an amount established in rules, not to exceed \$4 million.
- Requires the insurance to provide coverage to pay damages for injury to persons or damage to property caused by the location for which the permit was issued.
- Excludes from the liability insurance coverage requirement a person using self-insurance, and requires a self-insured person to file with the Chief a certification of self-insurance specifying coverage details.
- Requires a self-insured person to notify the Chief if the person is no longer able to maintain self-insurance in the amount certified.

Oil and gas drilling permit self-insurance

- Excludes a person that has been issued a drilling permit under the Oil and Gas Law and that is self-insured from the current requirement to obtain liability insurance coverage, and requires a self-insured person to file with the Chief a certification of self-insurance specifying coverage details.



- Requires a self-insured person to notify the Chief if the person is no longer able to maintain self-insurance in the amount certified.

Limited liability companies

- Applies the Oil and Gas Law to a limited liability company.

Country of origin disclosure form for certain steel products used in oil and gas production

- Extends by two years, to March 31, 2017, the beginning date by which an owner of a well must file with the Division of Oil and Gas Resources Management a country of origin disclosure form for certain steel products used in oil and gas production.

Telecommunications

- Would lift the current prohibition against an incumbent local exchange carrier withdrawing or abandoning basic local exchange service (BLES) in an exchange area if the carrier were to withdraw the interstate-access component of its BLES in accordance with an order of the Federal Communications Commission.
- Requires a carrier withdrawing or abandoning BLES to give 90 days' notice to the Public Utilities Commission of Ohio (PUCO) and affected customers.
- Permits a residential customer who will be unable to obtain voice service upon the withdrawal or abandonment of BLES to petition the PUCO to find a willing provider of voice service, and permits a collaborative process at the PUCO to identify customers in this position.
- Permits the PUCO to order the withdrawing or abandoning carrier to provide voice service to a customer described above for one year if, after an investigation, no willing provider is identified.
- Permits the order described above to be extended for one additional year if a willing provider of voice service still cannot be identified upon further evaluation.
- Requires the PUCO to plan for the transition from the current public switched telephone network to an Internet-protocol network.
- Requires the PUCO to establish a collaborative process with incumbent and competitive local exchange carriers, the Office of the Ohio Consumers' Counsel, and other invited members to focus on the Internet-protocol-network transition process and related consumer issues.



- Ensures that an incumbent local exchange carrier that withdraws or abandons BLES under the bill would still be subject to the PUCO's oversight of the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy.
- States that the bill does not affect any contractual obligation, including agreements under the federal Telecommunications Act of 1996, as amended, or any right or obligation under federal law or rules.

High volume dog breeders

- Authorizes a high volume breeder to submit to the Director of Agriculture, with an application for a high volume breeder license under the Dog Breeding Kennels and Retailers Law, cash, negotiable certificates of deposit, or irrevocable letters of credit in lieu of evidence of insurance or of a surety bond as required by current law.
- Revises the structure of the face value amounts of the various types of security coverage that must be submitted to the Director with an application for a high volume breeder license.
- Eliminates certain requirements with which an applicant for renewal of a high volume breeder license must comply.

Deer sanctuary licenses

- Creates an annual deer sanctuary license, which authorizes a person to engage in the raising or rehabilitation of white-tailed deer that are not captive white-tailed deer and are not for sale or personal use, and specifies the manner in which a person may apply for such a license.
- Prohibits a person that has been issued such a license from releasing any deer held under the license into the wild.
- Requires the Director of Agriculture to do all of the following:
 - Issue a deer sanctuary license if the Director determines that the application is made in good faith and is complete;
 - Inspect all licensed deer sanctuaries in accordance with rules adopted under the bill; and
 - Adopt specified rules, including rules governing application for a deer sanctuary license and establishing facility specifications for a deer sanctuary.

- Requires money received from license fees to be credited to the Deer Sanctuary Fund, which the bill creates, and requires the Director to use the Fund to administer the above provisions.

Review compliance certificates

- Eliminates provisions governing review compliance certificates issued under the Concentrated Animal Feeding Facilities Law, the operation of which has expired.

Issuance of licenses under Auctioneers Law

- Authorizes the Department of Agriculture to issue or renew a license under the Auctioneers Law if an applicant or licensee has not been convicted of more than one felony or crime involving fraud or theft in this or another state at any time during the ten years immediately preceding application or renewal if the conviction does not directly relate to conducting an auction or acting as an auctioneer.

Elimination of state safety audits, inspections, and training for industrial minerals mining

- Eliminates requirements in current law that the Chief of the Division of Mineral Resources Management conduct inspections and safety audits for industrial minerals mining operations, provide safety training, and adopt related rules.
- As a result, eliminates the requirement that the Chief issue abatement orders upon finding dangerous conditions or practices during inspections or audits.
- Also eliminates the requirement that a mine operator employ a certified mine foreperson to conduct inspections or provide an alternate training plan using qualified persons.

Great Lakes Compact

- For purposes of the Great Lakes-St. Lawrence River Basin Water Resources Compact, does all of the following:
 - Establishes a presumption of what constitutes an adverse impact under the Compact's decision-making standard with respect to consumptive uses;
 - Bases the presumption on the long-term mean annual runoff from Ohio's portion of the Lake Erie basin and the average Lake Erie water level;



--Specifies how the Chief of the Division of Soil and Water Resources must calculate the long-term mean annual runoff from Ohio's portion of the Lake Erie basin; and

--Restates the Compact's entire decision-making standard in the Ohio statute that implements the Compact.

- States that nothing in the Ohio statute that implements the Great Lakes Compact precludes a municipal corporation that is in the Lake Erie drainage basin and the Ohio River drainage basin from drilling wells in the Lake Erie drainage basin to supply its public water system, provided that certain conditions are met.

Youth deer and wild turkey permits for mobility impaired or blind persons

- Requires a mobility impaired or blind person who is under 18 and an Ohio resident and who is unable to hunt without the assistance of another person to be issued a free youth deer or wild turkey permit, as applicable.
- Requires a person who is assisting a mobility impaired or blind youth and who is an Ohio resident to be issued a free deer or wild turkey permit, and requires a nonresident who is providing such assistance to obtain a deer or wild turkey permit and, by operation of law, to pay a fee for the permit.

Incidental taking permit

- Authorizes the Chief of the Division of Wildlife to establish a fee in rules for a permit issued under continuing law to a person operating an energy facility whose operation may result in the incidental taking of a wild animal.
- Narrows the definition of "energy facility" for that purpose to mean certain wind turbines and associated facilities, and defines "incidental taking" as the killing or injuring of a wild animal occurring by chance or without intention.

Watercraft certificates of title

- Eliminates the requirement that the make, manufacturer's serial number, and horsepower of any inboard motor or motors of a watercraft be included with a watercraft certificate of title application.

Department of Natural Resources notices

- Requires the Department of Natural Resources to publish notices regarding certain activities, projects, or improvements as contemplated in the general newspaper publication statute.



Enforcement of Water Pollution Control Law

- Increases criminal penalties for certain violations of the Water Pollution Control Law, and establishes culpable mental states regarding certain violations.
- Provides that if a person is convicted of or pleads guilty to a violation of any provision of that Law, the sentencing court may order the person to reimburse the state agency or a political subdivision for any actual response costs, including addressing impacts to aquatic resources.

Section 401 water quality certifications

- With respect to an application for a section 401 water quality certification, alters the requirement to include a detailed mitigation proposal by doing all of the following:
 - Retaining the requirement that the proposal include a legal mechanism for protecting the property, but eliminating the stipulation that the legal mechanism protect the property in perpetuity and instead requiring that the proposal be for long-term mitigation;
 - Specifying that the legal mechanism may include a deed restriction, environmental covenant, conservation easement, other real estate instrument, or demonstration that the mitigation proposal will attain applicable water quality standards for the waters of the state that are the subject of the application; and
 - Stating that attainment of such standards constitutes protection of the property.

Phosphorous monitoring for a publicly owned treatment works

- Requires specified publicly owned treatment works, including those with a design flow of 1 million gallons per day or more, to begin monthly monitoring of total and dissolved phosphorous by December 1, 2015.
- Requires publicly owned treatment works that are not subject to specified phosphorous effluent limit to complete and submit an optimization study that evaluates its ability to reduce phosphorous to that limit.

Dredged material in Lake Erie and tributaries

- Beginning July 1, 2020, prohibits a person from depositing dredged material in Ohio's portion of Lake Erie and direct tributaries that resulted from harbor or navigation maintenance activities unless authorized by the Director of Environmental Protection.



- Allows the Director to authorize such deposits of dredged material for specified facilities and projects, including beach nourishment and habitat restoration.
- Authorizes the Director to consult with the Director of Natural Resources for the above purpose, but specifies that the Director of Environmental Protection has exclusive authority to approve the location in which dredged material is proposed to be deposited.
- Requires the Director to work with the U.S. Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the above requirements.

Study of nutrient loading to Ohio watersheds

- Authorizes the Director of Environmental Protection to study, examine, and calculate nutrient loading to Ohio watersheds from point and nonpoint sources.
- Requires the Director or the Director's designee, in order to evaluate nutrient loading contributions, to use available data, including data on water quality and point source discharges into Ohio watersheds.
- Requires the Director or the Director's designee to report and update the study's results to coincide with the release of the Ohio Integrated Water Quality Monitoring and Assessment Report.

Lead contamination of drinking water from plumbing

- Prohibits using certain plumbing supplies and materials that are not lead free in the installation or repair of a public water system or of any plumbing in a facility providing water for human consumption rather than requiring certain plumbing supplies and materials that are used in a public water system or in plumbing for facilities connected to a public water system to be lead free as in current law.
- Expands the list of plumbing supplies and materials to which the above prohibition applies to include plumbing fittings and plumbing fixtures.
- Generally prohibits a person from doing any of the following:
 - Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free;
 - Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies; and



--Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use it in the installation or repair of any plumbing providing water for human consumption.

- Establishes several exemptions from the above prohibitions, including pipes, pipe fittings, or plumbing fittings or fixtures that are used exclusively for nonpotable services.
- Revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law.
- Establishes a formula for calculating the weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture.

Video lottery terminal revenue use

- Requires corporations formed to establish a thoroughbred or harness horsemen's health and retirement fund to include in its articles of incorporation that video lottery terminal revenue paid to the corporation under Ohio law be used to establish and administer health, retirement, and other benefits.

Connection to private sewerage system

- Generally authorizes the owner of property that is served by a household sewage treatment system and that is reasonably accessible to a proposed private sewerage system to elect not to connect to the private sewerage system if both of the following apply:
 - The property owner so notifies both the owner or operator of the private sewerage system and the applicable board of health; and
 - The board determines that the household sewage treatment system is not causing a nuisance as specified in the law governing such systems.
- Requires a person that submits plans to install a private sewerage system to simultaneously so notify both the owner of each parcel of property that is served by a household sewage treatment system, that is reasonably accessible to the sewerage system, and that may be required to connect to it and the applicable board of health.
- Specifies what constitutes a reasonably accessible parcel of property.

- States that the bill's authorization and procedure for electing not to connect to a private sewerage system does not apply to a discharging system, and specifies what constitutes a discharging system.

Indebtedness of county agricultural societies

- Eliminates the 25% cap on total net indebtedness that may be incurred by a county agricultural society.

Agricultural tractor operation and driver's license

- Requires the operator of an agricultural tractor to hold a driver's license when transporting persons on a trailer or unit of farm machinery.
- Exempts the operator of an agricultural tractor from driver's license requirements if the tractor is being operated in order to conduct any agricultural activity.

Construction of buildings in metropolitan park districts

For a metropolitan park district, authorizes a municipal, township, or county building department to exercise enforcement authority, accept and approve plans and specifications, and make inspections pursuant to laws and rules governing building construction upon the approval of the district's board of park commissioners.

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CONTENT AND OPERATION

Agricultural pollution abatement

Administrative transfer

The bill transfers, effective January 1, 2017, the administration and enforcement of the Agricultural Pollution Abatement Program from the Department of Natural Resources to the Department of Agriculture.¹ To effect that transfer, the bill does all of the following:

(1) Authorizes a person that owns or operates agricultural land or an animal feeding operation (AFO) (see below) to develop and operate under a nutrient utilization plan rather than an operation and management plan as in current law (see below). A nutrient utilization plan must be approved by the Director of Agriculture, the Director's designee, or the supervisors of the applicable soil and water conservation district (hereafter supervisors of a conservation district).² Under current law, an operation and utilization plan must be approved by the Chief of the Division of Soil and Water Resources or the supervisors of a conservation district. A nutrient management plan is a written record that contains both of the following: (1) implementation schedules and operational procedures for a level of management and pollution abatement practices that will abate water degradation by residual farm products (see below) or manure, including attached substances (hereafter water degradation), and (2) best management practices (see below) that are to be used by the owner or operator.³

(2) Revises rule-making authority regarding the abatement of water degradation by agricultural pollutants by requiring:

--The Director to adopt the rules rather than the Chief subject to the approval of the Ohio Soil and Water Conservation Commission as in existing law;

¹ Section 15.

² R.C. 939.03(A).

³ R.C. 939.01(E).



--The rules to establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming operations that will abate water degradation (hereafter abatement standards) rather than by animal waste, including attached substances, as in current law; and

--The Director to adopt rules that are identical to specified rules adopted by the Chief and currently in effect regarding the Program, including rules regarding composting of dead animals that is conducted in conjunction with agricultural operations.⁴

(3) Authorizes the supervisors of conservation districts to develop nutrient utilization plans as necessary and to determine whether nutrient utilization plans that are developed by persons who own or operate agricultural land or AFOs comply with abatement standards;⁵

(4) Applies the Program to animal feeding operations rather than concentrated animal feeding operations, which is not defined for that purpose in current law, and defines "animal feeding operation" to mean the production area of an agricultural operation where agricultural animals are kept and raised in confined areas other than a facility that possesses a permit issued under the Concentrated Animal Feeding Facilities Law or a discharge permit issued under the Water Pollution Control Law.⁶

(5) Requires a person who owns or operates an agricultural operation, or owns the animals raised by the owner or operator of an agricultural operation, and who wishes to conduct composting of dead animals resulting from the operation to comply with certain requirements, including composting the animals in accordance with rules adopted by the Director rather than by the Chief as in existing law, and requires any such person who fails to comply with those rules to prepare and operate under a composting plan in accordance with a requirement of the Director to take a corrective action rather than an order of the Chief as in existing law;⁷

(6) Transfers from the Chief to the Director responsibility for administering the Agricultural Pollution Abatement Fund, which is used to pay the costs of investigating, mitigating, minimizing, removing, or abating water degradation caused by agricultural pollution or an unauthorized release, spill, or discharge of manure or residual farm

⁴ R.C. 939.02(C) and Section 4.

⁵ R.C. 1515.08(R) and (S).

⁶ R.C. 939.01(I).

⁷ R.C. 939.04.



products into or on the environment that requires emergency action to protect the public health;⁸

(7) Creates the Soil and Water Administration Fund to pay the Chief's costs in administering and enforcing the Soil and Water Resources Law;⁹

(8) Establishes other provisions governing the administration and enforcement of the Agricultural Pollution Abatement Program, including requiring the Director to enter into cooperative agreements with the supervisors of an interested conservation district regarding compliance with the Director's rules pertaining to agricultural pollution abatement and authorizing the Director or the Director's designee to enter on property to inspect and investigate conditions relating to agricultural pollution of water, provided that, in the case of private property, the owner's consent has been obtained.¹⁰ Agricultural pollution is failure to use management or conservation practices in farming operations to abate water degradation.¹¹

(9) Makes conforming changes regarding the Agricultural Pollution Abatement Program's transfer.¹²

The bill requires the Director of Natural Resources to enter into a memorandum of understanding with the Director of Agriculture regarding the transfer of the Program.¹³ It also states that operation and management plans that were developed or approved under existing law continue as nutrient utilization plans under the bill, as applicable.¹⁴

Complaints

Under the bill, a person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written, signed, and dated complaint to the Director or to the Director's designee. After receiving an oral complaint, the Director or the Director's designee may cause an investigation to be

⁸ R.C. 939.11, 1511.071 (repealed), and 1511.99 and Section 6.

⁹ R.C. 1511.09.

¹⁰ R.C. 939.02, 939.06, 939.07, 939.08, 939.10, and 1515.08(T).

¹¹ R.C. 939.01(C).

¹² R.C. 901.22, 903.082, 903.25, 941.14, 953.22, 1515.01, 3734.02, 3734.029, 3745.70, 6111.03, 6111.04, and 6111.44.

¹³ Section 3.

¹⁴ Section 5.



conducted to determine whether agricultural pollution has occurred or is imminent. After receiving a written, signed, and dated complaint, the Director or the Director's designee must cause such an investigation to be conducted.¹⁵

Affirmative defense

Under the bill, in a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or an AFO is operating under and in substantial compliance with an approved nutrient utilization plan developed by the person or with a nutrient utilization plan developed by the Director or the Director's designee or the supervisors of a conservation district or required by the Director. The bill states that nothing in its provisions governing the development of nutrient utilization plans, the filing of complaints regarding nuisances involving agricultural pollution, and the providing of an affirmative defense is in derogation of the authority to adopt rules or take corrective actions granted to the Director in the bill.¹⁶

Enforcement

Corrective actions and civil penalties

Under the bill, the Director may propose to require corrective actions and assess a civil penalty against an owner or operator of agricultural land or an AFO if the Director or the Director's designee determines that the owner or operator is doing one of the following (hereafter noncompliance):

(1) Not complying with abatement standards;

(2) Not operating in accordance with an approved nutrient utilization plan that is developed by the owner, with a nutrient utilization plan developed by the Director or the Director's designee or by the supervisors of the applicable conservation district, or with a nutrient utilization plan required by the Director under the bill (see below);

(3) Not complying with standards governing the composting of dead animals established by the Director under the bill; or

¹⁵ R.C. 939.03(B).

¹⁶ R.C. 939.03(C).



(4) Not operating in accordance with a composting plan that is approved in accordance with rules adopted by the Director under the bill or required by the Director under the bill (see below).¹⁷

The Director may include in the corrective actions a requirement that an owner or operator do one of the following:

(1) Operate under a nutrient utilization plan approved by the Director or the Director's designee under the bill;

(2) If the owner or operator has failed to operate in accordance with an existing nutrient utilization plan, operate in accordance with that plan;

(3) Prepare a composting plan in accordance with rules adopted by the Director under the bill and operate in accordance with that plan; or

(4) If the owner or operator has failed to operate in accordance with an existing composting plan, operate in accordance with that plan.¹⁸

The Director may impose a civil penalty only if all of the following occur:

(1) The owner or operator receives a written notice that contains specified information, including the time period within which the owner or operator must correct the deficiencies and attain compliance;

(2) After the specified time period has elapsed, the Director or the Director's designee has inspected the agricultural land or AFO, determined that the owner or operator is still not in compliance, and issued a notice of an adjudication hearing; and

(3) The Director affords the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination, the imposition of the civil penalty, or both. However, the owner or operator may waive the right to an adjudication hearing.¹⁹

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that noncompliance has occurred or is occurring, the Director may issue an order requiring compliance and assess the civil

¹⁷ R.C. 939.09(A)(1).

¹⁸ R.C. 939.09(A)(2).

¹⁹ R.C. 939.09(A)(3).

penalty. The order and the assessment of the civil penalty may be appealed in accordance with the Administrative Procedure Act.²⁰

Additionally, a person who has violated rules adopted by the Director under the bill must pay a civil penalty in an amount established in those rules.²¹

Administrative penalties

In addition to any other penalties imposed under the bill, the Director may impose an administrative penalty against an owner or operator of agricultural land or an AFO if the Director or the Director's designee determines that the owner or operator is not in compliance with best management practices that are established in the Director's rules. The administrative penalty cannot exceed \$5,000. The Director must afford the owner or operator an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's determination, the Director's imposition of an administrative penalty, or both. The Director's determination and the imposition of the administrative penalty may be appealed in accordance with the Administrative Procedure Act.²²

Actions of the Attorney General

The Attorney General, upon the written request of the Director, must bring an action for an injunction against any person violating or threatening to violate rules adopted by the Director or an order issued by the Director requiring compliance with a corrective action proposed by the Director. Also, in lieu of seeking civil penalties, the Director may request the Attorney General, in writing, to bring an action for a civil penalty against any person that has violated or is violating a rule adopted by the Director under the bill. The civil penalty cannot exceed \$10,000 per violation. Each day that a violation continues constitutes a separate violation.²³

Emergency actions

Notwithstanding any other enforcement provision in the bill, if the Director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, the Director may issue an order, without notice or adjudication hearing, stating the existence of the emergency and requiring that action be taken that is necessary to meet the emergency. The order takes effect immediately. A

²⁰ R.C. 939.09(A)(4).

²¹ R.C. 939.09(A)(5).

²² R.C. 939.09(D).

²³ R.C. 939.09(B) and (C).



person to whom the order is directed must comply immediately, but on application to the Director must be afforded an adjudication hearing in accordance with the Administrative Procedure Act as soon as possible and not later than 30 days after application. On the basis of the hearing, the Director must continue the order in effect, revoke it, or modify it. The Director's order is appealable in accordance with the Administrative Procedure Act. No emergency order can remain in effect for more than 120 days after its issuance.²⁴

A person that is responsible for causing or allowing the unauthorized spill, release, or discharge of manure or residual farm products that requires emergency action to protect public health or safety or the environment is liable to the Director for the costs incurred in investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge. Upon request of the Director, the Attorney General must bring a civil action against the responsible person or persons to recover those costs. Money recovered by the Attorney General and money collected from civil penalties by the Director or the Attorney General on the Director's behalf must be credited to the Agricultural Pollution Abatement Fund.²⁵

Current law

If a person violates rules adopted by the Chief of the Division of Soil and Water Resources governing abatement standards and water degradation or governing composting of dead animals, the Chief, after affording the person an adjudication hearing, must issue orders requiring compliance with the rules. As part of the compliance, the Chief may require a person to operate under an operation and management plan approved by the Chief or the Chief must require a person to prepare a composting plan and operate in accordance with that plan, as applicable.²⁶

Existing law prohibits a person from failing to comply with an order of the Chief.²⁷ Violation is a first degree misdemeanor. In addition, a violator may be required to pay for damages in an amount equal to the costs of reclaiming, restoring, or otherwise repairing any damage to public or private property caused by the violation.²⁸

²⁴ R.C. 939.09(E).

²⁵ R.C. 939.09(F) and (G).

²⁶ R.C. 1511.02(G).

²⁷ R.C. 1511.07(A)(1).

²⁸ R.C. 1511.99.



The Chief may apply to the applicable court of common pleas for an order to compel a violator to cease the violation. The Chief also may issue emergency orders to take necessary action when an unauthorized release, spill, or discharge of animal waste, or a violation of a rule adopted by the Chief regarding composting of dead animals, occurs that causes water pollution. The Attorney General, upon the written request of the Chief, must bring appropriate legal action in Franklin County against any person who fails to comply with an order of the Chief.²⁹

Finally, a person may appeal an order of the Chief to the Franklin County Court of Common Pleas or the court of common pleas of the county in which the alleged violation exists. If the court finds that the order was unreasonable or unlawful, it must vacate the order and make the order that it finds the Chief should have made. The judgment of the court is final unless reversed, vacated, or modified on appeal.³⁰

Operation and management plans

The bill narrows the scope of operation and management plans in current law and the statutes governing those plans to address only soil erosion and sediment control.³¹ It specifies that such an operation and management plan developed by a person who owns or operates agricultural land, developed by the Chief or by the supervisors of a conservation district, or required by an order issued by the Chief may include a soil erosion management plan, a timber harvest plan, or both.³²

A soil erosion management plan or timber harvest plan is a written record, developed or approved by the supervisors of a conservation district or the Chief, that contains implementation schedules and operational procedures for a level of land and water management that will abate wind or water erosion of the soil or abate water degradation by sediment from agricultural operations or timber operations, as applicable.³³

Disclosure of information

The bill generally prohibits specified state and local government officials from disclosing certain information provided by or regarding a person who operates under a

²⁹ R.C. 1511.07.

³⁰ R.C. 1511.08, not in the bill.

³¹ R.C. 1511.01(G) and (H), 1511.02(E) and (G), 1511.021(B) and (C), 1511.05, 1511.07, and 1515.08(L) and (Q).

³² R.C. 1511.021(A)(2).

³³ R.C. 1511.01(G) and (I).



nutrient utilization plan or an operation and management plan. Except as provided below, the bill prohibits the Director of Agriculture, an employee of the Department of Agriculture, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the Department or a district from disclosing either of the following:

(1) Information, including data from geographic information systems and global positioning systems, provided by a person who owns or operates agricultural land or an AFO and operates under a nutrient utilization plan; or

(2) Information gathered as a result of an inspection of agricultural land or an AFO to determine whether the person who owns or operates the land or AFO is in compliance with a nutrient utilization plan.³⁴

The Director or the supervisors of a district may release or disclose information specified above to a person or a federal, state, or local agency working in cooperation with the Director or the supervisors in the development of a nutrient utilization plan or an inspection to determine compliance with such a plan if the Director or supervisors determine that the person or agency will not subsequently disclose the information to another person.³⁵

The bill largely retains current law that prohibits the Director of Natural Resources, an employee of the Department of Natural Resources, the supervisors of a soil and water conservation district, an employee of a district, and a contractor of the Department or a district from disclosing the same information as described above for a person who owns or operates agricultural land and operates under an operation and management plan and that provides for the release or disclosure of information under similar circumstances. Because of the transfer discussed above, the bill removes animal feeding operations from that provision.³⁶

Watersheds in distress

The bill requires the Chief of the Division of Soil and Water Resources to adopt rules in accordance with the Administrative Procedure Act governing watersheds in distress notwithstanding any other statute to the contrary. The rules must do all of the following:

³⁴ R.C. 939.05(A).

³⁵ R.C. 939.05(B).

³⁶ R.C. 1511.022.



(1) Define "watersheds in distress" and "nutrient management plan";

(2) Establish technically feasible and economically reasonable standards to achieve a level of management and conservation practices in farming or silvicultural operations that will abate the degradation of the waters of the state by animal waste within watersheds in distress;

(3) Establish criteria for the development of nutrient management plans that address the methods, amount, form, placement, cropping system, and timing of all animal waste applications within watersheds in distress; and

(4) Establish requirements and procedures governing the development and the approval or disapproval of such nutrient management plans.³⁷

The bill states that a nutrient management plan that is approved by the Chief under the above rules constitutes an approved nutrient utilization plan for purposes of the bill's provisions governing agricultural pollution abatement.³⁸

Additional definitions

The bill defines several relevant terms and revises the definitions of several others. Under the bill, best management practices are practices or a combination of practices that are determined to be the most effective and practicable means of preventing or reducing agricultural pollution sources to a level compatible with the attainment of applicable water quality standards. They include structural and nonstructural practices, conservation practices, and operation and maintenance procedures.³⁹ Residual farm products are bedding, wash waters, waste feed, and silage drainage, including compost products resulting from the composting of dead animals in agricultural operations regulated by the Director of Agriculture when certain conditions are met.⁴⁰

The bill replaces the term "agricultural pollution" with "sediment pollution" in the Soil and Water Resources and Soil and Water Conservation Commission Laws and generally applies the existing definition of "agricultural pollution" to "sediment pollution" by removing references to animal waste.⁴¹ Finally, the bill replaces the term

³⁷ R.C. 1511.023.

³⁸ R.C. 939.03(A).

³⁹ R.C. 939.01(L).

⁴⁰ R.C. 939.01(F).

⁴¹ R.C. 1511.01(D).



"pollution abatement practice" with "erosion and sediment abatement practice" in the Soil and Water Resources Law. It generally applies the existing definition of "pollution abatement practice" to "erosion and sediment abatement practice" by specifying that it means, in part, any erosion control and sediment reduction structure, practice, or procedure and the design, operation, and management associated with it rather than any erosion control or animal waste pollution abatement facility, structure, or procedure and the operation and management associated with it.⁴² The bill makes conforming changes regarding the replacement of the term.⁴³

Application of fertilizer and manure

Prohibition and exemptions

The bill establishes prohibitions governing the application of fertilizer and manure in Lake Erie's western basin. The Director of Agriculture must administer and enforce the provisions governing the application of fertilizer. The Chief of the Division of Soil and Water Resources must administer and enforce the provisions governing the application of manure. However, the bill transfers that authority from the Chief to the Director of Agriculture on January 1, 2017.⁴⁴

Except as described below, the bill prohibits any person in the western basin from surface applying fertilizer or manure, as applicable, under any of the following circumstances:

(1) On snow-covered or frozen soil;

(2) When the top two inches of soil are saturated from precipitation;

(3) When the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding ½ inch in a 24-hour period.⁴⁵

The bill states that the prohibition does not affect any restrictions established in Concentrated Animal Feeding Facilities Law or otherwise apply to those entities or facilities that are permitted as concentrated animal feeding facilities under that Law.⁴⁶

⁴² R.C. 1511.01(C).

⁴³ R.C. 1511.01(F) and 1511.02(E)(5).

⁴⁴ Sections 11, 12, 13, and 14.

⁴⁵ R.C. 905.326(A) and 1511.024(A).

⁴⁶ R.C. 905.326(D) and 1511.024(D).



The bill specifies that the prohibition does not apply if a person in the western basin applies fertilizer or manure, as applicable, under any of the following circumstances:

(1) The fertilizer or manure application is injected into the ground.

(2) The fertilizer or manure application is incorporated within 24 hours of surface application.

(3) The fertilizer or manure application is applied onto a growing crop.

(4) The fertilizer application consists of potash or gypsum.

(5) In the event of an emergency, the Director or the Director's designee (hereinafter, Director) or the Chief or the Chief's designee (hereinafter, Chief), as applicable, provides written consent and the fertilizer or manure application is made in accordance with procedures established in the United States Department of Agriculture Natural Resources Conservation Service Practice Standard Code 590 prepared for Ohio.⁴⁷

Upon receiving a complaint by any person or upon receiving information that would indicate a violation of the above prohibition, the Director or the Chief may investigate or make inquiries into any alleged violation of the prohibition.

After receiving a complaint by any person or upon receiving information that would indicate a violation of the prohibition, the Director or the Chief may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged violation. If an individual denies access to the Director or the Chief, the Director or Chief may apply to a court of competent jurisdiction in the county in which the premises is located for a search warrant authorizing access to the premises to determine if a violation occurred. The court must issue the search warrant for the purposes requested if there is probable cause to believe that the person violated the prohibition. The finding of probable cause may be based on hearsay, provided that there is a reasonable basis for believing that the source of the hearsay is credible.⁴⁸

Enforcement

Under the bill, the Director or Chief may assess a civil penalty against a person that violates the above prohibition. The Director or Chief may impose a civil penalty

⁴⁷ R.C. 905.326(B) and 1511.024(B).

⁴⁸ R.C. 905.326(C) and 1511.024(C).



only if the Director or Chief affords the person an opportunity for an adjudication hearing under the Administrative Procedure Act to challenge the Director's or Chief's determination that the person violated the above prohibition. The person may waive the right to an adjudication hearing.⁴⁹

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director or Chief determines that a violation has occurred or is occurring, the Director or Chief may issue an order requiring compliance and assess the civil penalty. The order and the assessment of the civil penalty may be appealed in accordance with the appeals provisions of the Administrative Procedure Act.⁵⁰

A person that has violated the prohibition must pay a civil penalty in an amount established in rules adopted by the Director or Chief. The civil penalty cannot be more than \$10,000 for each violation. Each 30-day period during which a violation continues constitutes a separate violation.⁵¹

Under the bill, the western basin of Lake Erie is land in Ohio that is located in the St. Marys, Auglaize, Blanchard, Sandusky, Cedar-Portage, Lower and Upper Maumee, Tiffin, St. Joseph, Ottawa, and River Raisin watersheds.⁵²

Enforcement of Oil and Gas Law

Material and substantial violations

The bill expands the definition of "material and substantial violation" in the Oil and Gas Law to include submission of information that is knowingly falsified.⁵³

Registration containing background information

The bill requires a person who intends to engage in an activity regulated under the Oil and Gas Law to register with the Division of Oil and Gas Resources Management on a form prescribed by the Chief prior to engaging in the activity. The person must disclose on the form all felony convictions of or felony guilty pleas to any of the following that have occurred three years previous to the date of registration:

⁴⁹ R.C. 905.327(A) and 1511.025(A).

⁵⁰ R.C. 905.327(B) and 1511.025(B).

⁵¹ R.C. 905.327(C) and (D) and 1511.025(C) and (D).

⁵² R.C. 905.326(E) and 1511.01(J).

⁵³ R.C. 1509.01(EE).



- (1) Knowing violations of the Federal Water Pollution Control Act;
- (2) Purposeful violations of the state Water Pollution Control Law or rules adopted under it; or
- (3) Purposeful violations of any other state's laws that are no more stringent than the Federal Water Pollution Control Act.

The Chief may request additional information if the person has been convicted of or pled guilty to such a felony concerning the conviction or plea. However, the Chief cannot request information extending to the person's corporate parent entities. After the Chief has reviewed the submitted information and any additional information requested, the Chief may deny the person's registration by order. If the Chief issues such an order, the person may appeal to the Oil and Gas Commission or to the common pleas court in the county in which the activity that is the subject of the order is located. The bill prohibits the Chief from issuing a permit, registration certificate, or order authorizing an activity under the Oil and Gas Law or rules adopted under it to a person whose registration was denied.⁵⁴

The bill specifies that none of the following are required to submit the above registration containing background information:

- (1) A person or direct corporate subsidiary of a person that is registered with the Division prior to the bill's effective date;
- (2) A person that, prior to the bill's effective date, was issued a permit, registration certificate, or order authorizing an activity under the Oil and Gas Law or rules adopted under it; and
- (3) A person that, prior to the bill's effective date, was authorized to store, recycle, treat, process, or dispose of brine or other waste substances without a permit under conditions specified in current law.⁵⁵

Finally, under the bill, a person whose registration was denied by an order of the Chief may re-apply for a registration.⁵⁶

⁵⁴ R.C. 1509.051(A).

⁵⁵ R.C. 1509.051(B).

⁵⁶ R.C. 1509.051(C).

Brine transportation

The bill prohibits anyone from transporting brine without being registered by the Chief rather than only prohibiting anyone from transporting brine by vehicle without being registered by the Chief. It makes conforming changes in the statute governing registration by removing references to transportation by vehicle only. The bill then requires an applicant for a registration certificate to transport brine to list each pipeline that will be used to transport brine in addition to each vehicle, vessel, railcar, and container as in current law.⁵⁷

The bill states that for purposes of the provisions of the Oil and Gas Law governing transporter registration, "transport brine" excludes the movement of brine within a facility approved, permitted, or registered under that Law and "pipeline" excludes piping or other appurtenances associated with processing activity at a facility approved, permitted, or registered under that Law.⁵⁸

The bill prohibits a registered transporter from allowing any other person to use the transporter's registration certificate to transport brine.⁵⁹ It also prohibits a permit holder or the owner of a well for which a permit has been issued under the Oil and Gas Law from entering into an agreement with a person who is not registered to transport brine to dispose of brine at the well.⁶⁰

Under existing law, a transporter must include with an application for registration a disposal plan for brine that in part includes a list of all disposal sites to be used. A registered transporter that intends to revise the plan must apply to the Chief in order to do so. The bill retains the requirement that an application for revision must include a list of all disposal sites of brine currently transported, but eliminates a requirement that an application also list all sources of brine currently transported. It also eliminates a requirement that approvals and denials of revisions must be by order of the Chief.⁶¹

The bill requires each registered transporter to keep on each vessel, railcar, and container used to transport brine, in addition to each vehicle as in current law, a daily log and to keep a daily log for each pipeline used to transport brine. All logs must be

⁵⁷ R.C. 1509.222(A) and (B).

⁵⁸ R.C. 1509.222(G).

⁵⁹ R.C. 1509.222(D).

⁶⁰ R.C. 1509.223(A)(2).

⁶¹ R.C. 1509.222(E).



made available upon request of the Chief, the Chief's authorized representative, or a peace officer. The bill requires a daily log to include, in addition to information specified in current law, the date and time brine is loaded or transported through a pipeline and the amount of brine transported through a pipeline, as applicable.⁶²

The bill applies existing identification requirements for vehicles used to transport or dispose of brine to vessels, railcars, and containers, requiring registered transporters to identify them with reflective paint and to indicate specified information, including the transporter's name and telephone number. It also requires pipelines used to transport or dispose of brine to be legibly identified on the surface of the ground in a manner similar to the identification of underground gas lines. The identification must indicate specified information, including the transporter's name and telephone number.⁶³

Penalties

The bill eliminates minimum civil penalties for certain violations of the Oil and Gas Law as follows:

Type of violation	The bill	Current law
Violations of provisions of the Oil and Gas Law prohibiting the injection of brine or other waste substances without a permit or transporting brine without a registration certificate.	A civil penalty of not more than \$20,000 for each violation.	A civil penalty of not less than \$2,500 nor more than \$20,000 for each violation.
Violations of the prohibition against the improper placement of brine.	A civil penalty of not more than \$10,000 for each violation.	A civil penalty of not less than \$2,500 nor more than \$10,000 for each violation.
Violations of rules adopted under the Oil and Gas Law specifically relating to a well owner's duty to restore disturbed land surface.	No penalty.	A civil penalty of not more than \$5,000 for each violation. ⁶⁴

⁶² R.C. 1509.223(C).

⁶³ R.C. 1509.223(D).

⁶⁴ R.C. 1509.33.



The bill also revises criminal penalties for certain violations of that Law as follows:

Type of violation	The bill	Current law
Violations of any rules adopted under the Oil and Gas Law for which no specific penalty is provided.	No penalty.	(1) For a first offense: a fine of \$100 to \$1,000. (2) For each subsequent offense: a fine of \$200 to \$2,000.
Violations of rules adopted under that Law governing permitting requirements for the exploration for or extraction of minerals or energy other than oil or natural gas.	No penalty.	A fine of not more than \$5,000 for each violation.
Violations of provisions relating to the proper handling, storage, disposal, and transportation of brine except those discussed below.	Purposeful violation: (1) For a first offense: a fine of not more than \$10,000, imprisonment for not more than three months, or both. (2) For each subsequent offense: a fine of not more than \$20,000, imprisonment for not more than two years, or both.	Knowing violation: (1) For a first offense: a fine of \$10,000, imprisonment for six months, or both. (2) For each subsequent offense: a fine of \$20,000, imprisonment for two years, or both.
Violations of provisions specifically related to the improper placement of brine and injection permit requirements for brine and other waste substances.	Makes knowing violations a felony. Knowing violation: (1) For a first offense: a fine of not more than \$50,000, imprisonment for not more than one year, or both. (2) For each subsequent offense: a fine of not more than \$100,000, imprisonment for not more than two years, or both.	Knowing violation: (1) For a first offense: a fine of \$10,000, imprisonment for six months, or both. (2) For each subsequent offense: a fine of \$20,000, imprisonment for two years, or both. ⁶⁵

⁶⁵ R.C. 1509.99(A) to (C).



Additionally, the bill eliminates the requirement that the Attorney General, upon request of the Chief, commence a civil action against a person who violates rules adopted under the Oil and Gas Law.⁶⁶ The bill also specifies that for purposes of imposing both civil and criminal penalties under that Law, each day of a purposeful violation constitutes a separate offense rather than each day of violation as in current law.⁶⁷

Response costs and liability

Under the bill, anyone who violates the brine disposal permit requirements of the Oil and Gas Law or the provisions of that Law governing the transportation of brine is liable for any damage or injury caused by the violation and for the actual cost of rectifying the violation and conditions caused by it rather than the cost as in current law.⁶⁸

In addition, under the bill, if a person is convicted of or pleads guilty to a purposeful violation of the provisions of the Oil and Gas Law specifically relating to the improper placement of brine and governing permits to inject brine or other waste substances, the sentencing court may order the person to reimburse the state agency or a political subdivision for actual response costs incurred in responding to the violation, including the cost of rectifying the violation and conditions caused by it.⁶⁹

Mandatory pooling and unit operation

Mineral rights owned by Department of Transportation

Under existing law, the Oil and Gas Leasing Commission is responsible for administering the leasing of formations for the exploration for and development and production of oil and natural gas within land owned or controlled by state agencies. The governing statutes establish procedures for the nomination of parcels of land and for the leasing of formations within nominated parcels. The Commission is required to adopt rules establishing additional procedures and requirements.⁷⁰ As of the date of this analysis, members of the Commission have not been appointed.

⁶⁶ R.C. 1509.33(H).

⁶⁷ R.C. 1509.33(I) and 1509.99(G).

⁶⁸ R.C. 1509.33(G).

⁶⁹ R.C. 1509.99(E).

⁷⁰ R.C. 1509.73, not in the bill.



The bill requires the Chief of the Division of Oil and Gas Resources Management, notwithstanding the authority granted to the Commission, to do both of the following:

(1) Issue an order for mandatory pooling that encompasses a tract for which all of the mineral rights for oil or gas are owned by the Department of Transportation; and

(2) Issue an order for the unit operation of a pool or a part of a pool that encompasses a unit area for which all of the mineral rights for oil or gas are owned by that Department.⁷¹

Mandatory pooling procedures

The bill authorizes the owner who has the right to drill to request a mandatory pooling order under the Oil and Gas Law rather than the owner of the tract of land who is also the owner of the mineral interest as in current law. In addition, the bill allows an application for a mandatory pooling order to be submitted if a tract or tracts, rather than a single tract of land as in existing law, are of insufficient size or shape to meet the statutory minimum acreage requirements for drilling units for drilling a proposed well, including a proposed horizontal well, rather than for drilling a well as in existing law.

The bill also revises that Law regarding mandatory pooling to distinguish between mineral rights owners and surface rights owners as follows:

(1) Requires the Chief to notify all mineral rights owners of tracts proposed to be pooled by an order and included in the drilling unit of the filing of the application for a mandatory pooling order and of their right to a hearing rather than all owners of land within the area proposed to be included in the drilling unit;

(2) Requires a mandatory pooling order to allocate on a surface acreage basis a pro rata portion of the production to each tract pooled by the order rather than to the owner of each such tract, and requires the pro rata portion to be in the same proportion that the percentage of the tract's acreage, rather than the owner's acreage, is to the state minimum acreage requirements;

(3) Requires a mandatory pooling order to specify the basis on which each mineral rights owner of a tract, rather than each owner of a tract, pooled by the order must share all reasonable costs and expenses of drilling and producing if the mineral rights owner, rather than the owner of a tract, elects to participate in the drilling and operation of the well;

⁷¹ R.C. 1509.27 and 1509.28(B).



(4) Prohibits surface operations or disturbances to the surface of the land from occurring on a tract pooled by an order without the written consent of the surface rights owner of the tract rather than the written consent of or a written agreement with the owner of the tract; and

(5) Provides that a mineral rights owner of a tract pooled by a mandatory pooling order who does not elect to participate in the risk and cost of the drilling and operation of a well must be designated as a nonparticipating owner in the drilling and operation and is not liable for actions or conditions associated with the drilling or operation rather than applying those provisions to the owner of a tract.

Additionally, the bill requires the Chief to issue a drilling permit and an order for mandatory pooling not later than 30 days after a hearing on an application for mandatory pooling if the Chief finds that the application for mandatory pooling is in proper form and that mandatory pooling is necessary. Current law requires the Chief to take those actions after making such findings, but does not require the Chief to act within 30 days after the hearing. Finally, the bill increases from five to ten the maximum number of applications for mandatory pooling orders that a person may submit each year unless otherwise approved by the Chief.⁷²

Unit operation procedures

Continuing law requires the Chief to hold a hearing, on the Chief's motion or receipt of an application by the owners of 65% of the land area overlying the pool, to consider the need for the operation as a unit of an entire pool or part of a pool. The bill requires the Chief to hold the hearing not later than 45 days after the Chief's motion or receipt of an application.

The bill also requires the Chief to make an order providing for the unit operation of a pool or part of a pool not later than 30 days after the date of the hearing if the Chief finds that the operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting the operation. Current law requires the Chief to make an order providing for unit operation after making such findings, but does not specify a time by which the Chief must do so.

In addition, current law requires the Chief's order to prescribe a plan for unit operation that includes specified information and provisions, including a provision, if necessary, for carrying or otherwise financing any person who is unable to meet the

⁷² R.C. 1509.27.

person's financial obligations in connection with the unit, allowing a reasonable interest charge for that service. The bill requires the interest charge to be not less than 200%.

Finally, under the bill, if the Chief adopts rules or establishes guidelines for the purposes of the statute governing unit operation, the rules or guidelines cannot establish a prehearing publication notice requirement of more than three publications in a newspaper of daily general circulation in the applicable county or counties and cannot require the last date of publication to occur not more than five days prior to the hearing. Finally, any publication requirement established in such rules or guidelines must allow for publication in the newspaper of daily circulation that is nearest to the proposed area of unit operation if a newspaper of daily circulation is not available in the county in which the proposed area of unit operation is located.⁷³

Application of certain Oil and Gas Law provisions to public land

The bill applies to public land provisions in the Oil and Gas Law governing minimum distances of wells from the boundaries of tracts, voluntary and mandatory pooling, special drilling units, establishment of exception tracts to which minimum acreage and distance requirements do not apply, unit operation of a pool, and revision of an existing tract by a person holding a permit under that Law. The bill accomplishes the change by revising the definition of "tract" to mean a single, individual parcel of land or a portion of a single, individual parcel of land rather than a single, individually taxed parcel of land appearing on the tax list as in current law.⁷⁴

Property tax valuation of oil and gas reserves

The bill states that the "only method" for valuing oil and gas reserves is to employ an existing discounted cash flow formula. Under current law, this formula appears to apply only for the purposes of calculating the tax value of oil and gas reserves exploited by an active well that was not the subject of a recent arm's length sale.

Under continuing law's discounted cash flow valuation method, producing oil and gas reserves exploited by wells that were not recently sold in an arm's length transaction are valued, for real property tax purposes, under a form of net income capitalization valuation. Generally, the gross value of production is computed on the basis of the five-year average price of oil and gas from Ohio wells, and the gross production value is discounted over a ten-year period to determine the net present value of the oil or gas. Production volume is adjusted for "flush" production and

⁷³ R.C. 1509.28.

⁷⁴ R.C. 1509.01(J).



production forced by using various secondary recovery methods (such as pressurized injection), and an annual rate of decline in production is stipulated. Gross value is adjusted by netting out royalty expenses, capital recovery expenses, and operating expenses. The unit of production for oil is a barrel; the unit for gas is MCF. No per-well average of production is employed, and extractions from wells that share the same meter must be apportioned according to each well.⁷⁵

The discounted cash flow formula appears under current law to apply only for the purpose of calculating the taxable value of oil and gas reserves exploited by a "developed and producing well that has not been the subject of a recent arm's length sale."⁷⁶ Indeed, the formula accepts production inputs only from wells developed and producing for the tax year.⁷⁷ Methods that county auditors are required or allowed to use to value undeveloped oil and gas reserves are not explicitly stated in current law, which requires an auditor to increase the value of land or mineral rights if the auditor determines that their value has increased because of the discovery of oil or gas, construction of production facilities, commencement of drilling, or other factors.⁷⁸ Under a rule adopted by the Tax Commissioner, oil and gas rights that have been separated from surface rights must be valued in accordance with the Commissioner's "annual journal entry . . . in the matter of adopting a uniform formula in regard to the valuation of oil and gas deposits in the eighty-eight counties of the state."⁷⁹ This annual entry likely refers to the discounted cash flow formula, which sets value based on a reserve's production. Thus, under continuing administrative rules, undeveloped oil and gas reserves that have been separated from adjoining land appear to have a taxable value of zero, even though the statutory formula used to calculate that value purports to apply only to reserves exploited by producing and developed wells not recently sold at an arm's length sale.

The bill specifies that county auditors may employ no method other than the discounted cash flow formula to determine the tax value of all oil or gas reserves, even in the absence of a developing and producing well.⁸⁰ It is not clear how the bill changes the property tax valuation methods of oil and gas reserves that exist under current law, if it changes them at all. The bill may simply confirm the Tax Commissioner's rule that

⁷⁵ R.C. 5713.051.

⁷⁶ R.C. 5713.051(B) and (C).

⁷⁷ R.C. 5713.051(A)(6).

⁷⁸ R.C. 5713.05, not in the bill.

⁷⁹ O.A.C. 5703-25-11(I).

⁸⁰ R.C. 5713.051(D).



suggests that undeveloped oil and gas reserves may be valued only according to that formula. Conversely, the bill's new language could override continuing law's explicit admonition that the discounted cash value formula applies only to producing oil and gas reserves. It also is not clear whether the bill requires county auditors to apply the discounted cash flow formula to oil and gas reserves exploited by a well and recently sold at arm's length or to undeveloped oil and gas mineral interests recently sold at arm's length. (See **COMMENT.**)

The bill states that it clarifies the General Assembly's intent that the discounted cash flow formula "continues to represent" the only method of valuing oil and gas reserves for property tax purposes.⁸¹ The valuation changes, if any, apply with respect to property added to the tax list, or charged with past-due tax, on or after the bill's effective date.⁸²

Application fee for permit to plug back an existing oil or gas well

The bill requires an application for a permit to plug back an existing oil or gas well to be accompanied by a nonrefundable fee as follows:

(1) \$500 for a permit to conduct activities in a township with a population of fewer than 10,000;

(2) \$750 for a permit to conduct activities in a township with a population of 10,000 to 14,999; or

(3) \$1,000 for a permit to conduct activities in either a township with a population of 15,000 or more or a municipal corporation regardless of population.

The bill accomplishes the change by removing the exemption in current law under which such an application need not be accompanied by a fee.⁸³

Emergency planning reporting requirements pertaining to oil and gas facilities

The bill revises certain requirements governing the reporting of hazardous materials associated with oil and gas operations. Under current law, persons regulated under the Oil and Gas Law must report to the Division of Oil and Gas Resources Management specified information regarding hazardous materials that is required to be

⁸¹ Section 10(A).

⁸² Section 10(B) and (C).

⁸³ R.C. 1509.06(G).



reported by the federal Emergency Planning and Community Right-to-Know Act (EPCRA). The Chief of the Division, in consultation with the Emergency Response Commission, must adopt rules that specify the information that must be included in an electronic database that the Chief creates and hosts. The information must be information that the Chief considers to be appropriate for the purpose of responding to emergency situations that pose a threat to public health or safety or the environment.

The bill requires all persons that are regulated under the Oil and Gas Law and rules adopted under it, rather than only owners or operators of facilities that are regulated under the Law, to submit the above information to the Chief. As a result, the bill requires the information to be filed with the Chief on or before March 1 of each year rather than as part of an owner or operator's statement of production of oil, gas, and brine for a specified period of time as provided in current law.⁸⁴

The bill retains, with certain modifications, provisions to be included in the rules governing the database and the information submitted for it. Specifically, the bill's modifications require the Chief's rules to do all of the following:

(1) Require that the information be consistent with the information that a person regulated under the Oil and Gas Law is required to submit under EPCRA;

(2) Ensure that the Emergency Response Commission, the local emergency planning committee of the emergency planning district in which a facility is located, and the fire department that has jurisdiction over a facility, rather than the Commission and every local emergency planning committee and fire department in Ohio as in current law, have access to the database;

(3) Ensure that the information submitted for the database be made immediately available, rather than available via the Internet or a system of computer disks as in current law, to the above entities; and

(4) Ensure that the information includes the information required to be reported under the Emergency Planning Law and rules adopted under it governing the submission of an emergency and hazardous chemical inventory form.⁸⁵

As a result of the modification discussed in item (1), above, the bill eliminates current law that requires, at a minimum, the information in the database to include the

⁸⁴ R.C. 1509.11 and 1509.231(A).

⁸⁵ R.C. 1509.23 and 1509.231(B).



information that a person that is regulated under the Oil and Gas Law is required to submit under EPCRA.⁸⁶

For purposes of the above provisions, the bill applies the definition of "facility" in the Emergency Planning Law. Under that Law, a facility is all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.⁸⁷

The bill then revises a requirement governing the filing of information under the state Emergency Planning Law. Under the bill, an owner or operator of a facility that is regulated under the Oil and Gas Law generally is deemed to have satisfied all of the inventory requirements established under the Emergency Planning Law by complying with the requirements established by the bill. Current law instead specifies that any such owner or operator who has filed a log and production statement with the Chief in accordance with the Oil and Gas Law is generally deemed to have satisfied all of the submission and filing requirements established under the Emergency Planning Law.⁸⁸

Finally, the bill makes conforming changes.⁸⁹

Brine storage permit financial assurance and insurance requirements

Financial assurance requirement

The bill prohibits a person that has been issued a permit or order to store, recycle, treat, or process brine or other waste substances (hereafter brine storage permit) from failing to satisfy the financial assurance requirements established by the bill. However, the bill excludes the following persons from the prohibition:

(1) An owner conducting production operations on a well pad or well site pursuant to a drilling permit for which the owner has satisfied the insurance and bonding requirements established by current law and the bill (see below); and

⁸⁶ R.C. 1509.23(B).

⁸⁷ R.C. 3750.01(D), not in the bill.

⁸⁸ R.C. 3750.081(A).

⁸⁹ R.C. 1509.23, 3750.081(B), and 3750.13(A)(4).



(2) An owner that is storing, recycling, treating, or processing brine or other waste substances on a well pad or well site for which the owner has satisfied those insurance and bonding requirements.⁹⁰

The bill requires a brine storage permit applicant to execute and file with the Chief a surety bond or other specified form of financial assurance. The surety bond must be in an amount established in rules adopted by the Chief, but cannot exceed \$250,000. The bond must be payable to the state and conditioned on the performance of all requirements established in the Oil and Gas Law and rules adopted under it. The bill establishes standard requirements and procedures governing the issuance and deposit of such surety bonds. The bill authorizes a brine storage permit applicant, in lieu of a surety bond, to deposit with the Chief cash, negotiable certificates of deposit, or irrevocable letters of credit and establishes requirements and procedures governing their issuance and deposit.⁹¹

Under the bill, such a person must maintain the surety bond or other financial assurance until the person complies with rules governing the closure of the location for which a brine storage permit was issued. If such rules are not adopted, the person must maintain the surety bond or other financial assurance until the Chief inspects the location for which a brine storage permit was issued and issues a written approval of closure.⁹²

Bond forfeiture order

The Chief may issue a bond forfeiture order to a person who has been issued a brine storage permit if the Chief finds that the person has failed to comply with a final nonappealable enforcement order or a compliance agreement. The bond forfeiture order must include provisions that do all of the following:

- (1) Specify the violation giving rise to the order;
- (2) Declare that the entire amount of the bond or other form of financial assurance is forfeited; and
- (3) If the bond is supported by or in the form of cash or negotiable certificates of deposit, declare the cash or certificates property of the state.

⁹⁰ R.C. 1509.211(A).

⁹¹ R.C. 1509.211(B).

⁹² R.C. 1509.211(C).



The Chief must certify the total forfeiture to the Attorney General who must collect the amount of the forfeiture.⁹³ All money collected from such forfeitures must be deposited in the existing Oil and Gas Well Fund and used to restore the applicable brine storage location.⁹⁴

Liability insurance requirement

The bill also requires an applicant for a brine storage permit to obtain liability insurance coverage in an amount established in rules adopted by the Chief, which cannot exceed \$4 million. The insurance must provide coverage to pay damages for injury to persons or damage to property caused by the location for which the permit was issued.

The bill excludes from the liability insurance coverage requirement a person using self-insurance. A self-insured person must file with the Chief a certification of self-insurance specifying the amount of coverage and its effective dates as well as contact information if the entity providing evidence of self-insurance is not the applicant. A self-insured person must notify the Chief if the person is no longer able to maintain evidence of financial responsibility in the form of self-insurance in the specified amount.⁹⁵

Rules

The bill authorizes the Chief to adopt rules establishing requirements and procedures concerning the financial assurance and insurance requirements established by the bill.⁹⁶

Oil and gas drilling permit self-insurance

The bill excludes a person that has been issued a drilling permit under the Oil and Gas Law and that is self-insured from the current requirement to obtain liability insurance coverage. A self-insured person must file with the Chief all of the following:

(1) A certification of self-insurance stating the amount of coverage for which financial responsibility is being established by self-insurance;

(2) The effective dates of coverage; and

⁹³ R.C. 1509.211(D).

⁹⁴ R.C. 1509.211(E).

⁹⁵ R.C. 1509.211(F).

⁹⁶ R.C. 1509.211(G).



(3) The full legal name and contact information of the entity providing evidence of self-insurance if different from that of the applicant.

A self-insured person must notify the Chief if the person is no longer able to maintain evidence of financial responsibility in the form of self-insurance in the amount certified.⁹⁷

Limited liability companies

The bill applies the Oil and Gas Law to a limited liability company by including such a company in the definition of "person" in that Law.⁹⁸

Country of origin disclosure form for certain steel products used in oil and gas production

The bill extends by two years, to March 31, 2017, the beginning date by which an owner of a well must file with the Division of Oil and Gas Resources Management a country of origin disclosure form. The form specifies the country in which each oil country tubular good initially used in a production operation on or after that date was manufactured unless that country cannot be determined by the owner. Oil country tubular goods are circular steel pipes that are seamless or welded and used in drilling for oil or natural gas, including casing, tubing, and drill pipe, whether finished or unfinished, and steel couplings and drill collars used with the pipes.⁹⁹

Telecommunications

Withdrawal or abandonment of basic local exchange service

The bill would lift the current prohibition against an incumbent local exchange carrier withdrawing or abandoning basic local exchange service (BLES) in an exchange area if:

(1) The Federal Communications Commission (FCC) allows the carrier to withdraw the interstate-access component of its basic local exchange service;

(2) The carrier withdraws that component in the exchange area; and

(3) The carrier gives at least 90 days' prior notice to the PUCO and to its affected customers.

⁹⁷ R.C. 1509.07(A)(4).

⁹⁸ R.C. 1509.01(T).

⁹⁹ R.C. 1509.16.



Along the same lines, if (1) and (2) above occurred and the notice requirement was met, the bill would relieve the carrier of its carrier-of-last-resort obligation with regard to that exchange area. The carrier-of-last-resort obligation is the requirement that an incumbent local exchange carrier must provide BLES to all persons or entities in its service area requesting BLES (and that BLES must be provided on a reasonable and nondiscriminatory basis).¹⁰⁰

Under current law, there are also customer-service requirements for the provision of BLES, such as requirements for service installation and reliability. These requirements would not apply to a carrier's service in an exchange area where the carrier withdraws or abandons BLES under the bill, since the requirements apply only to the provision of BLES.¹⁰¹ The bill expressly states that any "voice service" to which customers are transitioned following the withdrawal of BLES is *not* BLES. Therefore, voice service would not be subject to any requirements governing BLES. "Voice service" is described as including "all of the applicable functionalities" described in federal regulations.¹⁰² These regulations describe eligibility requirements for federal universal service support in rural, insular, and high-cost areas. The regulations require the provision of voice grade access to the public switched network or its functional equivalent, minutes of use for local service provided at no additional charge to end users, access to emergency service, and toll limitation services to qualifying low-income consumers.¹⁰³

Terminology explained

"Incumbent local exchange carrier"

An incumbent local exchange carrier (commonly called an "ILEC") is, under continuing law, the local exchange carrier that, on February 8, 1996 (the date of enactment of the federal Telecommunications Act of 1996), (1) provided telephone exchange service in an area and (2) was deemed to be a member of the Exchange Carrier Association under federal regulations or, since February 8, 1996, became a successor or

¹⁰⁰ R.C. 4927.10 and 4927.11(A).

¹⁰¹ R.C. 4927.08, not in the bill.

¹⁰² R.C. 4927.01(A)(1) and (18).

¹⁰³ 47 C.F.R. 54.101(a).



assign of a member of the Exchange Carrier Association.¹⁰⁴ According to the Public Utilities Commission (PUCO), as of 2012 there were 43 such carriers in Ohio.¹⁰⁵

"Interstate-access component"

The bill defines "interstate-access component" as the portion of carrier access that is within the jurisdiction of the FCC. "Carrier access" is defined under continuing law as access to and usage of telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks and includes special access.¹⁰⁶

"Basic local exchange service"

The bill defines BLES as residential-end-user access to and usage of telephone-company-provided services over a single line or small-business-end-user access to and usage of such services over the primary access line of service, which in both cases are not bundled or packaged services, that enables the customer to originate or receive voice communications within a local service area as that area existed on September 13, 2010, or as that area is changed with the PUCO's approval. BLES includes services such as local dial tone service, flat-rate telephone exchange service (for residential end users), touch tone dialing service, access to and usage of 9-1-1 services, and other basic services.¹⁰⁷

PUCO process for identifying providers of voice service

If a residential customer receives notice of a BLES withdrawal or abandonment, and the customer will be unable to obtain voice service upon the withdrawal or abandonment, the bill permits the customer to petition the PUCO. The petition must be filed not later than 60 days prior to the effective date of the withdrawal or abandonment. The PUCO must then issue an order disposing of the petition not later than 60 days after the petition's filing. If the PUCO determines after an investigation that no voice service will be available to the customer at the customer's residence, the PUCO must attempt to identify a willing provider. If no willing provider is identified, the PUCO may order the withdrawing or abandoning carrier to provide the voice

¹⁰⁴ R.C. 4927.01(A)(5).

¹⁰⁵ "Telephone Service Areas in Ohio: 2012," available at <<http://www.puco.ohio.gov/puco/index.cfm/utility-maps/#sthash.DIRcF2R6.dpbs>> (click the link for "8.5 x 11 (PDF)" under "Telephone Maps") (last visited October 24, 2014).

¹⁰⁶ R.C. 4927.01(A)(3) and (7).

¹⁰⁷ R.C. 4927.01(A)(1).



service for 12 months. The willing provider or the carrier, as applicable, may utilize any technology or service arrangement to provide the voice service.

The PUCO shall evaluate, during any 12-month period in which a carrier has been ordered to provide voice service, whether an alternative voice service exists for the affected customer. If no alternative voice service is available, the PUCO may extend the order for one additional 12-month period.¹⁰⁸

Collaborative process to address the network transition

The bill requires the PUCO, not later than 90 days after the provision's effective date, to establish a collaborative process to address the Internet-protocol-network transition, with all of the following:

- Incumbent local exchange carriers;
- Any competitive local exchange carriers affected by the transition;
- The Office of the Ohio Consumers' Counsel;
- At the invitation of the PUCO, other interested consumer representatives and members of the General Assembly.

The collaborative process must focus on the Internet-protocol-network transition processes underway at the Federal Communications Commission and the issues of universal connectivity, consumer protection, public safety, reliability, expanded availability of advanced services, and competition. The bill requires the industry participants to strive to address unserved or underserved areas with wireline or wireless alternatives. The process must ensure that public education concerning the transition is thorough. The process must also address the availability of wireless and wireline voice services to consumers of basic local exchange service, upon the eventual withdrawal of BLES, and how best to make those consumers aware of the available options.

The process must include a review of the number and characteristics of BLES customers in Ohio, an evaluation of what alternatives are available to them, and must embark on an education campaign plan for those customers' eventual transition to advanced services.

If the collaborative process identifies residential BLES customers who will be unable to obtain voice service upon the withdrawal or abandonment of basic local

¹⁰⁸ R.C. 4927.10(B).

exchange service, the PUCO may find those customers to be eligible for the process described above (see "**PUCO process for identifying providers of voice service**"), regardless of whether they have filed petitions with the PUCO. The bill states that any customers identified through the collaborative process must be treated as though they filed timely petitions under the bill's provisions.

The collaborative process must, pursuant to the PUCO's rules, respect the confidentiality of any data shared with those involved in the process.¹⁰⁹

Transition to an Internet-protocol network

The bill requires the PUCO to plan for the transition, consistent with the directives and policies of the FCC, from the current public switched telephone network to an Internet-protocol network that will stimulate investment in the Internet-protocol network in Ohio and that will expand the availability of advanced telecommunications services to all Ohioans. The transition plan must include a review of statutes or rules that may prevent or delay an appropriate transition. The bill requires the PUCO to report to the General Assembly on any further action required to be taken by the General Assembly to ensure a successful and timely transition.¹¹⁰

Rulemaking

The bill requires the PUCO to adopt rules to implement the bill's provisions related to the withdrawal or abandonment of BLES, and to bring its rules into conformity with the bill. Rules adopted or amended must include provisions for reasonable customer notice of the steps to be taken during, and the actions resulting from, the transition plan described above (see "**Transition to an Internet-protocol network**"). Rules adopted or amended must be consistent with the FCC's rules.

If the PUCO fails to comply with these rulemaking requirements before the FCC adopts an order permitting the withdrawal of the interstate-access component of BLES, the bill states that any rule of the PUCO that is inconsistent with that order shall not be enforced.¹¹¹

¹⁰⁹ Section 8 and R.C. 4927.10(B).

¹¹⁰ Section 7.

¹¹¹ Section 9.



Rights and obligations not affected by the bill

Contractual obligations and federal rights and obligations

The bill states that it does not affect any contractual obligation, including agreements under the federal Telecommunications Act of 1996, as amended, or any right or obligation under federal law or rules.¹¹²

Carrier access, pole attachments, and conduit occupancy

The bill ensures that an incumbent local exchange carrier that withdraws or abandons BLES under the bill would still be subject to the PUCO's oversight of the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy. Current law on this subject generally requires that the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy, provided in Ohio by a telephone company *that is a public utility*, be approved and tarified as prescribed by the PUCO. The bill adds that this requirement also applies when an *incumbent local exchange carrier* provides carrier access, pole attachments, or conduit occupancy. The reason for the addition is that an incumbent local exchange carrier is not a public utility with respect to its provision of certain advanced and newer services. So, if an incumbent local exchange carrier were to withdraw or abandon BLES and instead provide only an advanced service, that carrier would no longer be a public utility. Therefore, without the bill's addition, that carrier could be considered no longer subject to the PUCO's regulation of carrier access, pole attachments, and conduit occupancy.

The bill makes parallel changes in two other provision of law governing pole attachments and conduit occupancy:

- The bill requires *incumbent local exchange carriers*, in addition to telephone companies that are public utilities, to permit pole attachments and conduit occupancy upon reasonable terms and conditions and the payment of reasonable charges.
- The bill requires an *incumbent local exchange carrier*, in addition to a telephone company that is a public utility, to obtain PUCO approval before withdrawing a tariff for pole attachments or conduit occupancy, or abandoning the service of providing pole attachments or conduit occupancy.

Finally, the bill states that its provisions related to the withdrawal or abandonment of BLES do not affect carrier-access requirements under Ohio law, or

¹¹² R.C. 4927.101(A)(1) and (2) and (B).



rights or obligations under Ohio law governing pole attachments and conduit occupancy.¹¹³

High volume dog breeders

Financial assurance

Under the Dog Breeding Kennels and Retailers Law, rules adopted by the Director of Agriculture must establish a requirement that a high volume breeder submit with a license application evidence of either insurance or a surety bond payable to the state to ensure compliance with that Law and rules adopted under it. The bill adds that the rules must allow an applicant to submit instead cash, negotiable certificates of deposit, or irrevocable letters of credit. It establishes standard requirements and procedures governing their issuance and deposit.

The bill applies the required face value of the insurance coverage or bond to the cash, certificates of deposit, and letters of credit. The face value is based on the number of adult dogs kept, housed, and maintained (hereafter kept). The bill revises one of the categories by establishing a face value of \$20,000 if 51 to 80 adult dogs are kept and \$50,000 if more than 80 adult dogs are kept. Currently, the face value is \$50,000 if more than 50 adult dogs are kept. The bill retains the required face value of \$5,000 if not more than 25 adult dogs are kept and \$10,000 if 26 to 50 adult dogs are kept.¹¹⁴

High volume breeder license renewal

The bill eliminates certain requirements with which an applicant for renewal of a high volume breeder license must comply. Current law requires a person who is proposing to continue the operation of a high volume breeder to apply for the license in the same manner as for an initial license, which includes providing both of the following:

(1) A signed release permitting the performance of a background investigation regarding the applicant; and

(2) Photographic evidence documenting the facilities where dogs will be kept, housed, and maintained by the applicant. The Director may conduct an inspection of the facilities that are the subject of an application in addition to reviewing photographic evidence submitted by an applicant for a license.

¹¹³ R.C. 4905.71, 4927.01(A)(5) and (14), 4927.07(E), 4927.101(A)(3) and (4) and (B), and 4927.15; R.C. 4905.02(A)(5), not in the bill.

¹¹⁴ R.C. 956.03(E).



Under the bill, an applicant for a renewal license need not provide the photographic evidence. However, the Director may conduct an inspection of the facilities that are the subject of the application. Additionally, the applicant need not provide the signed release permitting a background investigation, provided that the applicant has not had any new convictions of or has not pleaded guilty to a violation of a local, state, or federal law prohibiting animal cruelty, animal fighting, or domestic violence during the immediately preceding year and the applicant affirms that the applicant has not had any such new convictions or guilty pleas on the application, and provided that the Director does not request the applicant to provide a signed release.¹¹⁵

Deer sanctuary licenses

The bill creates an annual deer sanctuary license, which authorizes a person to engage in the raising or rehabilitation of white-tailed deer that are not captive white-tailed deer and are not for sale or personal use. If the Director of Agriculture receives a written application and determines that it is made in good faith and is complete, the Director must issue a deer sanctuary license to the applicant upon payment of the license fee established in rules adopted under the bill. A license expires annually on March 31 and maybe renewed.¹¹⁶ The bill prohibits a licensee from releasing any deer held under the license into the wild.¹¹⁷

Under the bill, the Director must to do both of the following:

(1) Inspect all licensed deer sanctuaries in accordance with rules adopted under the bill; and

(2) Adopt rules that do all of the following:

--Specify information to be included in a license application, including a description of an applicant's facility demonstrating that it will comply with the specifications established in rules;

--Establish facility specifications for a licensed deer sanctuary;

--Establish a fee for the issuance of a license;

--Establish procedures governing the inspection of licensed deer sanctuaries;

¹¹⁵ R.C. 956.04(D).

¹¹⁶ R.C. 901.80(A).

¹¹⁷ R.C. 901.80(B).



--Establish the manner in which a deer must be transported to a licensed deer sanctuary;

--Establish a procedure for and requirements governing the renewal of a deer sanctuary license; and

--Establish any other requirements and procedures that the Director determines are necessary.¹¹⁸

Money from license fees must be credited to the Deer Sanctuary Fund, which the bill creates in the state treasury. The Director must use money in the Fund to administer the above provisions and rules adopted under them.¹¹⁹

Review compliance certificates

The bill eliminates provisions governing review compliance certificates issued under the Concentrated Animal Feeding Facilities Law, the operation of which has expired. Sub. S.B. 141 of the 123rd General Assembly, which took effect March 15, 2001, transferred the regulation of animal waste disposal at concentrated animal feeding facilities (CAFFs) from the Environmental Protection Agency to the Department of Agriculture. The act required the Director of Agriculture to finalize a program under which the Director was given the authority to issue, in part, permits to install and permits to operate for CAFFs. The Director finalized the program in August, 2002. Prior to the finalization, the Director of Environmental Protection issued installation permits for the installation or modification of disposal systems for animal waste that involved 1,000 or more animal units or any parts of those disposal systems in compliance with the Federal Water Pollution Control Act.

Current law specifies that on and after the date that is two years after the date on which the Director of Agriculture finalized the program for the issuance of permits to install for CAFFs, which was in August, 2004, and until the issuance of a permit to operate, no person lawfully could operate a CAFF in existence prior to August, 2004, unless the person applied for a review compliance certificate issued by the Director. Upon the Director's review of specified information concerning a facility and inspection of the facility, the Director had to issue a review compliance certificate to the facility if the Director determined that it satisfied certain criteria. A permit to operate had to be obtained prior to expiration of the review compliance certificate, which was valid for

¹¹⁸ R.C. 901.80(C) and (D).

¹¹⁹ R.C. 901.80(E) and 901.801.



five years. Because the above deadlines have passed, the statutes governing review compliance certificates are obsolete.¹²⁰

Issuance of licenses under Auctioneers Law

The bill creates an exception to current law that prohibits the Department of Agriculture from issuing or renewing a license to act as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer if the applicant or licensee has been convicted of a felony or crime involving fraud or theft in this or another state at any time during the ten years immediately preceding application or renewal. Under the bill, the Department may issue or renew such a license if the applicant or licensee has not been convicted of more than one felony or crime involving fraud or theft in this or another state at any time during the ten years immediately preceding application or renewal if the conviction does not directly relate to conducting an auction or acting as an auctioneer.¹²¹

Elimination of state safety audits, inspections, and training for industrial minerals mining

The bill eliminates requirements in current law that the Chief of the Division of Mineral Resources Management conduct inspections and safety audits and provide safety training for industrial minerals mining. Specifically, the bill eliminates the requirements that the Chief do all of the following:

(1) Conduct a safety audit at an industrial minerals mining operation (hereafter mining operation) if the operator has requested the Division of Mineral Resources Management to conduct mine safety training;

(2) Conduct additional safety audits at any mining operation if requested by the operator;

(3) Prepare a report that describes the general conditions of the mining operation, including any hazardous conditions, violations of safety standards, and the nature and extent of any hazardous condition or violation found and the corresponding remedy for each hazardous condition or violation;¹²²

¹²⁰ R.C. 903.01, 903.03, 903.04 (repealed), 903.07, 903.09, 903.10, 903.11, 903.12, 903.13, 903.16, 903.17, and 903.25.

¹²¹ R.C. 4707.02(A).

¹²² R.C. 1514.42 (repealed).



(4) Annually conduct a safety performance evaluation of all mining operations in Ohio in accordance with rules;¹²³

(5) Conduct mine safety training for the employees of a mining operation if the operator requests the Division to conduct that training;¹²⁴

(6) Enforce the safety standards established in rules when conducting inspections and enforce other rule-based standards governing safety audits and inspections;¹²⁵ and

(7) Inspect a mining operation that is not federally inspected or if an operation is identified through a safety performance evaluation as having lost-time accidents in an amount greater than the national average, if a fatality of a miner occurs, or if a life-threatening injury of a miner occurs at an operation.¹²⁶

Consequently, the bill eliminates a requirement that if during an inspection or a safety audit, the Chief finds a condition or practice at a mining operation that could reasonably be expected to cause the death of or imminent serious physical harm to an employee of the operation, the Chief immediately must issue orders to safeguard the employees, notify the operator of the condition or practice, require the operator to abate the condition or practice within a reasonable period of time, and complete a report.¹²⁷

In addition, the bill eliminates the requirement that the operator of a mining operation employ a certified mine foreperson or a person who is qualified to conduct examinations of mining operations for purposes of federal mining laws and the qualifications for and the examination of a certified mine foreperson. As a result, the bill also eliminates the authorization for an operator, in lieu of employing a certified mine foreperson, to submit to the Chief a detailed training plan under which persons who qualify under the plan may conduct and document examinations at the mining operation.¹²⁸

The bill also eliminates provisions under which money in the Surface Mining Fund collected from applicable severance taxes must be used in part for the above mine

¹²³ R.C. 1514.45 (repealed).

¹²⁴ R.C. 1514.46 (repealed).

¹²⁵ R.C. 1514.43 (repealed).

¹²⁶ R.C. 1514.41 (repealed).

¹²⁷ R.C. 1514.44 (repealed).

¹²⁸ R.C. 1514.47 (repealed).



safety training and under which money in the Mine Safety Fund must be used in part for the purpose of administering all of the above requirements.¹²⁹

As a result of the above changes, the bill eliminates the requirement that the Chief, in consultation with a statewide association that represents the industrial minerals mining industry, adopt rules that generally establish all of the following:

(1) Safety standards governing mining operations and the criteria, standards, and procedures governing safety performance evaluations;

(2) Requirements regarding the reporting and investigation of accidents;

(3) The time, place, and frequency of mine safety trainings; and

(4) Minimum qualifications necessary to take the certified mine forepersons examination, fees governing the renewal of certificates, and requirements and procedures for the approval of training plans for the use of qualified persons in lieu of certified mine foreperson.¹³⁰

Finally, the bill makes necessary conforming changes.¹³¹

Great Lakes Compact

Overview

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 (hereafter Compact) for the purpose of protecting the watershed of the Great Lakes and certain portions of the St. Lawrence River. 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

¹²⁹ R.C. 1514.11 and 1561.24.

¹³⁰ R.C. 1514.40 (repealed).

¹³¹ R.C. 1514.09.



cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the source watershed.¹³²

Decision-making standard and presumption of compliance

Current law requires the Chief of the Division of Soil and Water Resources to issue a withdrawal and consumptive use permit for a facility if the Chief determines that the facility meets the decision-making standard in the Compact. The bill establishes a presumption with regard to one portion of the decision-making standard. The bill also restates the Compact's decision-making standard in the Ohio statute that implements the Compact.¹³³

Currently, one part of the decision-making standard in the Compact requires a withdrawal and consumptive use to be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed.¹³⁴ The bill adds that if the individual or cumulative consumptive uses are at or below the consumptive use total (see below), it is presumed that the 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 Great Lakes basin considered as a whole or of the Lake Erie watershed considered as a whole. In addition, if the individual or cumulative consumptive uses are above the consumptive use total and the consumptive uses will result in not more than 1% of the long-term mean annual runoff (see below) from the state's portion of the Lake Erie basin and when the average Lake Erie water level is at least one-half foot above the Lake Erie low water datum (see below) for any month during the preceding 12 months, it is presumed that the 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 Great Lakes basin considered as a whole or of the Lake Erie watershed considered as a whole.¹³⁵

The bill requires the Chief to calculate the long-term mean annual runoff for the state's portion of the Lake Erie basin utilizing the best available data, including stream gauge data from the U.S. Geological Survey, U.S. Army Corps of Engineers, and Natural Resources Conservation Service, and any other data the Chief determines to be

¹³² R.C. 1522.01 – Section 1.2 and Section 4, not in the bill.

¹³³ R.C. 1522.13(A)(1), (3), (4), and (5).

¹³⁴ R.C. 1522.13(B).

¹³⁵ R.C. 1522.13(A)(2)(a).



appropriate. The period of record must be 50 years prior to the bill's effective date or the total period of record, whichever is less. The Chief must recalculate the long-term mean annual runoff every ten years utilizing the best available data for the most recent, previous 50 years, or the total period of record, whichever is less.¹³⁶

The bill defines the following:

(1) "Long-term mean annual runoff" as the total volume of runoff from all streams and direct overland flow from the Ohio portion of the Lake Erie basin into Lake Erie for a specified period of time as calculated by the Chief under the bill;

(2) "Lake Erie low water datum" as the low water datum established for Lake Erie by the coordinating committee on Great Lakes basic hydraulic and hydrologic data, which is set at an elevation of 569.2 (IGLD-1985);

(3) "Average Lake Erie water level" as the average monthly lake level as calculated by the national oceanic and atmospheric administration from four water level gauges located at Toledo, Cleveland, Port Stanley, and Port Colborne;

(4) "Consumptive use total" as the total consumptive use in the Lake Erie basin by all water withdrawal facilities registered under current law during 2013.¹³⁷

Municipal wells in Lake Erie drainage basin

The bill states that nothing in the Ohio statutes that implement the Great Lakes Compact precludes a municipal corporation, the boundaries of which are located in both the Lake Erie drainage basin and the Ohio river drainage basin, from drilling wells in the Lake Erie drainage basin to supply its public water system, provided that the aggregate withdrawal capacity of those wells does not exceed more than one million gallons per day and provided that the municipal corporation complies with all applicable requirements governing those wells. "Public water system" has the same meaning as in the Safe Drinking Water Law.¹³⁸

Youth deer and wild turkey permits for mobility impaired or blind persons

The bill requires that any mobility impaired or blind person who is under 18, an Ohio resident, and unable to hunt without the assistance of another person be issued a free youth deer or wild turkey permit, as applicable. The bill also requires that a person

¹³⁶ R.C. 1522.13(D).

¹³⁷ R.C. 1522.10(P) to (S).

¹³⁸ R.C. 1522.25.



who is assisting such a mobility impaired or blind person and who is an Ohio resident be issued a free deer or wild turkey permit, as applicable. A person who is assisting the mobility impaired or blind person and who is not an Ohio resident must obtain a deer or wild turkey permit, as applicable, and, by operation of current law, pay the statutorily established fee for such a permit. However, the mobility impaired or blind person and the person who is assisting that person must obtain a special youth hunting license, an apprentice youth hunting license, or a hunting license, as applicable, in order to obtain the applicable permit.¹³⁹

Incidental taking permit

The bill authorizes the Chief of the Division of Wildlife to establish a fee in rules for a permit issued under continuing law to a person operating an energy facility whose operation may result in the incidental taking of a wild animal. It narrows the definition of "energy facility" for that purpose to mean wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at an aggregate capacity of five or more megawatts. Under current law, "energy facility" instead means a facility at which energy is produced. The bill accordingly eliminates the definition of "energy" as work or heat that is, or can be, produced from any fuel or source whatsoever. Finally, it defines "incidental taking" to mean the killing or injuring of a wild animal occurring by chance or without intention.¹⁴⁰

Watercraft certificates of title

The bill eliminates the requirement that the make, manufacturer's serial number, and horsepower of any inboard motor or motors of a watercraft be included with a watercraft certificate of title application. An applicant must continue to include in the title application a description of the watercraft, including the make, year, length, series or model, if any, body type, and hull identification number or serial number of the watercraft.¹⁴¹

Department of Natural Resources notices

The bill requires the Department of Natural Resources to publish notices regarding certain activities, projects, or improvements as contemplated in the general newspaper publication statute. Continuing law requires the Department to supervise

¹³⁹ R.C. 1533.12(B)(5).

¹⁴⁰ R.C. 1533.081.

¹⁴¹ R.C. 1548.07(A)(6).



the design and construction of, and to make contracts for the construction, reconstruction, improvement, enlargement, alteration, repair, or decoration of, certain projects such as dam repairs, waterway safety improvements, and Division of Wildlife improvements.¹⁴²

The general newspaper publication statute requires that the first publication of a notice be made in its entirety in a newspaper of general circulation, but the second publication may be made in abbreviated form in a newspaper of general circulation and on the newspaper's Internet website if the newspaper has one. That statute also authorizes a state agency or political subdivision to eliminate any further newspaper publications, provided that the second, abbreviated notice meets all of the following requirements:

(1) It is published in the newspaper of general circulation in which the first publication of the notice was made and is published on that newspaper's Internet website if the newspaper has one.

(2) It is published on the state public notice website.

(3) It includes a title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice, and includes a statement that the notice is posted in its entirety on the state public notice website. The notice also may be posted on the state agency's or political subdivision's Internet website.

(4) It includes the Internet addresses of the state public notice website and of the newspaper's and state agency's or political subdivision's Internet website if the notice or advertisement is posted on those websites and the name, address, telephone number, and electronic mail address of the state agency, political subdivision, or other party responsible for publication of the notice.

A notice published on an Internet website must be published in its entirety.¹⁴³

Enforcement of Water Pollution Control Law

The bill increases criminal penalties for certain violations of the Water Pollution Control Law and establishes culpable mental states regarding certain violations as follows:

¹⁴² R.C. 1501.011.

¹⁴³ R.C. 7.16, not in the bill.



Type of violation	The bill	Current law
Violations of provisions regarding prohibited acts of pollution, compliance with effluent standards, and right of entry for enforcement purposes.	<p>A purposeful violation is a felony punishable by: a fine of not more than \$25,000, imprisonment for not more than four years, or both.</p> <p>Each day of violation is a separate offense.</p> <p>A knowing violation is a misdemeanor punishable by: a fine of not more than \$10,000, imprisonment for not more than one year, or both.</p> <p>Each day of violation is a separate offense.</p>	A violation is punishable by: a fine of not more than \$25,000, imprisonment for not more than one year, or both.*
Violations of provision requiring approval for plans for disposal of industrial waste.	<p>A knowing violation is a misdemeanor punishable by: a fine of not more than \$10,000, imprisonment for not more than one year, or both.</p> <p>Each day of violation is a separate offense.</p>	A violation is punishable by a fine of not more than \$500.*
Violations of provision requiring approval of plans for installation of or changes in sewerage or treatment works.	<p>A violation is punishable by a fine of not more than \$10,000.*</p> <p>Each day of violation is a separate offense.</p>	A violation is punishable by a fine of not more than \$100.*

* No culpable mental state is specified. The default culpable mental state is recklessness.

The bill also provides that if a person is convicted of or pleads guilty to a violation of any provision of the Water Pollution Control Law, the court imposing the sentence may order the person to reimburse the state agency or a political subdivision for any actual response costs incurred in responding to the violation, including the cost of restoring affected aquatic resources or otherwise compensating for adverse impact to aquatic resources directly caused by the violation, but not including costs of prosecution.¹⁴⁴

¹⁴⁴ R.C. 6111.99.

Section 401 water quality certifications

Background

Under the federal Water Pollution Control Act, anyone applying for a federal license or permit to conduct an activity that may result in a discharge into the waters of the state must obtain certification from the applicable state that the discharge will comply with that Act. The certification is known as a section 401 water quality certification.

In Ohio, the Director of Environmental Protection is charged with issuing or denying section 401 water quality certifications. The state Water Pollution Control Law establishes requirements and procedures governing applications for and the issuance or denial of those certifications.

Applications

Under current law, an application for a section 401 water quality certification must be accompanied by specified documents and materials. One of those documents is a specific and detailed mitigation proposal, including the location and proposed legal mechanism for protecting the property in perpetuity.

The bill removes the stipulation that the proposed legal mechanism protect the property in perpetuity. It instead requires that the specific and detailed mitigation proposal accompanying the application be for long-term mitigation, but does not define "long-term" ("long-term protection" is used in applicable federal regulations – see 33 C.F.R. 332.7). The bill retains current law requiring the proposal to include the location and proposed legal mechanism for protecting the property. It adds that the proposed legal mechanism may include a deed restriction, an environmental covenant, a conservation easement, another real estate instrument, or a demonstration that the mitigation proposal will attain applicable water quality standards for the waters of the state that are the subject of the application. Under the bill, attainment of those standards constitutes protection of the property.¹⁴⁵

Phosphorous monitoring for a publicly owned treatment works

The bill requires a publicly owned treatment works with a design flow of 1 million gallons per day or more, or designated as a major discharger, to begin monthly monitoring of total and dissolved phosphorous not later than December 1, 2015. Additionally, a publicly owned treatment works that is not subject to a phosphorus effluent limit of one milligram per liter as a 30-day average must complete and submit

¹⁴⁵ R.C. 6111.30(A)(4).



an optimization study that evaluates the publicly owned treatment works' ability to reduce phosphorous to that limit. Finally, the Director must modify NPDES permits to include those requirements.¹⁴⁶

Dredged material in Lake Erie and tributaries

Beginning July 1, 2020, the bill prohibits a person from depositing dredged material in the portion of Lake Erie that is within Ohio's jurisdictional boundaries or in the direct tributaries of Lake Erie within Ohio that resulted from harbor or navigation maintenance activities unless the Director of Environmental Protection has determined that the dredged material is suitable for one of the locations, purposes, or activities specified below and has issued a section 401 water quality certification authorizing the deposit.

The bill allows the Director to authorize such deposits of dredged material that resulted from harbor or navigation maintenance activities for any of the following:

- (1) Confined disposal facilities;
- (2) Beneficial use projects;
- (3) Beach nourishment projects if at least 80% of the dredged material is sand;
- (4) Placement in the littoral drift if at least 60% of the dredged material is sand;
- (5) Habitat restoration projects; and
- (6) Projects involving amounts of dredged material that do not exceed 10,000 cubic yards, including material associated with dewatering operations related to dredging operations.

Under the bill, the Director may consult with the Director of Natural Resources for purposes of the above provisions. The bill specifies that the Director of Environmental Protection has exclusive authority to approve the location in which dredged material is proposed to be deposited. The Director may adopt necessary rules.

Finally, the bill requires the Director, in order to ensure the regular and orderly maintenance of federal navigation channels and ports in Ohio, to work with the U.S.

¹⁴⁶ R.C. 6111.03.



Army Corps of Engineers on a dredging plan that focuses on long-term planning for the disposition of dredged material consistent with the bill's requirements.¹⁴⁷

Study of nutrient loading to Ohio watersheds

The bill authorizes the Director of Environmental Protection to study, examine, and calculate nutrient loading to Ohio watersheds from point and nonpoint sources. The study must determine comparative contributions by those sources and utilize the information derived from those calculations to determine the most environmentally beneficial and cost-effective mechanisms to reduce nutrient loading to Ohio watersheds. In order to evaluate nutrient loading contributions, the Director or the Director's designee must conduct a study of the statewide nutrient mass balance for both point and nonpoint sources in Ohio watersheds using available data, including data on water quality and on point source discharges into Ohio watersheds. The Director or the Director's designee must report and update the study's results to coincide with the release of the Ohio Integrated Water Quality Monitoring and Assessment Report.¹⁴⁸

Lead contamination of drinking water from plumbing

The bill revises the statute governing the prevention of lead contamination of drinking water from plumbing. It first prohibits using any pipe, pipe fitting, plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of a public water system or of any plumbing in a residential or nonresidential facility providing water for human consumption. Current law instead requires pipes, pipe fittings, solder, and flux that are used in a public water system or in plumbing for residential or nonresidential facilities providing water for human consumption that are connected to a public water system to be lead free. The bill retains a provision that exempts leaded joints necessary for the repair of cast iron pipes.¹⁴⁹

The bill also prohibits a person from doing any of the following:

(1) Introducing into commerce any pipe, pipe fitting, or plumbing fitting or fixture that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

¹⁴⁷ R.C. 6111.32.

¹⁴⁸ R.C. 6111.03(T).

¹⁴⁹ R.C. 6109.10(B)(1) and (D)(1).



(2) Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies, except for the selling of plumbing supplies by manufacturers of those supplies; and

(3) Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.¹⁵⁰

The bill exempts the following from all of the above prohibitions:

(1) Pipes, pipe fittings, or plumbing fittings or fixtures, including backflow preventers, that are used exclusively for nonpotable services; and

(2) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are at least two inches in diameter.¹⁵¹

Under the bill, the owner or operator of a public water system must identify and provide notice to persons that may be affected by lead contamination of their drinking water if the contamination results from the lead content in the construction materials of the public water distribution system, the corrosivity of the water supply is sufficient to cause the leaching of lead, or both. Current law instead requires each public water system to identify and provide notice to persons that may be affected by lead contamination of their drinking water.¹⁵²

In addition, the bill revises the definition of "lead free" by specifying that it means, in part, containing not more than a weighted average of .25% lead when used with respect to wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures rather than not more than 8% lead when used with respect to pipes or pipe fittings as in current law. It retains current law specifying that solders and flux are lead free if they contain not more than .2% lead.¹⁵³

The weighted average lead content of a pipe, pipe fitting, or plumbing fitting or fixture must be calculated by using the following formula: for each wetted component, the percentage of lead in the component must be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to

¹⁵⁰ R.C. 6109.10(B)(2), (3), and (4) and (D)(2) and (3).

¹⁵¹ R.C. 6109.10(D)(4).

¹⁵² R.C. 6109.10(C).

¹⁵³ R.C. 6109.10(A)(1).



determine the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component must be added together, and the sum of the weighted percentages must constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components must be used to determine whether the wetted surfaces are lead free pursuant to the bill's revised definition of "lead free." For purposes of the lead contents of materials that are provided as a range, the maximum content of the range must be used.¹⁵⁴

Video lottery terminal revenue use

The bill requires a corporation formed to establish a thoroughbred horsemen's health and retirement fund and a corporation formed to establish a harness horsemen's health and retirement fund to include in its articles of incorporation that the video lottery terminal revenue paid to the corporation under Ohio law must be used exclusively to establish and administer the health and retirement fund and to finance benefits paid to the horsemen under the corporation's benefit plan.¹⁵⁵

Current law allows nonprofit corporations to be formed to establish thoroughbred and harness horsemen's health and retirement funds to be administered for the benefit of horsemen. Certain requirements must be in the corporations' articles of incorporation, including the use of certain moneys paid to the corporations from racetracks as required under law.¹⁵⁶

Background on video lottery terminal revenue

Facilities with video lottery terminals (VLTs) are sometimes referred to as "racinos." VLTs are part of the state lottery and are operated only at racetracks in Ohio.¹⁵⁷ Racetrack operators receive a commission for operating the VLTs on behalf of the state.¹⁵⁸ Currently, each VLT sales agent receives 66.5% of the VLT income generated at its facility as a commission.¹⁵⁹ After receiving its commission, each VLT sales agent must return to the state between 9% to 11% of its commission "for the benefit of breeding and racing in the state." The 9% to 11% amount is the default amount and only applies if the VLT sales agent and the applicable horsemen's association recognized by

¹⁵⁴ R.C. 6109.10(A)(2).

¹⁵⁵ R.C. 3769.21(B)(3).

¹⁵⁶ R.C. 3769.21(A) and (B).

¹⁵⁷ R.C. 3770.21, not in the bill.

¹⁵⁸ R.C. 3769.087(C), not in the bill.

¹⁵⁹ O.A.C. 3770:2-3-08.



the state to represent such persons have not otherwise agreed on an amount. Also, the percentage each VLT sales agent must pay is determined by a sliding scale based upon capital expenditures necessary to build the VLT sales agent's facility.¹⁶⁰

Therefore, under the bill, if a corporation formed to establish a thoroughbred or harness horsemen's health and retirement fund receives VLT revenue under the bill, it must be used to establish and administer the health and retirement fund and to finance benefits paid to the horsemen under the corporation's benefit plan.

Connection to private sewerage system

The bill generally authorizes the owner of property that is served by a household sewage treatment system and that is reasonably accessible to a proposed private sewerage system to elect not to connect to the private sewerage system under certain circumstances. It establishes a procedure for that opt-out.

Under the bill, a person that submits plans to install a private sewerage system to the Director of Environmental Protection must simultaneously so notify both the owner of each parcel of property that is served by a household sewage treatment system and the board of health of the health district in which the affected parcel of property is located if the owner or operator of the sewerage system has determined that the parcel is reasonably accessible to the sewerage system and may be required to connect to it. The notice must include a statement indicating that if the person receiving the notice chooses to elect out of connecting to the sewerage system after receiving the notice, the cost of connecting to the system in the future may be higher. The notice must be in writing and sent via certified mail.¹⁶¹ The bill states that a parcel of property is reasonably accessible if all of the following apply:

(1) The office of the sanitary engineer of the applicable jurisdiction and the Environmental Protection Agency have certified that the new sewerage system and its receiving treatment works have the capacity to accept the additional waste from the parcel of property;

(2) The foundation wall of the structure from which sewage or other waste originates is 400 feet or less from the nearest boundary of the right-of-way within which the new sewerage system is located; and

¹⁶⁰ R.C. 3769.087(C), not in the bill.

¹⁶¹ R.C. 6112.06(B)(1).



(3) There are no physical barriers between the parcel of property and the new sewerage system that would prevent the parcel from connecting to the new sewerage system.¹⁶²

The bill then states that a person who receives such a notice cannot be required to connect to the sewerage system if both of the following apply:

(1) The person notifies the owner or operator of the sewerage system and the applicable board of health that the person elects not to connect to the sewerage system. The notice must be in writing and sent via certified mail not later than 60 days after the person has received the notice regarding the new system. Not later than 120 days after the board of health receives the notice from the property owner, the board must evaluate the household sewage treatment system serving the affected parcel of property to determine if the system operates and is maintained in accordance with state law governing household sewage treatment systems and rules adopted under that law by the Director of Health and by the board, if any. The property owner is responsible for the costs of the evaluation.

Under the bill, if the property owner is aware that the property will be vacant at any time during the 120-day period, the owner must notify the board of health of the dates during which the property will be vacant. In order for the inspection to occur, the owner must ensure that the property is occupied for at least 90 consecutive days within the 120-day period and notify the board of health of the dates of occupancy. The bill stipulates that failure to so notify the board or to so occupy the property constitutes termination of the bill's authorization for the property owner to elect out of connecting to the sewerage system.

(2) The applicable board of health determines that the household sewage treatment system operates and is maintained in accordance with the above law and rules. The board then must so notify the person and the owner or operator of the sewerage system. However, if the board determines that a nuisance exists as specified in that law, the board must so notify the person, and the person may repair the system within 60 days to eliminate the nuisance. However, the board may assist the person in developing a plan for the incremental repair or replacement of the system. The plan must establish a phased approach to repair, alter, or replace the system over a period of time specified in the plan and approved by the board. The plan also must require sufficient alterations to the system to correct the nuisance in a timely manner in order for the person not to be required to connect to the sewerage system. Failure to repair, alter, or replace the system to eliminate the nuisance constitutes termination of the bill's

¹⁶² R.C. 6112.06(B)(2).

authorization for the property owner to elect out of connecting to the sewerage system.¹⁶³

The bill's authorization and procedure for an owner of a household sewage treatment system to elect not to connect to a sewerage system does not apply to a household sewage treatment system that is a discharging system. A discharging system is one of the following:

(1) A system for which an NPDES permit has been issued under the Water Pollution Control Law and rules adopted under it; or

(2) A system for which an NPDES permit would be required, but that has not been issued such a permit.

However, the notification required by the bill must be issued to an applicable property owner regardless of whether the property owner's system is a discharging system.¹⁶⁴

Indebtedness of county agricultural societies

The bill eliminates the existing 25% cap on total net indebtedness that may be incurred by a county agricultural society. Current law authorizes a county agricultural society to enter into agreements to obtain loans and credit for expenses related to the society's purposes, provided that the agreements are in writing and are first approved by the society's board of directors. The total net indebtedness incurred by a county agricultural society cannot exceed an amount equal to 25% of its annual revenues.¹⁶⁵

Agricultural tractor operation and driver's license

As a general matter, a person is not required to have a driver's license to temporarily drive an agricultural tractor on a street or highway at a speed of 25 miles per hour or less. The bill requires the operator of an agricultural tractor to hold a driver's license when transporting persons on a trailer or unit of farm machinery. Additionally, the bill relocates the provision of current law requiring a person operating an agricultural tractor faster than 25 miles per hour to hold a driver's license. However, neither requirement applies if the agricultural tractor is being operated on the street or highway in order to conduct any agricultural activity. Violation of the new and existing

¹⁶³ R.C. 6112.06(C).

¹⁶⁴ R.C. 6112.06(D).

¹⁶⁵ R.C. 1711.13(B).



requirement to have a driver's license when operating an agricultural tractor under these limited circumstances is a first degree misdemeanor.¹⁶⁶

Construction of buildings in metropolitan park districts

The bill authorizes a municipal, township, or county building department certified by the Board of Building Standards to exercise enforcement authority, accept and approve plans and specifications, and make inspections for a metropolitan park district, upon the approval, by resolution, of the district's board of park commissioners, pursuant to the laws governing building construction enforcement, supervision, and records; submission of plans, approvals, prohibitions, and fines relating to building construction; and rules establishing requirements for building services piping.¹⁶⁷

COMMENT

Article XII, Section 2 of the Ohio Constitution requires that, for property tax purposes, "[l]and and improvements thereon shall be taxed by uniform rule according to value." This provision is generally referred to as the "uniform rule." The Ohio Supreme Court has repeatedly held that the best method of determining a property's tax value for purposes of complying with the uniform rule is the actual price paid for property in an arm's-length transaction. Only in the absence of such a sale has the Court held that the uniform rule permits the use of other factors to determine a property's taxable value. See *State ex rel Park Inv. Co. v. Bd. of Tax Appeals*, 170 Ohio St. 410 (1964), *Berea City Sch. Dist. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St. 3d 269 (2005), and *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St. 3d 516 (2008).

HISTORY

ACTION

DATE

Introduced
Reported, H. Agriculture & Natural Resources

03-18-14

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¹⁶⁶ R.C. 4507.021 and 4507.03.

¹⁶⁷ R.C. 3781.10(E)(9).

