

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 231

Representative Wachtmann

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A B I L L

To amend sections 1501.33, 1521.04, 1522.03, and 1
1522.05, to enact sections 1522.10, 1522.101, and 2
1522.11 to 1522.20, and to repeal section 1522.07 3
of the Revised Code to establish a program for the 4
issuance of permits for the withdrawal and 5
consumptive use of waters from the Lake Erie 6
basin. 7

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

Section 1. That sections 1501.33, 1521.04, 1522.03, and 8
1522.05 be amended and sections 1522.10, 1522.101, 1522.11, 9
1522.12, 1522.13, 1522.14, 1522.15, 1522.16, 1522.17, 1522.18, 10
1522.19, and 1522.20 of the Revised Code be enacted to read as 11
follows: 12

Sec. 1501.33. (A) Except as provided in divisions (B) ~~and~~ 13
(C), and (D) of this section, no person shall allow a facility 14
that the person owns to withdraw waters of the state in an amount 15
that would result in a new or increased consumptive use of more 16
than an average of two million gallons of water per day in any 17
thirty-day period without first obtaining a permit from the 18
director of natural resources under section 1501.34 of the Revised 19
Code. The person shall submit an application for a permit to the 20

director on a form ~~he~~ the director prescribes, which application 21
shall declare and document all of the following: 22

(1) The facility's current withdrawal capacity per day if the 23
withdrawal is to occur at a facility already in operation; 24

(2) The total new or increased daily withdrawal capacity 25
proposed for the facility; 26

(3) The locations and sources of water proposed to be 27
withdrawn; 28

(4) The locations of proposed discharges or return flows; 29

(5) The locations and nature of proposed consumptive uses; 30

(6) The estimated average annual and monthly volumes and 31
rates of withdrawal; 32

(7) The estimated average annual and monthly volumes and 33
rates of consumptive use; 34

(8) The effects the withdrawal is anticipated to have with 35
respect to existing uses of water resources; 36

(9) A description of other ways the applicant's need for 37
water may be satisfied if the application is denied or modified; 38

(10) A description of the conservation practices the 39
applicant intends to follow; 40

(11) Any other information the director may require by rule. 41

Each application shall be accompanied by a nonrefundable fee 42
of one thousand dollars, which shall be credited to the water 43
management fund created under section 1501.32 of the Revised Code. 44

(B) A major utility facility that is subject to regulation 45
under Chapter 4906. of the Revised Code need not obtain a permit 46
under section 1501.34 of the Revised Code. 47

(C)(1) A public water system, as that term is defined in 48
section 6109.01 of the Revised Code, that withdraws waters of the 49

state in an amount that would result in a new or increased 50
consumptive use of more than two million gallons per day need not 51
obtain a permit under section 1501.34 of the Revised Code if any 52
of the following apply: 53

(a) The public water system was in operation on the effective 54
date of this section and no substantial changes are proposed for 55
that system except as specified in division (C)(1)(c) of this 56
section. 57

(b) A public water system that is proposed to be constructed 58
or installed, or an existing system for which changes are 59
proposed, encompasses only water distribution facilities. 60

(c) A public water system, other than one that encompasses 61
only water distribution facilities, is proposed to be constructed 62
or installed, or substantial changes in the design capacity of an 63
existing system, other than one that encompasses only water 64
distribution facilities, are proposed; the plans submitted for the 65
system to the director of environmental protection under section 66
6109.07 of the Revised Code declare and document the information 67
specified in division (A) of this section and rules adopted under 68
it as determined by the director of natural resources; and the 69
director of environmental protection has applied the criteria 70
specified in division (A) of section 1501.34 of the Revised Code 71
in reviewing and approving the plans as determined by the director 72
of natural resources. 73

(2) Any public water system that withdraws waters of the 74
state in an amount that would result in a new or increased 75
consumptive use of more than two million gallons per day and that 76
does not meet the criteria specified in divisions (C)(1)(a), (b), 77
or (c) of this section shall obtain a permit under section 1501.34 78
of the Revised Code. A person who submits plans for such a system 79
under section 6109.07 of the Revised Code may request the director 80
of natural resources in writing to consider those plans as an 81

application under this section. No later than twenty days after 82
receiving the request, the director shall notify the person of one 83
of the following: 84

(a) The plans declare and document the information specified 85
in division (A) of this section and rules adopted under it and are 86
accepted as an application under this section, and the person 87
shall submit to the director the application fee required under 88
division (A) of this section. 89

(b) Additional specified information is necessary before the 90
director can accept the plans as an application. 91

(c) The plans do not meet the requirements of division (A) of 92
this section and rules adopted under it and an application shall 93
be submitted in accordance with this section. 94

(D) A facility that is required to obtain a permit under 95
sections 1522.10 to 1522.20 of the Revised Code need not obtain a 96
permit under section 1501.34 of the Revised Code. 97

Sec. 1521.04. The chief of the division of soil and water 98
resources, with the approval of the director of natural resources, 99
may make loans and grants from the water management fund created 100
in section 1501.32 of the Revised Code to governmental agencies 101
for water management, water supply improvements, and planning and 102
may administer grants from the federal government and from other 103
public or private sources for carrying out those functions and for 104
the performance of any acts that may be required by the United 105
States or by any agency or department thereof as a condition for 106
the participation by any governmental agency in any federal 107
financial or technical assistance program. Direct and indirect 108
costs of administration may be paid from the fund. 109

The chief may use the water management fund for the purposes 110
of administering the water diversion and consumptive use permit 111

programs established in sections 1501.30 to 1501.35 of the Revised Code and the withdrawal and consumptive use permit program established under sections 1522.10 to 1522.20 of the Revised Code; to perform watershed and water resources studies for the purposes of water management planning; and to acquire, construct, reconstruct, improve, equip, maintain, operate, and dispose of water management improvements. The chief may fix, alter, charge, and collect rates, fees, rentals, and other charges to be paid into the fund by governmental agencies and persons who are supplied with water by facilities constructed or operated by the department of natural resources in order to amortize and defray the cost of the construction, maintenance, and operation of those facilities.

Sec. 1522.03. ~~(A) Subject to the limitations established in division (B) of section 1522.05 of the Revised Code, the director of natural resources~~ The chief of the division of soil and water resources shall do both of the following:

~~(1) Adopt rules in accordance with Chapter 119. of the Revised Code for the implementation, administration, and enforcement of this chapter;~~

~~(2) Enforce~~ enforce the great lakes-st. Lawrence river basin water resources compact and take appropriate actions to effectuate its purposes and intent.

~~(B) Subject to the limitations established in division (B) of section 1522.05 of the Revised Code, any appropriate state agency or governmental officer shall enforce the compact and take appropriate actions to effectuate its purpose and intent.~~

Sec. 1522.05. ~~(A)~~ Pursuant to Section 9.2 of the great lakes-st. Lawrence river basin water resources compact, the governor may take such actions as are necessary for the initial

organization and operation of the great lakes-st. Lawrence river 142
basin water resources council created in Section 2.1 of the 143
compact. Agencies of the state are hereby authorized to cooperate 144
with the council. 145

~~(B)(1) The governor, the department of natural resources, or 146
any other agency of the state shall not adopt rules or implement 147
any program regulating the use, withdrawal, consumptive use, or 148
diversion of water pursuant to Sections 4.10 and 4.12.2 of the 149
compact unless the general assembly enacts legislation after the 150
effective date of this section authorizing the implementation of 151
the program or adoption of rules. 152~~

~~In addition, the The governor, the department of natural 153
resources, or any other agency of the state shall not adopt rules 154
or implement any mandatory program governing water conservation 155
and efficiency pursuant to Section 4.2 of the compact related to 156
the great lakes-st. Lawrence river basin water resources compact 157
unless the general assembly enacts legislation ~~after the effective~~ 158
~~date of the compact~~ authorizing the implementation of the program 159
or adoption of the rules. ~~However, the The governor, the~~ 160
department of natural resources, or any other agency of the state 161
~~may shall not~~ adopt rules concerning and ~~may implement~~ voluntary 162
establishing a mandatory water conservation and efficiency 163
~~programs~~ program without authorization from the general assembly. 164
~~Such voluntary programs shall not include any mandatory~~ 165
~~requirements.~~ 166~~

~~(2) Division (B)(1) of this section does not prohibit the 167
effectuation of Sections 4.8 and 4.9 of the compact after the 168
effective date of the compact or prohibit the continued 169
implementation and enforcement by the governor or applicable 170
agencies of this state of laws, rules, or programs regulating the 171
use, withdrawal, consumptive use, or diversion of water that are 172
in effect on or before the effective date of this section. 173~~

Sec. 1522.10. As used in sections 1522.10 to 1522.20 of the 174
Revised Code: 175

(A) "Baseline facility" means a facility identified in the 176
baseline report, a facility added to the baseline report under 177
section 1522.16 of the Revised Code, or any other facility that 178
has commenced withdrawal and consumptive use activities since the 179
submission of the baseline report and prior to the effective date 180
of this section. 181

(B) "Baseline facility abandonment" means the voluntary and 182
affirmative termination of a baseline facility's withdrawal and 183
consumptive use capacity as listed in the baseline report. 184
"Baseline facility abandonment" does not include the nonuse or the 185
transfer of a baseline facility's withdrawal and consumptive use 186
capacity. 187

(C) "Baseline report" means a list of the withdrawal and 188
consumptive use capacities of facilities that was developed for 189
purposes of section 4.12 of the great lakes-st. Lawrence river 190
basin water resources compact by the department of natural 191
resources and submitted to the great lakes-st. Lawrence river 192
basin water resources council on December 8, 2009. 193

(D) "Capacity" means the ability of a facility's pumps, 194
pipes, and other appurtenances to withdraw and consumptively use 195
water when operated under intended normal operating conditions. 196

(E) "Consumptive use" does not include water purchased from a 197
public water supplier and, for purposes of determining a new or 198
increased capacity for consumptive use, is the use based on a 199
coefficient of consumptive use generally accepted in the 200
scientific community that most accurately reflects the process at 201
a facility. 202

(F) "Facility" means any site, installation, or building at 203

which water withdrawal and consumptive use activities take place 204
that is located at a property or on contiguous properties and that 205
is under the direction of either a private or public entity. 206

(G) "Facility abandonment" means the voluntary and 207
affirmative termination of a facility's withdrawal and consumptive 208
use capacity as listed in a withdrawal and consumptive use permit 209
issued under section 1522.11 of the Revised Code. "Facility 210
abandonment" does not include the nonuse or the transfer of a 211
facility's withdrawal and consumptive use capacity. 212

(H) "High quality water" means a river or stream that has 213
been designated by the environmental protection agency under 214
Chapter 3745-1 of the Administrative Code not later than the 215
effective date of this section as an exceptional warm water 216
habitat, cold water habitat, outstanding state water, or superior 217
high-quality water. However, "high quality water" does not include 218
outstanding state waters that are designated as such due to 219
exceptional recreational values. 220

(I) "Increased capacity" does not include any capacity that 221
results from alterations or changes made at a facility that 222
replace existing capacity without increasing the capacity of the 223
facility. 224

(J) "Recognized navigational channel" means that portion of a 225
river or stream extending from bank to bank that is, as of the 226
effective date of this section, a state or federally maintained 227
navigational channel. 228

(K) "River or stream" means any river or stream in the Lake 229
Erie watershed identified on the effective date of this section in 230
the gazateer of Ohio streams. 231

(L) "River or stream under the influence of Lake Erie" means 232
that portion of a river or stream that has a bottom elevation at 233
or below the highest monthly long-term level of Lake Erie, as 234

designated by the United States army corp of engineers, of five 235
hundred seventy-one and nine-tenths feet above sea level and to 236
which both of the following apply: 237

(1) The portion of the river or stream is a direct tributary 238
of Lake Erie. 239

(2) The portion of the river or stream is a recognized 240
navigational channel. 241

"River or stream under the influence of Lake Erie" also 242
includes that portion of any river or stream that is a tributary 243
of Lake Erie that has a stream bottom elevation at or below five 244
hundred seventy-one and nine-tenths feet above sea level. 245

Sec. 1522.101. (A) For purposes of this chapter, with respect 246
to the definition of "source watershed" in section 1522.01 of the 247
Revised Code, the general assembly declares that "source 248
watershed" means the Lake Erie watershed. Further, the general 249
assembly declares as nonbinding the preference in that definition 250
for the "source watershed" to be the direct tributary stream 251
watershed from which water is withdrawn. 252

(B) Nothing in sections 1522.10 to 1522.20 of the Revised 253
Code shall limit a person's right to the reasonable use of ground 254
water, water in a lake, or any other watercourse in contravention 255
of Section 19b of Article I, Ohio Constitution. 256

Sec. 1522.11. (A) For purposes of the great lakes-st. 257
Lawrence river basin water resources compact, not later than one 258
hundred eighty days after the effective date of this section, the 259
chief of the division of soil and water resources shall establish 260
a program for the issuance of permits for the withdrawal and 261
consumptive use of water from the Lake Erie watershed. Upon 262
establishment of the program, the owner or operator of a facility 263
that is not otherwise exempt under section 1522.13 of the Revised 264

Code shall obtain a withdrawal and consumptive use permit from the 265
chief if the facility meets any of the following threshold 266
criteria: 267

(1) The facility has a new or increased capacity for 268
withdrawals and consumptive uses from Lake Erie or a river or 269
stream under the influence of Lake Erie of at least five million 270
gallons per day averaged over a ninety-day period. 271

(2) Except as provided in division (A)(3) of this section, 272
the facility has a new or increased capacity for withdrawals and 273
consumptive uses from any river or stream other than a river or 274
stream under the influence of Lake Erie or from ground water in 275
the Lake Erie watershed of at least two million gallons per day 276
averaged over a ninety-day period. 277

(3) The facility has a new or increased capacity for 278
withdrawals and consumptive uses of at least three hundred 279
thousand gallons per day averaged over a ninety-day period from 280
any river or stream to which both of the following apply: 281

(a) The river or stream is a high quality water. 282

(b) The river or stream has a drainage area of less than one 283
hundred square miles measured at the point where the withdrawal or 284
consumptive use occurs. 285

(B) Permits issued under this section shall be issued only 286
for the amount of withdrawal and consumptive use capacity of a 287
facility that exceeds threshold amounts established in division 288
(A) of this section. A permit shall neither address nor be 289
required for the portion of the withdrawal and consumptive use 290
capacity of the facility below that threshold amount. 291

(C) An applicant for a permit shall submit an application to 292
the chief on a form that the chief prescribes. The applicant shall 293
include with the application all of the following: 294

<u>(1) The name and address of the applicant and of a contact person for the applicant;</u>	295 296
<u>(2) A description of all of the following:</u>	297
<u>(a) The facility's current withdrawal capacity per day if the withdrawal is to occur at a facility already in operation;</u>	298 299
<u>(b) The total new or increased daily withdrawal capacity proposed for the facility;</u>	300 301
<u>(c) The locations and sources of water proposed to be withdrawn;</u>	302 303
<u>(d) The locations of proposed discharges or return flows;</u>	304
<u>(e) The locations and nature of proposed consumptive uses and the applicable consumptive use coefficient for the facility;</u>	305 306
<u>(f) The estimated average annual and monthly volumes and rates of withdrawal;</u>	307 308
<u>(g) The estimated average annual and monthly volumes and rates of consumptive use;</u>	309 310
<u>(h) Other ways the applicant's need for water may be satisfied if the application is denied or modified.</u>	311 312
<u>(3) A nonrefundable application fee of one thousand dollars the proceeds of which shall be credited to the water management fund created in section 1501.32 of the Revised Code.</u>	313 314 315
<u>The chief shall not require an applicant to submit any information with an application other than the information required by divisions (C)(1) and (2) of this section.</u>	316 317 318
<u>(D) A permit is valid until the facility to which the permit applies is the subject of facility abandonment. Once every five years, the owner or operator of a facility shall certify to the chief that the facility is in compliance with the permit that has been issued for the facility.</u>	319 320 321 322 323

(E) No person that is required to do so shall fail to apply for and receive a withdrawal and consumptive use permit. 324
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(F) A permit issued under this section shall include terms and conditions restricting the withdrawal and consumptive use by a facility to amounts not exceeding the capacity of the facility. 326
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Sec. 1522.12. (A) In making the decision to issue or deny a withdrawal and consumptive use permit, the chief of the division of soil and water resources shall apply the criteria established in section 4.11 of the great lakes-st. Lawrence river basin water resources compact. 329
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For purposes of applying the criteria established in section 4.11 of the great lakes-st. Lawrence river basin water resources compact, all of the following apply: 334
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(1) If a withdrawal and consumptive use by a facility from Lake Erie or a river or stream under the influence of Lake Erie will not lower the water level in Lake Erie by one inch over a five-year period from the long-term mean Lake Erie water level of five hundred seventy-one and nine-tenths feet above sea level, it is irrebuttably presumed that the withdrawal and consumptive use will not cause a significant individual or cumulative adverse impact to the quantity or quality of waters and water dependent natural resources and the Lake Erie watershed. 337
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(2) If a withdrawal and consumptive use by a facility from ground water or from a river or stream that is not a river or stream under the influence of Lake Erie will not lower the water level in Lake Erie by one-half inch over a five-year period from the long-term mean Lake Erie water level of five hundred seventy-one and nine-tenths feet above sea level, it is irrebuttably presumed that the withdrawal and consumptive use will not cause a significant individual or cumulative adverse impact to the quantity or quality of waters and water dependent natural 346
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resources and the Lake Erie watershed. 355

(3) A withdrawal and consumptive use from any river or stream 356
that is a high quality water with a drainage area of less than one 357
hundred square miles has or will have no significant individual or 358
cumulative adverse impacts on the Lake Erie watershed unless the 359
withdrawal and consumptive use adversely impacts the high quality 360
water as determined by the chief in accordance with rules adopted 361
under section 1522.14 of the Revised Code. 362

(B) The chief shall not submit an application for a 363
withdrawal and consumptive use permit for regional review to the 364
regional body as defined in section 1.2 of the great lakes-st. 365
Lawrence river basin water resources compact unless regional 366
review is agreed to by the applicant for the permit. 367

(C) The chief shall issue a withdrawal and consumptive use 368
permit for a facility only if the chief determines that a facility 369
meets all of the criteria established in section 4.11 of the great 370
lakes-st. Lawrence river basin water resources compact. 371

(D) A withdrawal or consumptive use is reasonable under 372
section 4.11.5 of the great lakes-st. Lawrence river basin water 373
resources compact unless a determination is made that the 374
withdrawal or consumptive use is not reasonable by a court of 375
competent jurisdiction in this state pursuant to section 1521.17 376
of the Revised Code. This division does not provide standing to 377
the department of natural resources to bring suit under the 378
reasonable use doctrine. 379

Sec. 1522.13. The following are exempt from the requirement 380
to obtain a withdrawal and consumptive use permit: 381

(A) A facility or proposed facility that has a withdrawal and 382
consumptive use capacity or proposed capacity below the threshold 383
amounts established in divisions (A)(1) to (3) of section 1522.11 384

<u>of the Revised Code;</u>	385
<u>(B) A baseline facility that has not increased its withdrawal</u>	386
<u>and consumptive use capacity beyond the capacity listed in the</u>	387
<u>baseline report and beyond the thresholds established in section</u>	388
<u>1522.11 of the Revised Code;</u>	389
<u>(C) A facility that is required to increase its withdrawal</u>	390
<u>and consumptive use capacity as a result of legal requirements</u>	391
<u>established by federal, state, or local governmental authorities;</u>	392
<u>(D) A facility making a withdrawal and consumptive use from</u>	393
<u>nonchannelized surface water that is not a river or stream or from</u>	394
<u>an impoundment of water that is isolated and does not depend</u>	395
<u>entirely on ground water for replenishment such as a farm pond,</u>	396
<u>golf course pond, or other similar retention pond;</u>	397
<u>(E) A facility that is establishing a new or is increasing</u>	398
<u>its withdrawal and consumptive use capacity as a result of an</u>	399
<u>emergency condition that, without the new or increased withdrawal</u>	400
<u>and consumptive use capacity, will result in imminent harm to</u>	401
<u>human health or property;</u>	402
<u>(F) A facility that is establishing a new or is increasing</u>	403
<u>its withdrawal and consumptive use capacity for testing purposes</u>	404
<u>only if the testing period will last no longer than thirty-six</u>	405
<u>months;</u>	406
<u>(G) A facility that is establishing a new or is increasing</u>	407
<u>its withdrawal and consumptive use capacity in order to respond to</u>	408
<u>a humanitarian crisis if the increased capacity is necessary to</u>	409
<u>assist in the management of that crisis;</u>	410
<u>(H) A facility that is exempt from the requirement to obtain</u>	411
<u>a permit under divisions (B) and (C) of section 1501.33 of the</u>	412
<u>Revised Code;</u>	413
<u>(I) A facility that undergoes a ground water review under</u>	414

section 1514.13 of the Revised Code; 415

(J) A facility with ground water or surface water withdrawals 416
or consumptive uses that are subject to regulation under a state 417
or federal law other than sections 1522.10 to 1522.20 of the 418
Revised Code and other than a permit issued under Chapter 6111. of 419
the Revised Code and rules adopted under it; 420

(K) A facility that is withdrawing or consumptively using 421
water from an off-stream impoundment that has been substantially 422
filled by a withdrawal from a baseline facility or from a facility 423
for which a withdrawal and consumptive use permit has been issued. 424

Sec. 1522.14. The chief of the division of soil and water 425
resources shall adopt rules in accordance with Chapter 119. of the 426
Revised Code that establish standards for what constitutes 427
significant individual or cumulative adverse impact to a high 428
quality water with a drainage area of less than one hundred square 429
miles for purposes of division (A)(3) of section 1522.12 of the 430
Revised Code. 431

Sec. 1522.15. (A)(1) A permittee may transfer a withdrawal 432
and consumptive use permit upon the sale or transfer of a 433
facility. In addition, the owner of a baseline facility may 434
transfer the withdrawal and consumptive use capacity of the 435
baseline facility upon the sale or transfer of the baseline 436
facility. Transferred capacity of a baseline facility shall not 437
require a withdrawal and consumptive use permit. Notice of a 438
transfer shall be given to the chief of the division of soil and 439
water resources in a manner prescribed by the chief. 440

(2) If a permittee sells a portion of a facility for which a 441
withdrawal and consumptive use permit has been issued, the 442
permittee may transfer the applicable portion of the withdrawal 443
and consumptive use capacity authorized by the withdrawal and 444

consumptive use permit. The permittee shall provide notice of such 445
a transfer to the chief in a manner prescribed by the chief. Upon 446
receipt of the notice and if a permit is required based on the 447
threshold amounts established in divisions (A)(1) to (3) of 448
section 1522.11 of the Revised Code, the chief shall issue a new 449
permit to the permittee who transferred the portion of the 450
facility and a new permit to the transferee. Any new permits shall 451
reflect the transfer of the portion of the withdrawal and 452
consumptive use capacity. 453

(3) If the owner of a baseline facility sells a portion of 454
the baseline facility, the owner may transfer the applicable 455
portion of the withdrawal and consumptive use capacity listed in 456
the baseline report for that facility. The owner shall provide 457
notice of such a transfer to the chief in a manner prescribed by 458
the chief. The chief shall not require the owner of the baseline 459
facility or the transferee to obtain a withdrawal and consumptive 460
use permit. Rather, the chief shall update the baseline report to 461
reflect the transfer. 462

(B) The chief shall remove a facility from the baseline 463
report when the facility is subject to baseline facility 464
abandonment. However, a baseline facility shall not be removed 465
from the baseline report for the nonuse or the transfer of the 466
facility's baseline capacity. 467

Sec. 1522.16. (A) The owner or operator of a facility may 468
petition the chief of the division of soil and water resources for 469
either of the following: 470

(1) Inclusion in the baseline report if the owner or operator 471
believes that the facility was erroneously excluded from the 472
report; 473

(2) The amendment of the amount of a withdrawal and 474
consumptive use or other information included in the baseline 475

report regarding the facility if the owner or operator believes 476
that the information is incorrect. 477

(B) The chief shall issue an order either approving or 478
disapproving a petition submitted under this section. The chief 479
shall issue the order based on a thorough examination of the 480
circumstances concerning the petition. 481

(C) An order of the chief issued under this section may be 482
appealed in accordance with section 1522.19 of the Revised Code. 483

(D) The chief shall establish procedures for the submission 484
of petitions under this section. 485

Sec. 1522.17. (A) The chief of the division of soil and water 486
resources shall establish a voluntary water conservation program 487
that is applicable to all facilities that are the subjects of 488
withdrawal and consumptive use permits. The owner or operator of a 489
facility may participate in the program. If the owner or operator 490
chooses to participate in the program, the owner or operator shall 491
develop best management water conservation practices that are 492
economically feasible and applicable to the facility. The owner or 493
operator has discretion to determine which practices are best 494
management practices for purposes of the voluntary program. Any 495
reporting that is required under the program is proprietary and 496
shall be confidential and not subject to section 149.43 of the 497
Revised Code. Nothing in this chapter authorizes the chief or the 498
director of natural resources to adopt rules requiring mandatory 499
conservation of water resources. The general assembly shall not 500
amend this division in any manner that would require a mandatory 501
water conservation program without at least a two-thirds majority 502
vote of the senate and house of representatives. 503

This division complies with the requirements of section 505
4.11.3 of the great lakes-st. Lawrence river basin water resources 506

compact. 507

(B) Every five years, the chief shall make an assessment of 508
the cumulative impacts of withdrawals and consumptive uses from 509
the waters of the Lake Erie watershed for purposes of section 4.15 510
of the great lakes-st. Lawrence river basin water resources 511
compact. The assessment shall be based on reports, data, and other 512
information relating directly to withdrawals and consumptive uses 513
by facilities that have received a withdrawal and consumptive use 514
permit under this chapter. The chief shall prepare a report of the 515
assessment and shall submit a copy of it to the governor, the 516
speaker of the house of representatives, and the president of the 517
senate. 518

This division complies with the requirements of section 519
4.11.2 of the great lakes-st. Lawrence river basin water resources 520
compact as they relate to the assessment of significant cumulative 521
adverse impacts. 522

Sec. 1522.18. (A) There is hereby created the water resources 523
review commission consisting of five members appointed by the 524
governor with the advice and consent of the senate. The commission 525
shall hear appeals that are made under section 1522.19 of the 526
Revised Code. Of the initial members appointed to the commission, 527
one shall serve a term of three years, two shall serve a term of 528
four years, and two shall serve a term of five years as designated 529
by the governor. Thereafter, terms of office shall be five years. 530
Each member shall hold office from the date of appointment until 531
the end of the term for which the appointment was made. Each 532
vacancy occurring on the commission shall be filled by appointment 533
within sixty days after the vacancy occurs. Any member appointed 534
to fill a vacancy occurring prior to the expiration of the term 535
for which the member's predecessor was appointed shall hold office 536
for the remainder of that term. A member shall continue in office 537

subsequent to the expiration date of the member's term until the 538
member's successor takes office. A member may be reappointed. 539

540

(B) Two of the appointees to the commission shall be experts 541
in economic development, two shall be experts in water resource 542
management, and one shall be a member of the public who is an 543
attorney at law who is admitted to practice in this state and is 544
familiar with the laws related to water resources. Not more than 545
three members shall be members of the same political party. 546

(C) Three members of the commission constitute a quorum, and 547
no action of the commission shall be valid unless it has the 548
concurrence of at least a majority of the members. The commission 549
shall keep a record of its proceedings. Annually one member shall 550
be elected as chairperson and another member shall be elected as 551
vice-chairperson for terms of one year. 552

(D) The commission shall adopt rules governing the procedure 553
for appeals conducted under section 1522.19 of the Revised Code 554
and may adopt rules governing its own internal management that do 555
not affect private rights. 556

(E) The governor may remove a member of the commission from 557
office for inefficiency, neglect of duty, malfeasance, 558
misfeasance, or nonfeasance after delivering to the member the 559
charges against the member in writing with at least ten days' 560
written notice of the time and place at which the governor will 561
publicly hear the member, either in person or by counsel, in 562
defense of the charges against the member. If the member is 563
removed from office, the governor shall file in the office of the 564
secretary of state a complete statement of the charges made 565
against the member and a complete report of the proceedings. The 566
action of the governor removing a member from office is final. 567

(F) A member shall be paid as compensation for work as a 568

member one hundred fifty dollars per day when actually engaged in 569
the performance of work as a member and when engaged in travel 570
necessary in connection with that work. In addition to monetary 571
compensation, a member shall be reimbursed for all traveling, 572
hotel, and other expenses, in accordance with the current travel 573
rules of the office of budget and management, necessarily incurred 574
in the performance of the member's work as a member. 575

Sec. 1522.19. (A) A person having a direct economic interest 576
that is or may be adversely affected by a decision or order of the 577
chief of the division of soil and water resources under this 578
chapter may appeal the decision or order. The appeal shall be made 579
by filing a notice of appeal with the water resources review 580
commission for review of the decision or order not later than 581
thirty days after the decision or order is made. The person also 582
shall file a copy of the notice of appeal with the chief not later 583
than three days after filing the notice of appeal with the 584
commission. The notice of appeal shall contain a description of 585
the decision or order complained of and the grounds on which the 586
appeal is based. The commission has exclusive original 587
jurisdiction to hear and decide such appeals. The filing of a 588
notice of appeal under this division does not operate as a stay of 589
any decision or order of the chief. 590

(B) A permittee, if applicable, and the appellee, the chief, 591
and other interested persons shall be given written notice of the 592
date, time, and location of a hearing on the appeal at least five 593
days prior to the hearing. The hearing shall be of record. 594

(C) The commission shall affirm the decision or order of the 595
chief unless the commission determines by a preponderance of the 596
evidence that it is arbitrary, capricious, or otherwise 597
inconsistent with law; in that case the commission may modify the 598
decision or order of the chief or vacate it and remand it to the 599

chief for further proceedings that the commission may direct. The 600
commission shall render a decision not later than thirty days 601
after the hearing. 602

(D) The chairperson of the commission, under conditions that 603
the chairperson prescribes, may grant temporary relief that the 604
chairperson considers appropriate pending final determination of 605
an appeal if all of the following conditions are met: 606

(1) All parties to the appeal have been notified and given an 607
opportunity for a hearing on the request for temporary relief. 608

(2) The person requesting relief shows that there is a 609
substantial likelihood that the person will prevail on the merits. 610

(3) The relief will not adversely affect public health or 611
safety or cause significant imminent environmental harm to water 612
resources. 613

(E) A party that is aggrieved or adversely affected by a 614
decision of the water resources review commission may appeal to 615
the court of appeals for the county in which the activity 616
addressed by the decision of the commission occurred, is 617
occurring, or will occur. The appeal shall be filed not later than 618
thirty days after issuance of the decision of the commission. The 619
court shall confine its review to the record certified by the 620
commission. The court, upon motion, may grant temporary relief 621
that it considers appropriate pending final disposition of the 622
appeal if all of the following apply: 623

(1) All parties to the appeal have been notified and given an 624
opportunity to be heard on the request for temporary relief. 625

(2) The person requesting relief shows that there is a 626
substantial likelihood that the person will prevail on the merits. 627

(3) The relief will not adversely affect public health or 628
safety or cause significant imminent environmental harm to water 629

resources. 630

The court shall affirm the decision of the commission unless 631
the court determines that it is arbitrary, capricious, or 632
otherwise inconsistent with law; in that case the court shall 633
vacate the decision and remand it to the commission for further 634
proceedings that the court may direct. 635

(F) The water resources review commission or a court of 636
appeals shall not award attorney's fees to any party to an action 637
under this section. 638

(G) An appeal may not be taken under this section if the 639
subject of the appeal involves section 4.9 of the great lakes-st. 640
Lawrence river basin water resources compact. 641

Sec. 1522.20. (A)(1) The chief of the division of soil and 642
water resources may issue an order to a person that the chief 643
determines has violated, is violating, or is threatening to 644
violate any provisions of this chapter, rules adopted under it, or 645
a withdrawal and consumptive use permit. The order shall identify 646
the facility where the violation has occurred, is occurring, or is 647
threatened to occur, the specific violation, and actions that the 648
owner or operator of the facility must take to comply with the 649
order. The order shall establish a reasonable date by which the 650
owner or operator must comply with the order. 651

(2) An order issued under division (A)(1) of this section 652
shall be in writing and shall contain a finding of the facts on 653
which the order is based. Notice of the order shall be given by 654
certified mail to each person whose rights, duties, or privileges 655
are affected. Notice also shall be posted on the web site of the 656
department of natural resources in a manner prescribed by the 657
chief. 658

(B) The attorney general, upon the request of the chief, may 659

bring an action for injunction against a person who has violated, 660
is violating, or is threatening to violate any provisions of this 661
chapter, rules adopted under it, a withdrawal and consumptive use 662
permit, or an order of the chief issued under division (A) of this 663
section. The action shall be brought in the court of common pleas 664
of the county in which the violation has occurred, is occurring, 665
or is threatened to occur. The court of common pleas in which an 666
action for injunction is filed has jurisdiction to and shall grant 667
preliminary and permanent injunctive relief upon a showing that 668
the person against whom the action is brought has violated, is 669
violating, or is threatening to violate any provisions of this 670
chapter, rules adopted under it, a permit, or an order of the 671
chief. 672

Section 2. That existing sections 1501.33, 1521.04, 1522.03, 673
and 1522.05 and section 1522.07 of the Revised Code are hereby 674
repealed. 675

Section 3. For purposes of adopting rules under section 676
1522.14 of the Revised Code, as enacted by this act, regarding the 677
determination of what constitutes significant individual or 678
cumulative adverse impact to a high quality water with a drainage 679
area of less than one hundred square miles, the Chief of the 680
Division of Soil and Water Resources in the Department of Natural 681
Resources shall do both of the following: 682

(A) Convene an advisory group consisting of interested 683
parties to advise the Chief; 684

(B) Ensure that at least one member of the advisory group 685
represents The Nature Conservancy. 686

Section 4. The General Assembly hereby declares that the 687
purpose of this act is to protect private property rights 688
associated with surface and ground water in Ohio; to promote good 689

stewardship of Ohio's water resources; and to promote economic 690
development and job creation in Ohio by recognizing that abundant 691
fresh water is a highly desirable commodity. 692