

# AN ACT

To enact sections 3745.113, 6111.02, 6111.021, 6111.022, 6111.023, 6111.024, 6111.025, 6111.026, 6111.027, 6111.028, and 6111.029 of the Revised Code to require the issuance of permits for impacts to isolated wetlands, to require the preparation of zero-base budgets by two agencies during the biennium ending June 30, 2005, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 3745.113, 6111.02, 6111.021, 6111.022, 6111.023, 6111.024, 6111.025, 6111.026, 6111.027, 6111.028, and 6111.029 of the Revised Code be enacted to read as follows:

Sec. 3745.113. (A) A person that applies for a state isolated wetland permit under Chapter 6111. of the Revised Code and rules adopted under it shall pay an application fee of two hundred dollars at the time of application.

In addition, that person shall pay, at the time of application, a review fee of five hundred dollars per acre of the wetlands to be impacted.

However, the review fee shall not exceed five thousand dollars per application. In addition, if an application is denied, the director of environmental protection shall refund to the applicant one-half of the amount of the review fee paid by the applicant under division (A) of this section.

(B) If a person conducts any activities for which an individual state isolated wetland permit is required under Chapter 6111. of the Revised Code and rules adopted under it without first obtaining such a permit, the person shall pay twice the amount of the application and review fees that the person otherwise would have been required to pay under division (A) of this section, not to exceed ten thousand dollars.

(C) All moneys collected under this section shall be deposited in the state treasury to the credit of the dredge and fill fund created in section 6111.029 of the Revised Code.

(D) Fees established under this section shall not apply to any agency or department of the state or to any county, township, or municipal corporation in this state.

Sec. 6111.02. As used in this section and sections 6111.021 to 6111.028 of the Revised Code:

(A) "Category 1 wetland," "category 2 wetland," or "category 3 wetland" means a category 1 wetland, category 2 wetland, or category 3 wetland, respectively, as described in rule 3745-1-54 of the Administrative Code, as that rule existed on the effective date of this section, and as determined to be a category 1, category 2, or category 3 wetland, respectively, through application of the "Ohio rapid assessment method for wetlands version 5.0," including the Ohio rapid assessment method for wetlands version 5.0 quantitative score calibration dated August 15, 2000, unless an application for a section 401 water quality certification was submitted prior to February 28, 2001, in which case the applicant for the permit may elect to proceed in accordance with Ohio rapid assessment method for wetlands version 4.1.

(B) "Creation" means the establishment of a wetland where one did not formerly exist and that involves wetland construction on nonhydric soils.

(C) "Enhancement" means activities conducted in an existing wetland to improve or repair existing or natural wetland functions and values of that wetland.

(D) "Fill material" means any material that is used to fill an aquatic area, to replace an aquatic area with dry land, or to change the bottom elevation of a wetland for any purpose and that consists of suitable material that is free from toxic contaminants in other than trace quantities. "Fill material" does not include either of the following:

(1) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products;

(2) Material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.

(E) "Filling" means the addition of fill material into a wetland for the purpose of creating upland, changing the bottom elevation of the wetland, or creating impoundments of water. "Filling" includes, without limitation, the placement of the following in wetlands: fill material that is necessary for the construction of any structure; structures or impoundments requiring rock,

sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands, property protection, or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill material for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and underwater utility lines; and artificial reefs.

(F) "Isolated wetland" means a wetland that is not subject to regulation under the Federal Water Pollution Control Act.

(G) "Mitigation" means the restoration, creation, enhancement, or, in exceptional circumstances, preservation of wetlands expressly for the purpose of compensating for wetland impacts.

(H) "Mitigation bank service area" means the designated area where a mitigation bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and other aquatic resources and that is designated as such in accordance with the process established in the "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (1995)," 60 FR 58605.

(I) "Off-site mitigation" means wetland restoration, creation, enhancement, or preservation occurring farther than one mile from a project boundary, but within the same watershed.

(J) "On-site mitigation" means wetland restoration, creation, enhancement, or preservation occurring within and not more than one mile from the project boundary and within the same watershed.

(K) "Practicable" means available and capable of being executed with existing technology and without significant adverse effect on the economic feasibility of the project in light of the overall project purposes and in consideration of the relative environmental benefit.

(L) "Preservation" means the protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal mechanisms to prevent harm to the wetlands. "Preservation" may include protection of adjacent upland areas as necessary to ensure protection of a wetland.

(M) "Restoration" means the reestablishment of a previously existing wetland at a site where it has ceased to exist.

(N) "State isolated wetland permit" means a permit issued in accordance with sections 6111.02 to 6111.027 of the Revised Code authorizing the filling of an isolated wetland.

(O) "Watershed" means a common surface drainage area corresponding

to one from the list of thirty-seven adapted from the forty-four cataloging units as depicted on the hydrologic unit map of Ohio, United States geological survey, 1988, and as described in division (F)(2) of rule 3745-1-54 of the Administrative Code or as otherwise shown on map number 1 found in rule 3745-1-54 of the Administrative Code. "Watershed" is limited to those parts of the cataloging units that geographically lie within the borders of this state.

(P) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. "Wetlands" includes swamps, marshes, bogs, and similar areas that are delineated in accordance with the 1987 United States army corps of engineers wetland delineation manual and any other procedures and requirements adopted by the United States army corps of engineers for delineating wetlands.

(Q) "Wetland mitigation bank" means a site where wetlands have been restored, created, enhanced, or, in exceptional circumstances, preserved expressly for the purpose of providing mitigation for impacts to wetlands and that has been approved in accordance with the process established in the "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (1995)," 60 FR 58605.

Sec. 6111.021. (A)(1) The director of environmental protection shall issue a general state isolated wetland permit or permits to cover activities within this state for purposes of section 6111.022 of the Revised Code. A general permit is effective for five years. Upon the expiration of a general permit, the director shall issue a new general permit.

(2) The director may issue an individual state isolated wetland permit for purposes of sections 6111.023 and 6111.024 of the Revised Code. An individual permit issued under either of those sections is effective for five years.

(B) A person that proposes to engage in an activity that involves the filling of an isolated wetland shall apply to the director for coverage under a general state isolated wetland permit or shall apply for an individual state isolated wetland permit, as applicable, in accordance with sections 6111.02 to 6111.027 of the Revised Code. No person shall engage in the filling of an isolated wetland unless authorized to do so by a general or individual state isolated wetland permit. Sections 6111.02 to 6111.027 of the Revised Code do not apply to isolated wetlands created by previous coal mining activities where remining is proposed, except for wetlands created for mitigation purposes.

(C) The issuance of a general or individual state isolated wetland permit constitutes the issuance of a section 401 water quality certification for purposes of the Federal Water Pollution Control Act.

Sec. 6111.022. (A) A proposed filling of a category 1 or a category 2 isolated wetland of one-half acre or less shall require a general state isolated wetland permit and be subject to level one review requirements established under division (B) of this section.

(B) Level one review shall apply only to the filling of a category 1 or a category 2 isolated wetland as described in division (A) of this section requiring a general state isolated wetland permit. A level one review shall require the submission of a pre-activity notice that includes an application, an acceptable wetland delineation, a 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.

(C) The proposed filling of an isolated wetland that is subject to level one review is authorized by a general state isolated wetland permit unless the director of environmental protection notifies the applicant within thirty days after receipt of a pre-activity notice that the filling of the isolated wetland will result in a significant negative impact on state water quality. An applicant that receives such a notice may apply for an individual state isolated wetland permit in accordance with the procedures and requirements established under section 6111.023 of the Revised Code.

(D) Required mitigation for the proposed filling of an isolated wetland that is subject to level one review shall be conducted by the applicant. Without the objection of the director and at the discretion of the applicant, the applicant shall conduct either on site mitigation, mitigation at a wetland mitigation bank within the same United States army corps of engineers district as the location of the proposed filling of the isolated wetland, or off-site mitigation.

(E) A person that has submitted a pre-activity notice for coverage under a general state isolated wetland permit under this section shall complete the filling within two years after the end of the thirty-day period following the receipt of the pre-activity notice by the director. If the person does not complete the filling within that two-year period, the person shall submit a new pre-activity notice in accordance with this section.

Sec. 6111.023. (A) A proposed filling of a category 1 isolated wetland of greater than one-half acre or the proposed filling of a category 2 isolated wetland of greater than one-half acre, but less than or equal to three acres shall require an individual state isolated wetland permit and be subject to

level two review requirements established under division (B) of this section.

(B) Level two review shall apply to the filling of a category 1 or a category 2 isolated wetland described in division (A) of this section and shall require all of the following:

(1) All of the information required to be submitted with a pre-activity notice as described in division (B) of section 6111.022 of the Revised Code;

(2) The submission of an analysis of practicable on-site alternatives to the proposed filling of the isolated wetland that would have a less adverse impact on the isolated wetland ecosystem;

(3) The submission of information indicating whether high quality waters, as defined in rule 3745-1-05 of the Administrative Code, are to be avoided by the proposed filling of the isolated wetland.

(C) The director of environmental protection shall issue or deny an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level two review not later than ninety days after the receipt of an application for the permit. The director shall issue an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level two review unless the director determines that the applicant for the permit has failed to demonstrate all of the following:

(1) There is no practicable on-site alternative to the proposed filling of the isolated wetland that would have a less adverse impact on the isolated wetland ecosystem.

(2) Reasonable buffers have been provided for any isolated wetland that will be avoided at the site where the proposed filling of the isolated wetland will take place.

(3) The isolated wetland that will be subject to filling is not locally or regionally scarce within the watershed in which it is located and does not contain rare, threatened, or endangered species.

(4) The impact would not result in significant degradation to the aquatic ecosystem.

(5) Appropriate mitigation has been proposed for any unavoidable impacts.

(6) Storm water and water quality controls will be installed to ensure that peak post-development rates of surface water runoff from the impacted isolated wetland do not exceed the peak pre-development rates of runoff from the on-site isolated wetland. Water quality improvement measures shall be incorporated into the design of the storm water control measures to the maximum extent practicable. Examples of these measures include, but are not limited to, incorporating vegetated areas in a storm water control

plan.

(7) Any additional, practicable, site-specific requirements that are determined necessary by the director to protect water quality have been satisfied.

(D)(1) Notwithstanding an applicant's demonstration under division (C) of this section, the director may deny an application for an individual state isolated wetland permit submitted under this section if the director determines that the proposed filling of the isolated wetland will result in an adverse short-term or long-term impact on water quality.

(2) The director may impose any practicable terms and conditions on an individual state isolated wetland permit issued under this section that are appropriate or necessary to ensure adequate protection of state water quality and to ensure compliance with this chapter and rules adopted under it.

(3) Prior to the issuance of an individual state isolated wetland permit under this section, or prior to, during, or after the filling of the isolated wetland that is the subject of the permit, the director may require that the applicant or permit holder perform various environmental quality tests, including, without limitation, chemical analyses of water, sediment, or fill material and bioassays, in order to ensure adequate protection of water quality.

(E)(1) Mitigation for the proposed filling of a category 1 isolated wetland that is subject to level two review shall be conducted by the applicant. Without the objection of the director and at the discretion of the applicant, the applicant shall conduct either on-site mitigation, mitigation at a wetland mitigation bank within the same United States army corps of engineers district as the location of the proposed filling of the isolated wetland, or off-site mitigation.

(2) Mitigation for the proposed filling of a category 2 isolated wetland that is subject to level two review shall be conducted by the applicant and shall occur in the following preferred order:

(a) Practicable on-site mitigation;

(b) Reasonably identifiable, available, and practicable off-site mitigation within the same watershed;

(c) If the proposed filling of the isolated wetland will take place within a mitigation bank service area, within that mitigation bank service area;

(d) If there is a significant ecological reason that the mitigation location should not be limited to the watershed in which the isolated wetland is located and if the proposed mitigation will result in a substantially greater ecological benefit, in a watershed that is adjacent to the watershed in which the isolated wetland is located.

Sec. 6111.024. (A) A proposed filling of a category 2 isolated wetland of greater than three acres or a category 3 isolated wetland shall require an individual state isolated wetland permit and be subject to level three review requirements established under division (B) of this section.

(B) Level three review shall apply to the filling of a category 2 or a category 3 isolated wetland described in division (A) of this section and shall require all of the following:

(1) All of the information required to be submitted with a pre-activity notice as described in division (B) of section 6111.022 of the Revised Code;

(2) A full antidegradation review conducted in accordance with rules adopted under section 6111.12 of the Revised Code;

(3) The submission of information indicating whether high quality waters, as defined in rule 3745-1-05 of the Administrative Code, are to be avoided by the proposed filling of the isolated wetland.

(C) The director of environmental protection shall issue or deny an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level three review not later than one hundred eighty days after the receipt of an application for the permit. The director shall not issue an individual state isolated wetland permit for the proposed filling of an isolated wetland that is subject to level three review unless the director determines that the applicant for the permit has demonstrated that the proposed filling will not prevent or interfere with the attainment or maintenance of applicable state water quality standards.

(D)(1) Notwithstanding division (C) of this section, the director also may deny an application for an individual state isolated wetland permit submitted under this section if the director determines that the proposed filling of the isolated wetland will result in an adverse short-term or long-term impact on water quality.

(2) The director may impose terms and conditions on an individual state isolated wetland permit issued under this section that are appropriate or necessary to ensure adequate protection of state water quality and to ensure compliance with this chapter and rules adopted under it.

(3) Prior to the issuance of an individual state isolated wetland permit under this section, or prior to, during, or after the filling of the isolated wetland that is the subject of the permit, the director may require that the applicant or permit holder perform various environmental quality tests, including, without limitation, chemical analyses of water, sediment, or fill material and bioassays, in order to ensure adequate protection of water quality.

isolated wetland that is subject to level three review shall occur in the following preferred order:

(1) Practicable on-site mitigation;

(2) Reasonably identifiable, available, and practicable off-site mitigation within the same watershed;

(3) If the proposed filling of the isolated wetland will take place within a mitigation bank service area, within that mitigation bank service area;

(4) If there is a significant ecological reason that the mitigation location should not be limited to the watershed in which the isolated wetland is located and if the proposed mitigation will result in a substantially greater ecological benefit, in a watershed that is adjacent to the watershed in which the isolated wetland is located.

Sec. 6111.025. (A) The director of natural resources in consultation with the director of environmental protection shall establish a list of approved wetland mitigation banks that shall be used by applicants for state isolated wetland permits for mitigation purposes and shall submit the list to the director of environmental protection. In establishing the list, the director of natural resources shall give preference to wetland mitigation banks that are comprised of areas involving the restoration of previously existing wetlands. The list established under this division shall not exclude state or local agencies from developing wetland mitigation banks.

(B) The department of natural resources, the division of wildlife in that department, or any other division in that department that is designated by the director of natural resources may establish and operate a wetland mitigation bank for purposes of sections 6111.02 to 6111.027 of the Revised Code. A mitigation bank so established may be used by any individual or entity, including any agency or department of the state, for mitigation purposes under those sections.

(C) The director of environmental protection annually shall issue a report to the members of the general assembly on the total number of acres of isolated wetlands that were subject to filling during the immediately preceding year as well as the total number of acres of isolated wetlands that were restored, created, enhanced, or preserved through mitigation that same year as a result of state isolated wetland permits issued under sections 6111.02 to 6111.027 of the Revised Code.

Sec. 6111.026. (A)(1) The director of environmental protection shall prescribe the form of the application for a general state isolated wetland permit and for an individual state isolated wetland permit.

(2) The director shall provide an explanation to an applicant for an individual state isolated wetland permit of the basis for the proposed denial

of the application.

(B) Within fifteen business days after the receipt of an application for an individual state isolated wetland permit or an application for coverage under a general state isolated wetland permit, the director shall notify the applicant if the application is complete. If the application is not complete, the director shall include in the notice an itemized list of the information or materials that are necessary to complete the application. Time periods specified in sections 6111.02 to 6111.027 of the Revised Code shall not apply until the application is determined by the director to be complete. If the applicant fails to provide information or materials that are necessary to complete the application within sixty days after the director's receipt of the application, the director may return the incomplete application to the applicant and take no further action on the application.

(C) Except as provided in division (D) of this section, the director shall publish notice 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 isolated wetland that is the subject of the application is to take place. The director shall accept comments concerning the application and requests for a public hearing concerning the application for not more than twenty days following the publication of notice concerning the application.

If a public hearing is requested during the twenty-day comment period and the director determines that there is significant public interest, the director or the director's representative shall conduct a public hearing concerning the application. Notice of the public hearing shall be published not later than thirty days prior to the date of the hearing in a newspaper of general circulation in the county in which the proposed filling of the isolated wetland that is the subject of the application is to take place. If a public hearing is requested concerning an application, the director shall accept comments concerning the application until five business days after the public hearing. A public hearing conducted under this division shall take place not later than seventy days after the receipt of the application.

(D) Applications for individual state isolated wetland permits submitted under section 6111.024 of the Revised Code and the issuance of a general state isolated wetland permit under section 6111.021 of the Revised Code are subject to rules adopted under section 6111.12 of the Revised Code governing public notice and participation.

(E) When an application for a state isolated wetland permit is changed, altered, or amended after a public hearing was conducted in accordance with division (C) or (D) of this section, a second hearing shall not be required for

the changed, altered, or amended application if the scope of the proposed filling that is proposed by the original application has not changed or the proposed filling has been reduced from that proposed in the original application.

(F) If the isolated wetland that is the subject of an application for an individual state isolated wetland permit submitted under section 6111.023 or 6111.024 of the Revised Code is part of a project that is subject to section 404 of the Federal Water Pollution Control Act, the director, at the request of the applicant, may revise the time periods established in this section for the public comment period and public hearing, if applicable, to coincide with the time periods for an application for a 401 water quality certification. If the applicant makes such a request, the director also may revise the time periods established in sections 6111.023 and 6111.024 of the Revised Code solely for the purpose of eliminating duplicative public comment and public hearing procedures as authorized by this division.

Sec. 6111.027. (A) Mitigation for impacts to isolated wetlands under sections 6111.02 to 6111.027 shall be conducted in accordance with the following ratios:

(1) For category 1 and category 2 isolated wetlands, other than forested category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted at a rate of two times the size of the area of isolated wetland that is being impacted.

(2) For forested category 2 isolated wetlands, mitigation located at an approved wetland mitigation bank shall be conducted at a rate of two and one-half times the size of the area of isolated wetland that is being impacted.

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

(B) Mitigation that involves the enhancement or preservation of isolated wetlands shall be calculated and performed in accordance with rule 3745-1-54 of the Administrative Code.

(C) An applicant for coverage under a general state isolated wetland permit or for an individual state isolated wetland permit under sections 6111.022 to 6111.024 of the Revised Code shall demonstrate that the mitigation site will be protected in perpetuity and that appropriate practicable management measures are, or will be, in place to restrict harmful activities that jeopardize the mitigation.

Sec. 6111.028. (A) The discharge of dredged material into isolated wetlands is subject to sections 6111.021 to 6111.027 of the Revised Code.

(B) As used in this section:

(1) "Discharge of dredged material" has the same meaning as in 33 CFR 323.2 as effective February 16, 2001.

(2) "Dredged material" means material that is excavated or dredged from isolated wetlands. "Dredged material" does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

Sec. 6111.029. There is hereby created in the state treasury the dredge and fill fund consisting of moneys credited to it under section 3745.113 of the Revised Code. The director of environmental protection shall use moneys in the fund solely for the purpose of administering sections 6111.02 to 6111.029 of the Revised Code.

SECTION 2. The Director of Budget and Management shall prepare a full zero-base budget for the biennium ending June 30, 2005, for the Environmental Protection Agency and for one state agency that the Director shall select prior to January 2002, that has fewer full-time equivalent personnel than any administrative department listed in section 121.02 of the Revised Code. The Director shall offer the two agencies substantial technical assistance throughout the process of preparing their zero-base budgets. Each of the agencies shall prepare a full zero-base budget in such manner and according to such schedule as the Director of Budget and Management requires. The zero-base budgets shall, as the Director of Budget and Management determines, be in addition to or in place of the estimates of revenue and proposed expenditures that they would otherwise be required to prepare under section 126.02 of the Revised Code.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that the protection of isolated wetlands is of vital importance to the state's environment and natural resources. Therefore, this act shall go into immediate effect.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. H. B. No. 231

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_