



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [Am. H.B. 473 of the 129th G.A.](#)

Date: May 22, 2012

Status: As Enacted

Sponsor: Rep. Wachtmann

Local Impact Statement Procedure Required: No

Contents: Establishes a program to regulate the withdrawal and consumptive use of waters from the Lake Erie basin and implements provisions of the Great Lakes – St. Lawrence River Basin Water Resources Compact

State Fiscal Highlights

- The Water Management Fund (Fund 5160) would gain revenues from permit fees charged to applicants for water withdrawal and consumptive use permits and water diversion permits. The proceeds of these fees would be used by the Department of Natural Resources (DNR) to administer these programs and other programs of the Division of Soil and Water Resources.
- Fund 5160 would also collect any recoverable costs required to be paid by violators of the bill's permitting provisions or of the Great Lakes Compact.

Local Fiscal Highlights

- County courts of common pleas in Franklin County and other counties where violations occur could incur minimal costs to adjudicate these cases, some of which may be recovered through court costs.

Detailed Fiscal Analysis

The bill implements provisions of the Great Lakes – St. Lawrence River Basin Water Resources Compact, a legally binding multi-state agreement, by (1) establishing a permitting program for withdrawal and consumptive use of water in the Lake Erie Watershed, (2) establishing a water diversion program, and (3) establishing an advisory group to make legislative recommendations for the application of the Compact's decision-making standard. These provisions primarily affect the Department of Natural Resources (DNR), which will be responsible for administering the permitting programs and related functions under the bill. Their fiscal effects are discussed below.

Water withdrawal and consumptive use permits

The bill establishes a program to issue permits for the withdrawal and consumptive use of water from the Lake Erie Watershed above certain threshold amounts. This program is to be administered by DNR's Division of Soil and Water Resources. Applicants for a permit must submit a nonrefundable \$1,000 application fee, which will be deposited into the Water Management Fund (Fund 5160). Under the bill, a permit would be valid until a facility is abandoned under circumstances prescribed in the bill, and permits may be transferred in full or in part (depending on the amount of withdrawal or consumptive use capacity that is transferred) to a new owner of a facility or part of a facility. The bill requires the Chief of the Division of Soil and Water Resources to issue a new permit when ownership of all or part of a facility's withdrawal or consumptive use capacity is transferred. However, it is unclear if each permittee would be required to submit an application and pay the fee when this occurs. Whether or not the fee applies in these cases could have an additional effect on the revenues to Fund 5160.

Actual revenues to Fund 5160 that result from the bill's provisions will depend on the number of facilities that are subject to the permitting program. Because the program would apply only to new withdrawal or consumptive use capacity that is developed after the bill becomes effective, it is difficult to determine with any certainty how many facilities might be required to apply for such permits. Overall, the thresholds for the water withdrawal and consumptive use capacity of facilities that will be required to obtain a permit under the bill are greater than the thresholds required of facilities that are subject to DNR's current Water Withdrawal Facilities Registration Program.¹ In 2010, the most recent year for which DNR has published data, there were 1,650 facilities subject to the Water Withdrawal Facilities Registration Program; presumably there would be a smaller number of facilities subject to the new program established by the bill.

¹ Owners of facilities or combination of facilities with the capacity to withdraw more than 100,000 gallons per day are subject to registration under the Water Withdrawal Facilities Registration Program.

Additionally, the bill exempts several different types of facilities, or circumstances surrounding a facility's water withdrawals or consumptive use, from the permitting requirements. Among those exempted are the approximately 600 "baseline facilities" whose withdrawal and consumptive use capacities were required to be reported in 2009, shortly after the Great Lakes Compact's ratification in Ohio. A baseline facility will only be required to obtain a permit if its withdrawal and consumptive use capacity increases over both its baseline capacity and above the bill's specified thresholds. The LSC bill analysis contains a full description of the facilities that are both subject to and exempt from the permitting program.

Additionally, the bill requires Fund 5160 to be used as a source of operating support for the Division of Soil and Water Resources to administer the withdrawal and consumptive use permitting program, presumably from the proceeds of the \$1,000 application fee. The fund already collects fees from and serves as a source of operating costs for DNR's existing Water Withdrawal Facilities Registration Program. Any additional costs to operate the permitting program under the bill will depend on the extent to which the staff and resources associated with the new permitting program could be integrated with those of the current program.

Experimental use permits

The bill authorizes the Chief of the Division of Soil and Water Resources to issue an experimental use permit in lieu of a withdrawal and consumptive use permit in circumstances the Chief deems appropriate. Specifically, the bill authorizes such permits for the stated purpose of encouraging the development and implementation of innovative and sustainable water use practices for industrial, commercial, residential, agricultural, or other purposes for the end goal of facilitating economic growth and job creation. Experimental use permits issued under the bill are valid for 24 months. The bill does not explicitly provide for a fee for an experimental use permit, but it does authorize the Chief to establish "terms and conditions" for a permit, which presumably could include a fee.

Water diversion permits

The bill prohibits the installation or operation of a facility or equipment that results in a new or increased diversion of water from the Lake Erie Watershed to another watershed without a permit. Under the bill, the Chief of the Division of Soil and Water Resources may only approve a water diversion permit if it is determined not to violate the prohibition against diversions in the Great Lakes Compact. Such permits will require a \$1,000 application fee, the proceeds of which will be deposited into the Fund 5160.

Adjudication and enforcement

The bill provides for the enforcement of the provisions of its permitting programs, as well as the Great Lakes Compact in general, and vests the Chief of the Division of Soil and Water Resources with the authority to issue orders to violators and

suspend or revoke permits as necessary. The bill also requires the Attorney General to bring appropriate legal or equitable actions against violators at the request of the Chief in the Franklin County Court of Common Pleas or the analogous court in the county where the applicable facility is located. Persons found in court to have violated the bill or the Compact are liable for any costs incurred by the Division of Soil and Water Resources to investigate, mitigate, minimize, remove, or abate the violation, and any such recovered costs are to be deposited in Fund 5160. Overall, the number of civil proceedings resulting from the bill is not likely to be very high. Therefore, any costs to the Attorney General, the Franklin County Court of Common Pleas, and any other county courts of common pleas would likely be minimal at most, and may be offset by court costs assessed to violators.

Advisory group

The bill requires the Chief of the Division of Soil and Water Resources to convene and serve as chairperson of an advisory group to make legislative recommendations for the application of the Compact's provisions related to the Compact's decision-making standard. See the LSC Bill Analysis for a full description of the advisory group's membership and mission. The bill does not specify what is to be the source of any costs incurred in the course of the advisory group's official duties. Presumably, these would be minimal and would be paid from Fund 5160.