

- The expenditures associated with this bill, including publication, public hearings, and the Level 1, 2, and 3 Reviews will be distributed as follows: 20% of the total costs to the Dredge and Fill Fund and 80% of the total costs to the General Revenue Fund (Surface Water). The OEPA estimated three years ago that the average cost for publications and holding public hearings is between \$4,000 and \$5,000 per application. This average was found by combining the cost of those applications that required only publications and those applications with public hearings. The cost will be distributed as follows: at least \$800 to \$1,000 to the Dredge and Fill Fund and at least \$3,200 to \$4,000 to the General Revenue Fund (Surface Water). The OEPA estimates that a Level 3 Review will cost about \$5,000 to administer¹. Level 1 and 2 Reviews are estimated to cost less. The cost of the reviews for each applicant will be distributed as follows: increase up to \$1,000 to the Dredge and Fill Fund and increase up to \$4,000 to the General Revenue Fund (Surface Water).
- This bill places a five-year limit on the General State Isolated Wetland Permit and a two-year limit on work performed. If work is not completed within two years, the person must submit a new pre-activity notice. The OEPA cannot estimate the number of persons that will need to submit a new pre-activity notice and therefore the LSC fiscal staff cannot estimate the possible revenue generated.
- This bill requires the director of the OEPA to submit an annual report to members of the General Assembly on the total acreage of isolated wetlands that were subject to filling during the immediately preceding year as well as the total acres of isolated wetlands that were restored, created, enhanced, or preserved through mitigation that same year as a result of state isolated wetland permits. The OEPA estimates that this report will not require additional substantial costs to administer.
- This bill requires the Director of Budget and Management to prepare a full zero-based budget for the biennium ending June 30, 2005, for the Environmental Protection Agency and one state agency that the Director shall select. The implementation of a zero-based budget would likely require the Office of Budget and Management, the EPA, and the selected state agency to prepare information in fiscal year 2003 for FY 2004 - FY2005 budget process. This may result in an increase in expenditures and could result in indirect future savings depending on future implementation.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2001	FY 2002	FUTURE YEARS
Any municipal corporation or political subdivision			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Payment to mitigation bank: \$13,000 to \$20,000 per acre; cost of on-site mitigation between \$35,000 and \$100,000 per acre	Payment to mitigation bank: \$13,000 to \$20,000 per acre; cost of on-site mitigation between \$35,000 and \$100,000 per acre	Payment to mitigation bank: \$13,000 to \$20,000 per acre; cost of on-site mitigation between \$35,000 and \$100,000 per acre

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

¹ This estimate is based on a three year old estimate where the OEPA estimated the cost of a full review to be between \$3,200 and \$3,400.

- A “person” that seeks to fill an isolated wetland is required to pay an application fee and review fees for a State Isolated Wetland Permit to Ohio EPA. *The definition of “person” includes any municipal corporation or political subdivision.* However, local governments are specifically exempted from these fees under the bill.
- Mitigation banks work on a system of credits; one credit equals one acre of restored wetlands. The price of a credit is determined by market forces, and typically runs between \$13,000 to \$20,000 per credit.
- Costs associated with on-site mitigation, conducted by the person or entity proposing to impact a wetland, can be significantly higher. Cost per mitigated acre may run between \$35,000 and \$100,000, on average. On-site mitigation is preferred.

Detailed Fiscal Analysis

Background

Prior to the 2001 decision of the United States Supreme Court, *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, persons wishing to discharge dredged or fill material into a wetland had to obtain a Section 404 permit (Isolated Wetland Permit) from the U.S. Army Corps of Engineers and a Section 401 Water Quality Certification from Ohio EPA² in accordance with the Clean Water Act. Section 401 Water Quality Certifications were granted upon demonstration that any discharge complied with all applicable effluent limitations and water quality standards; receipt of a Section 401 Water Quality Certification is a precondition to the issuance of a Section 404 permit from the Army Corps of Engineers.

Fees associated with a Section 401 Water Quality Certification are credited to Fund 4K4, Surface Water Protection, and are outlined below:

Table 1
401 Water Quality Certification Permit Fees

<u>Cubic Yards of Dredged or Fill Material</u>	<u>Fee</u>
Less than 500.....	\$15
501 to 5,000	\$25
5,001 to 15,000	\$50
15,001 to 30,000	\$75
30,001 to 50,000	\$100
More than 50,000	\$200

Since the Supreme Court decision, the authority of the Army Corps of Engineers and Ohio EPA to regulate certain isolated wetlands under the Clean Water Act is no longer clear. This bill establishes requirements for the issuance of a State Isolated Wetland Permits to persons proposing to impact waters of the state.

Fiscal Components of House Bill 231

Ohio EPA fees

Ohio EPA estimates it receives about 200 applications for 401 Water Quality Certification permits per year. Under the current fees, the majority of these permits fall between the \$15 and \$25 range outlined above. In 2000, the agency estimates these fees generated approximately \$3,800. However, the overall

² Under certain project circumstances, Ohio EPA could pre-grant Section 401 permits to 404 permits when wetland degradation was considered minimal. In these cases, applicants received only a Nationwide Permit. No fees were assessed for projects authorized under Nationwide Permits.

cost of administering Ohio EPA's wetland program reportedly costs the agency over \$1 million per year.

Currently, Ohio EPA 401 Water Quality Certification fees are deposited in Fund 4K4, Surface Water, and generate approximately \$3,800 per year for the fund. However, under this bill these fees will no longer be collected and deposited into this fund. Therefore there will be an approximate \$3,800 loss.

Under this bill, the Dredge and Fill Fund is created and credited with the revenue generated from application fees and review fees for State Isolated Wetland Permits. This bill requires an application fee and review fees for a State Isolated Wetland Permit.

Table 2
State Isolated Wetland Permit

Application Fee:	\$200 per application
Review Fees:	
Isolated Wetlands.....	\$500 per acre
Total Review fee not to exceed \$5,000 per application.	

If an application is denied, the Director of OEPA will refund one-half of the amount of paid review fees and shall explain the reason for the denial of the application. If an application is not obtained prior to conducting activities requiring a State Isolated Wetland Permit, the person shall pay twice the amount of the application and review fees, not to exceed \$10,000. All application fees and review fees collected are credited to the Dredge and Fill Fund. The Ohio EPA predicts they will generate \$20,000 to \$30,000 in revenue from the payment of application and review fees.

This bill requires the publication of the receipt of a complete application for an individual State Isolated Wetland Permit in a newspaper of general circulation in the county in which the proposed filling of the waters of the state will take place. The OEPA estimated three years ago that the average cost for publications and holding public hearings is between \$4,000 and \$5,000 per application. This average was found by combining the cost of those applications that required only publications and those applications with public hearings. The cost will be distributed between the Dredge and Fill Fund (20%) and the General Revenue Fund (Surface Water) (80%).

This bill places a five-year limit on the General State Isolated Wetland Permit and a two-year limit on work performed. If work is not completed within two years, the person must submit a new pre-activity notice. The OEPA cannot estimate the number of persons that will need to submit a new pre-activity notice and therefore the LSC fiscal staff cannot estimate the possible revenue generated.

Classification of Wetlands

In this bill, isolated wetlands are classified as: category 1 isolated wetlands; category 2 isolated wetlands; and category 3 isolated wetlands. This bill adopts the classification of isolated wetlands set forth in rule 3745-1-54 of the Administrative Code. The following is a brief overview of each isolated wetland category:

Category 1 isolated wetlands: support minimal wildlife habitat, and minimal hydrological and recreational functions; do not provide critical habitat for threatened or endangered species or contain rare, threatened or endangered species.

Category 2 isolated wetlands: support moderate wildlife habitat, or hydrological or recreational functions; dominated by native species but generally without the presence of, or habitat for, rare, threatened or endangered species; wetlands that are degraded but have a reasonable potential for reestablishing lost wetland functions.

Category 3 isolated wetlands: support superior habitat, or hydrological or recreational functions; contain or provide habitat for threatened or endangered species; high quality forested wetlands, including old growth forested wetlands, and mature forested riparian wetlands, vernal pools, and wetlands which are scarce regionally and/or statewide including but not limited to bogs and fens³.

This bill requires the director of the OEPA to submit an annual report to members of the General Assembly on the total acreage of isolated wetlands that were subject to filling during the immediately preceding year as well as the total acres of isolated wetlands that were restored, created, enhanced, or preserved through mitigation that same year as a result of state isolated wetland permits. The OEPA estimates that this report will not require additional substantial costs to administer.

Review Levels Required for a General State Isolated Wetland Permit

This bill requires a review, according to the category and size of the isolated wetland, prior to obtaining a State Isolated Wetland Permit.

Level 1 Review is necessary for category 1 isolated wetlands, or category 2 isolated wetlands of one-half acre or less. This review requires the submission of a pre-activity notice including an application, an acceptable isolated wetland delineation, an isolated wetland categorization, a description of the project, a description of the acreage of the isolated wetland that will be subject to filling, site photographs, and a mitigation proposal for the impact to the isolated wetland. Isolated wetlands requiring a Level 1 Review is authorized by a General State Isolated Wetland Permit unless the director of the EPA notifies the applicant within 30 days after receipt of the pre-activity notice of filling of the isolated wetland will result in a significant negative impact on state water quality.

Level 2 Review is necessary for category 1 isolated wetland greater than one-half acre of the proposed filling of a category 2 isolated wetland of greater than one-half acre, but less than or equal to three acres. This review requires the submission of all information required to be submitted with a pre-activity notice; the U.S. Army Corps of Engineers public notice of a receipt of a Section 404 Application; identification of the source of the fill material to be used for filling; submission of an analysis of

³ Summarized from the rule 3745-1-54 of the Ohio Administrative Code.

practicable on-site alternatives to the proposed filling that would have a less adverse impact on the isolated wetland ecosystem; submission of information indicating whether high quality waters are to be avoided. Isolated wetlands requiring a Level 2 Review is authorized by an individual State Isolated Wetland Permit not later than 90 days after the receipt of an application for the permit.

Level 3 Review is necessary for category 2 isolated wetland of greater than three acres or a category 3 isolated wetland. This review requires the submission of all information required to be submitted with a pre-activity notice; the U.S. Army Corps of Engineers public notice of a receipt of a Section 404 Application; a full antidegradation review; submission of information indicating whether high quality waters are to be avoided. Isolated wetlands requiring a Level 3 Review is authorized by an individual State Isolated Wetland Permit not later than 180 days after the receipt of an application for the permit.

Table 3
Required Review Levels

Wetland Category	
Level 1 Review:	category 1 or category 2 (0.5 acres or less)
Level 2 Review:	category 1 (>0.5 acres); 2 (>0.5 up to 3 acres)
Level 3 Review:	category 2 (>3 acres); any category 3

The Ohio EPA estimated three years ago, that the cost associated with administering a Level 3 Review would be between \$3,200 and \$3,400 per review. However, due to an increase in salary levels, etc. over the last three years, a Level 3 Review may be close to \$5,000 per review to administer. The OEPA also estimates that Level 1 and 2 Reviews will cost less. The cost of the reviews for each applicant will be distributed in increments of 20% to the Dredge and Fill Fund and 80% to the General Revenue Fund (Surface Water). The Dredge and Fill Fund will decrease by up to \$1,000 per review and the General Revenue Fund (Surface Water) will decrease by up to \$4,000 per review. At this time, LSC fiscal staff is unable to estimate the potential number of each level review and thus unable to present a total cost per year.

Mitigation Requirements

This bill requires mitigation according to the category and required review level of the isolated wetland.

Mitigation for the proposed filling of an isolated wetland subject to a Level 1 Review shall be conducted by the applicant and without the objection of the director and at the discretion of the applicant, the applicant shall conduct either on site mitigation, at a isolated wetland mitigation bank within the same district as the location, or off-site mitigation. The filling of the isolated wetland must be complete within two years after the end of the 30-day period following the receipt of the pre-activity notice by the director. If the filling is not complete, the person shall submit a new pre-activity notice.

Mitigation for the proposed filling of a category 2 isolated wetland subject to Level 2 Review shall be conducted by the applicant and without the objection of the director and at the discretion of the applicant. Mitigation shall occur in the following preferred order: practicable on-site mitigation; reasonably identifiable, available, and practicable off-site mitigation within the same watershed; within the same mitigation bank service area; in a watershed that is adjacent to the watershed in which the isolated wetland is located.

Mitigation for the proposed filling of a category 2 or 3 isolated wetland subject to a Level 3 Review shall occur in the following preferred order: practicable on-site mitigation; reasonably identifiable, available, and practicable off-site mitigation within the same watershed; within the same mitigation bank service area; in a watershed that is adjacent to the watershed in which the isolated wetland is located.

Mitigation for impacts to isolated wetlands shall be conducted at the following ratios:

Category 1 and 2 isolated wetlands (other than forested category 2 isolated wetlands): ratio rate of 2 x the size of the area of isolated wetland that is being impacted.

Forested Category 2 isolated wetlands: ratio rate of 2.5 x the size of the area of isolated wetland that is being impacted.

All other mitigation shall be subject to mitigation ratios established in rule 3745-1-54 of the Administrative Code.

In addition, this bill gives authority to the director of the EPA to impose any practicable terms and conditions on an individual State Isolated Wetland Permit to ensure adequate protection of state water quality and to ensure compliance with state or federal environmental laws administered by the EPA.

Mitigation Banking

Mitigation banking began in Ohio in 1992 as an agreement between the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, the Natural Resource Conservation Service, U.S. EPA, Ohio EPA, and the Ohio Department of Natural Resources. These six agencies form a mitigation bank review team (MBRT), with final approval for the creation of a mitigation bank residing with the U.S. Army Corps of Engineers. Mitigation banks are normally privately owned and operated, and operate under a five-year monitoring plan with the Army Corps. The five-year monitoring plan establishes standards, which the bank owner is solely responsible for meeting. These standards are set to guarantee that the mitigation of isolated wetlands have achieved a jurisdictional, functional, and self-sustaining status. After five years, and upon meeting these standards, a permanent conservation easement on the property is assigned to a non-profit entity, such as the Department of Natural Resources (DNR)⁴, a metro park, or a university, that will ensure that the isolated wetlands remain in perpetuity.

Mitigation banks work on a system of credits; one credit equals one acre of restored isolated wetlands. Because banks are privately owned, credit prices are determined by market forces. Currently, one credit costs between \$13,000 and \$20,000.

⁴ When turning a mitigation bank over to DNR, the agency normally charges \$1,000 per acre to cover the costs associated with long-term maintenance of the site.

Table 4 contains a status of constructed mitigation banks, as well as projects that are currently being reviewed under the MBRT process in Ohio:

Table 4
Constructed and Proposed Mitigation Bank Sites

Site	Banker	County	Acreage	Status	Long-term Manager
Hebron State Fish Hatchery**	Ohio Wetlands Foundation	Licking	33 acres	Built. 5 years of monitoring concluded.	DNR, Division of Wildlife
Big Island Wildlife Area**	Ohio Wetlands Foundation	Marion	380 acres	Built. 5 years of monitoring concluded.	DNR, Division of Wildlife
Sandy Ridge Metro Park**	Ohio Wetlands Foundation	Lorain	115 acres	Built. In year 4 of monitoring.	Lorain Metro Parks
Slate Run Metro Park	Ohio Wetlands Foundation	Fairfield	130 acres	Built. In year 2 of monitoring.	Columbus Metro Parks
Little Scioto Bank	Wetlands Resource Center	Marion	130 acres	Built. In year 1 of monitoring.	DNR, Division of Wildlife
Panzer Brothers Bank	Panzer Brothers	Summit	95 acres	Built (in phases). In year 2 of monitoring.	Revere Land Trust
Grand River Sites	Wetlands Preservation, Inc.	Ashtabula	100 acres (at 2 sites)	Built. In year 2 of monitoring.	Mt. Pleasant Rod and Gun Club
Three Eagles Bank	Ohio Wetlands Foundation	Sandusky	150 acres	Built. In year 2 of monitoring.	DNR, Division of Wildlife
Trumbull Creek	Ohio Wetlands Foundation	Ashtabula	200 acres	MBRT agreement not yet signed	DNR, Division of Wildlife
Little Scioto Bank (Phase II)	Wetlands Resource Center	Marion	170 acres	MBRT agreement not yet signed	DNR, Division of Wildlife
	Regional Council of Park Districts	Erie, Sandusky, Medina, Lorain	Unknown	MBRT agreement not yet signed	Four-county metro parks system
Crystal Springs	Wetlands Preservation, Inc.	Carroll	Unknown	Planning stages	Mt. Pleasant Rod and Gun Club
	Leslie Family Trust	Unknown	50 acres	Planning stages	Mt. Pleasant Rod and Gun Club
	Wulsin Bank	Pike	Unknown	Planning stages	Unknown

** *Known* that credits are no longer available for sale

On-site Mitigation

As provided by the Ohio Department of Transportation (ODOT), costs associated with on-site mitigation run between \$35,000 and \$100,000 per acre. In one incidence, ODOT paid close to \$220,000 per acre.

According to information provided by the Mile High Wetlands Group, a mitigation banking company in Colorado, planning and implementing a mitigation project may require the expertise of a certified wetland scientist, or other professional discipline, to add expertise through the mitigation process. That process can include: 1) a site selection/feasibility analysis, 2) development of a conceptual design for regulatory review/approval, 3) negotiations with the regulatory agency regarding details of the plan, 4) preparation of construction design drawings/specifications, 5) contractor selection, 6) construction implementation and oversight, 7) as-built reports, 8) annual monitoring reports issued to the regulatory agency, 9) post-construction maintenance and corrective measures, and 10) a final delineation report.

Zero-Based Budget

This bill requires the Director of Budget and Management to prepare a full zero-based budget for the biennium ending June 30, 2005, for the Environmental Protection Agency, and one state agency, selected by the Director, that has fewer full-time equivalent personnel than the EPA. The implementation of a zero-based budget would likely require the Office of Budget and Management, the EPA, and the selected state agency to prepare information in fiscal year 2003 for FY 2004-FY 2005 budget process. This may result in an increase in expenditures, depending on how it is accomplished. At this time, LSC fiscal staff cannot estimate the cost to implement a zero-based budget. Implementation of a zero-based budget may result in indirect future cost savings.

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