

## Environment and Natural Resources

### H.B. 175

**Primary Sponsor:** Rep. Hillyer

**Effective date:** July 21, 2022; appropriation effective April 20, 2022

#### Ephemeral features

- Excludes ephemeral features that are not waters of the United States (WOTUS) under the federal Clean Water Act from regulation under Ohio’s water pollution control programs, including the section 401 water quality certification program.
- Specifies that an ephemeral feature is a surface water flowing or pooling only in direct response to precipitation, such as rain or snow, and does not include a wetland.
- For ephemeral features that are WOTUS under the federal Clean Water Act, maintains the authority of the Ohio Environmental Protection Agency (OEPA) to regulate impacts to these waters.
- Establishes mitigation requirements, best management practices, and reporting and monitoring requirements that apply when these regulated ephemeral features will be impacted and a section 401 water quality certification is required.
- Excludes particular types of projects, such as water quality improvement projects and small dredge and fill projects, from the act’s mitigation requirements, best management practices, and reporting and monitoring requirements.
- Regarding a regulated ephemeral feature, prohibits the OEPA Director from both:
  - Imposing or requiring any mitigation standard, criteria, scientific method, process, or other procedure or policy not specified by the act with respect to a proposed impact to the ephemeral feature; and
  - Imposing any requirement on an activity impacting a regulated ephemeral feature beyond those specified in the act or by administrative rule for any activity impacting an ephemeral feature that requires the issuance of a section 401 water quality certification.
- Eliminates the section 401 water quality certification review fee that applied to all ephemeral streams (greater of \$5 per linear foot of stream to be impacted or \$200).

#### Federal Interagency Review Team

- Requires the OEPA Director, the Director of Natural Resources, and the Director of Transportation to each appoint an agency designee and an alternate to the federal Interagency Review Team (IRT) (which reviews documentation and advises U.S. Army Corps of Engineers district engineers on mitigation projects).

- Requires that the appointees have significant experience in at least one specified subject area: wetland or stream restoration, enhancement and protection of wetlands or streams, or compensatory mitigation plan development.
- Requires at least one appointee to maintain minutes of IRT meetings and specifies that those minutes are a public record.

### **Protocols for adoption of mitigation standards**

- Revises the law requiring all substantive standards the OEPA Director uses to evaluate section 401 water quality certification mitigation proposals to be adopted via rule in accordance with the Administrative Procedure Act to specify the following:
  - All substantive standards used by the IRT when reviewing documentation related to mitigation activities are also subject to that law;
  - The law applies to any guidance or guidelines used by the Director or the IRT;
  - A mitigation proposal may include proposals involving a wetland mitigation bank or stream mitigation bank, in-lieu fee mitigation, or permittee responsible mitigation; and
  - The law also applies to the establishment of performance metrics, a request for credit release, or termination of monitoring requirements.
- Eliminates law that authorized the Director to use additional mitigation standards, criteria, etc. (without going through the Administrative Procedure Act) in reviewing a mitigation proposal if the Director notified the applicant in advance that additional standards would be considered.
- Establishes a 24-month timeline to implement the changes specified above.

### **Property tax exemption**

- Establishes a property tax exemption for property held by a 501(c)(3) organization organized for conservation purposes if the property either:
  - Is subject to a mitigation requirement pursuant to a section 401 water quality certification or isolated wetland permit; or
  - Is a nature water project that receives funding through the H2Ohio Program.

### **Class VI injection wells**

- Requires the Department of Natural Resources (DNR) to begin working with the U.S. EPA and the U.S. Department of Energy to develop a state underground injection control program for Class VI injection wells (used to inject CO<sub>2</sub> into deep rock formations).

### **Indian Lake weed mitigation**

- Requires the DNR Director to enter into a memorandum of understanding with the Indian Lake Watershed Project concerning weed harvesting services at Indian Lake.

- Appropriates \$500,000 for weed harvesting in FY 2022 and reappropriates the unspent, unencumbered balance for FY 2023.