

As Introduced

124th General Assembly
Regular Session
2001-2002

H. B. No. 231

**REPRESENTATIVES Faber, Cates, Seitz, Calvert, Husted, Gilb, Hartnett,
Raga, Schmidt, Lendrum**

A B I L L

To enact section 6111.02 of the Revised Code to 1
require permits for and mitigation of impacts to 2
isolated wetlands. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 6111.02 of the Revised Code be 4
enacted to read as follows: 5

Sec. 6111.02. (A) As used in this section: 6

(1) "Navigable waters" has the same meaning as in the Federal 7
Water Pollution Control Act. 8

(2) "Wetland" means an area that has hydric soils and is 9
inundated or saturated by surface or ground water at a frequency 10
and duration that is sufficient to support, and that under normal 11
circumstances does support, a prevalence of hydrophytic vegetation 12
typically adapted for life in saturated soil conditions. "Wetland" 13
includes a marsh, bog, and other similar area. 14

(3) "Isolated wetland" means an intrastate wetland that is 15
not connected to navigable waters by a swale, stream, or other 16
distinctive open watercourse and that is not a navigable water 17
under the Federal Water Pollution Control Act pursuant to the 18
holding of the United States Supreme Court in *Solid Waste Agency* 19

of Northern Cook County v. United States Army Corps of Engineers,
121 S.Ct. 675 (2001).

(4) "High quality isolated wetland" means an isolated wetland
that has a high level of diversity of plant and animal species, a
high proportion of native plant and animal species, and a high
level of wetland functions. "High quality isolated wetland"
includes isolated wetlands that contain or provide habitat for
threatened or endangered species, forested wetlands that are of a
high quality, vernal pools, bogs, and fens.

(5) "Wetland mitigation bank" means a site where wetlands
have been restored, created, enhanced, or, in exceptional
circumstances, preserved expressly for the purpose of providing
compensatory mitigation for impacts to wetlands.

(B) In lieu of complying with any other requirements of this
chapter governing the waters of the state, a person that seeks to
fill, develop, or otherwise impact an isolated wetland shall
submit an application for an isolated wetland mitigation permit to
the environmental protection agency. The director of environmental
protection shall prescribe the form of the application. The
application shall include the name and address of the applicant, a
description of the isolated wetland that is proposed to be
impacted, and a description of proposed mitigation for the wetland
impact at a wetland mitigation bank under division (C)(1) of this
section or a description of proposed on-site mitigation under
division (C)(2) of this section. In addition, the application
shall be accompanied by a fee in an amount determined by the
director to be necessary to offset the cost of processing the
application. The director shall approve or disapprove the
application within sixty days of its receipt. If the director does
not approve or disapprove the application within sixty days, it
shall be deemed to be approved.

The director shall issue a permit for an approved application

for a proposed impact to an isolated wetland and corresponding mitigation for that impact. The permit shall include the information that is included with the application along with any other terms or conditions pertaining to mitigation as determined by the director. However, any terms or conditions included in the permit by the director shall not require a method of mitigation that is inconsistent with division (C)(1) or (2) of this section.

52
53
54
55
56
57
58

(C)(1) Unless conducted under division (C)(2) of this section, all mitigation for impacts to isolated wetlands shall be provided through the donation of money by the applicant to a wetlands mitigation bank approved under division (D) of this section. Mitigation for impacts to an isolated wetland shall be conducted so that the total wetlands created, restored, enhanced, or preserved through the mitigation are created, restored, enhanced, or preserved at a rate of two times the size of the area of isolated wetland that is being impacted.

59
60
61
62
63
64
65
66
67

(2) In lieu of a donation of moneys to a wetlands mitigation bank in accordance with division (C)(1) of this section, an applicant may mitigate the impacts to an isolated wetland through the creation, restoration, enhancement, or, in exceptional circumstances, preservation of wetlands at the site where the impact to the isolated wetland will occur. On-site mitigation for impacts to an isolated wetland shall be conducted so that the total wetlands created, restored, enhanced, or preserved through compensatory mitigation are created, restored, enhanced, or preserved at a rate of two times the size of the area of isolated wetland that is being impacted.

68
69
70
71
72
73
74
75
76
77
78

(D)(1) The director of natural resources shall establish a list of approved wetland mitigation banks that shall be used by applicants for permits for mitigation purposes under division (C)(1) of this section and shall submit the list to the director of environmental protection. Wetland mitigation banks approved

79
80
81
82
83

under this division shall support superior habitat or hydrological
or recreational functions and shall provide better ecological and
hydrological functions than isolated wetlands replaced by
mitigation.

84
85
86
87

(2) The director of natural resources shall establish
guidelines specifying appropriate limits on the amount of moneys
that shall be donated to a wetlands mitigation bank under division
(C)(1) of this section for mitigation of impacts to isolated
wetlands.

88
89
90
91
92

(E) This section does not apply to high quality isolated
wetlands. High quality isolated wetlands shall be governed by all
other applicable requirements of this chapter and rules adopted
under it.

93
94
95
96