

AN ACT

To amend sections 1501.32, 1501.33, 1521.04, 1522.03, and 1522.05, to enact sections 1522.10, 1522.101, 1522.11 to 1522.13, 1522.131, and 1522.14 to 1522.21, and to repeal section 1522.07 of the Revised Code to establish a program for the issuance of permits for the withdrawal and consumptive use of waters from the Lake Erie basin and to establish other requirements related to the implementation of the Great Lakes-St. Lawrence River Basin Water Resources Compact.

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

SECTION 1. That sections 1501.32, 1501.33, 1521.04, 1522.03, and 1522.05 be amended and sections 1522.10, 1522.101, 1522.11, 1522.12, 1522.13, 1522.131, 1522.14, 1522.15, 1522.16, 1522.17, 1522.18, 1522.19, 1522.20, and 1522.21 of the Revised Code be enacted to read as follows:

Sec. 1501.32. (A) No person shall divert more than one hundred thousand gallons per day of any waters of the state out of the ~~Lake Erie or Ohio river drainage basins~~ watershed to another basin without having a permit to do so issued by the director of natural resources. An application for such a permit shall be filed with the director upon such forms as the director prescribes. The application shall state the quantity of water to be diverted, the purpose of the diversion, the life of the project for which the water is to be diverted, and such other information as the director may require by rule. Each application shall be accompanied by a nonrefundable fee of one thousand dollars, which shall be credited to the water management fund, which is hereby created.

(B) The director shall not approve a permit application filed under this section if the director determines that any of the following applies:

(1) During the life of the project for which the water is to be diverted, some or all of the water to be diverted will be needed for use within the ~~basin~~ Ohio river watershed.

(2) The proposed diversion would endanger the public health, safety, or

welfare.

(3) The applicant has not demonstrated that the proposed diversion is a reasonable and beneficial use and is necessary to serve the applicant's present and future needs.

(4) The applicant has not demonstrated that reasonable efforts have been made to develop and conserve water resources in the importing basin and that further development of those resources would engender overriding, adverse economic, social, or environmental impacts.

(5) The proposed diversion is inconsistent with regional or state water resources plans.

(6) The proposed diversion, alone or in combination with other diversions and water losses, will have a significant adverse impact on in-stream uses or on economic or ecological aspects of water levels.

The director may hold public hearings upon any application for a permit.

~~(C) Whenever the director receives an application under this section to divert water out of the Lake Erie drainage basin, the director shall notify the governors and premiers of the other great lakes states and provinces, the appropriate water management agencies of those states and provinces, and, when appropriate, the international joint commission and shall solicit their comments and concerns regarding the application. In the event of an objection to the proposed diversion, the director shall consult with the affected great lakes states and provinces to consider the issues involved and seek mutually agreeable recommendations. Before rendering a decision on the permit application, the director shall consider the concerns, comments, and recommendations of the other great lakes states and provinces and the international joint commission, and, in accordance with section 1109 of the "Water Resources Development Act of 1986," 100 Stat. 4230, 42 U.S.C.A. 1962d-20, the director shall not approve a permit application for any diversion to which that section pertains unless that diversion is approved by the governor of each great lakes state as defined in section 1109(e) of that act.~~

~~(D)~~ The director shall determine the period for which each permit approved under this section will be valid and specify the expiration date, but in no case shall a permit be valid beyond the life of the project as stated in the application.

The director shall establish rules providing for the transfer of permits. A permit may be transferred on the conditions that the quantity of water diverted not be increased and that the purpose of the diversion not be changed.

~~(E)~~(D)(1) Within a time established by rule, the director shall do one of the following:

(a) Notify the applicant that an application the applicant filed under this section is approved or denied and, if denied, the reason for denial;

(b) Notify the applicant of any modification necessary to qualify the application for approval.

(2) Any person who receives notice of a denial or modification under division ~~(E)~~(D)(1) of this section is entitled to a hearing under Chapter 119. of the Revised Code if the person sends a written request for a hearing to the director within thirty days after the date on which the notice is mailed or otherwise provided to the applicant.

~~(F)~~(E) The director shall revoke a permit under this section without a prior hearing if the director determines that the quantity of water being diverted exceeds the quantity stated in the permit application.

The director may suspend a permit if the director determines that the continued diversion of water will endanger the public health, safety, or welfare. Before suspending a permit, the director shall make a reasonable attempt to notify the permittee that the director intends to suspend the permit. If the attempt fails, notification shall be given as soon as practicable following the suspension. Within five days after the suspension, the director shall provide the permittee an opportunity to be heard and to present evidence that the continued diversion of water will not endanger the public health, safety, or welfare.

If the director determines before the expiration date of a suspended permit that the diversion of water can be resumed without danger to the public health, safety, or welfare, the director shall, upon request of the permittee, reinstate the permit.

~~(G)~~(F) Any six or more residents of this state may petition the director for an investigation of a withdrawal of water resources that they allege is in violation of a permit issued under this section.

The petition shall identify the permittee and detail the reasons why the petitioners believe that grounds exist for the revocation or suspension of the permit under this section.

Upon receipt of the petition, the director shall send a copy to the permittee and, within sixty days, make a determination whether grounds exist for revocation or suspension of the permit under this section.

~~(H)~~(G) Each permittee shall submit to the director an annual report containing such information as the director may require by rule.

~~(I) The director shall issue a permit under division (A) of this section to any person who lawfully diverted more than one hundred thousand gallons~~

~~per day of any waters of the state out of the Ohio river drainage basin during the calendar year ending October 14, 1984. A person who is eligible for a permit under this division shall file an application under division (A) of this section not later than one hundred eighty days after the effective date of this amendment.~~

~~A person who applies for a permit under this division need not pay the application fee that is otherwise required under division (A) of this section. In addition, divisions (B) to (H) of this section and rules adopted under section 1501.31 of the Revised Code do not apply to an application that is filed or a permit that is issued under this division.~~

Sec. 1501.33. (A) Except as provided in divisions (B) ~~and~~ (C), ~~and~~ (D) of this section, no person shall allow a facility that the person owns or operates to withdraw waters of the state in an amount that would result in a new or increased consumptive use of more than an average of two million gallons of water per day in any thirty-day period without first obtaining a permit from the director of natural resources under section 1501.34 of the Revised Code. The person Prior to developing a new or increased withdrawal or consumptive use capacity that would facilitate a withdrawal requiring a permit under this section, an owner or operator of a facility shall submit an application for a permit to the director on a form he the director prescribes, which. The application shall declare and document all of the following:

- (1) The facility's current withdrawal capacity per day if the withdrawal is to occur at a facility already in operation;
- (2) The total new or increased daily withdrawal capacity proposed for the facility;
- (3) The locations and sources of water proposed to be withdrawn;
- (4) The locations of proposed discharges or return flows;
- (5) The locations and nature of proposed consumptive uses;
- (6) The estimated average annual and monthly volumes and rates of withdrawal;
- (7) The estimated average annual and monthly volumes and rates of consumptive use;
- (8) The effects the withdrawal is anticipated to have with respect to existing uses of water resources;
- (9) A description of other ways the applicant's need for water may be satisfied if the application is denied or modified;
- (10) A description of the conservation practices the applicant intends to follow;
- (11) Any other information the director may require by rule.

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

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

(C)(1) A public water system, as that term is defined in section 6109.01 of the Revised Code, that withdraws waters of the state in an amount that would result in a new or increased consumptive use of more than two million gallons per day need not obtain a permit under section 1501.34 of the Revised Code if any of the following ~~apply~~ applies:

(a) The public water system was in operation on ~~the effective date of this section~~ June 29, 1988, and no substantial changes are proposed for that system except as specified in division (C)(1)(c) of this section;

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

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

(2) Any public water system that withdraws waters of the state in an amount that would result in a new or increased consumptive use of more than two million gallons per day and that does not meet the criteria specified in ~~divisions~~ division (C)(1)(a), (b), or (c) of this section shall obtain a permit under section 1501.34 of the Revised Code. A person who submits plans for such a system under section 6109.07 of the Revised Code may request the director of natural resources in writing to consider those plans as an application under this section. No later than twenty days after receiving the request, the director shall notify the person of one of the following:

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

application fee required under division (A) of this section;

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

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

(D) A facility that is required to obtain a permit under sections 1522.10 to 1522.21 of the Revised Code need not obtain a permit under section 1501.34 of the Revised Code.

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

The chief may use the water management fund for the purposes of administering the water diversion and consumptive use permit 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 1522.21 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 all of the following:

~~(1)(A)~~ (A) Adopt rules in accordance with Chapter 119. of the Revised Code for the implementation, administration, and enforcement of ~~this chapter~~ the great lakes-st. Lawrence river basin water resources compact;

~~(2)(B)~~ 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;

(C) Adopt rules in accordance with Chapter 119. of the Revised Code for the development, implementation, administration, and enforcement of any permit program established under this chapter.

Rules adopted under this section shall be no more stringent than the great lakes-st. Lawrence river basin water resources compact. The chief shall convene a working group consisting of parties with interests in Lake Erie, the Lake Erie watershed, and the great lakes-st. Lawrence river basin water resources compact. The working group shall consult with the chief regarding the adoption of rules under this section.

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 basin water resources council created in Section 2.1 of the compact. Agencies of the state are hereby authorized to cooperate with the council.

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

~~In addition, the governor, the department of natural resources, or any other agency of the state shall not adopt rules or implement any mandatory program governing water conservation and efficiency pursuant to Section 4.2 of the compact unless the general assembly enacts legislation after the effective date of the compact authorizing the implementation of the program or adoption of rules. However, the governor, the department of natural resources, or any other agency of the state may adopt rules concerning and may implement voluntary water conservation and efficiency programs without authorization from the general assembly. Such voluntary programs shall not include any mandatory requirements.~~

~~(2) Division (B)(1) of this section does not prohibit the effectuation of Sections 4.8 and 4.9 of the compact after the effective date of the compact or prohibit the continued implementation and enforcement by the governor~~

~~or applicable agencies of this state of laws, rules, or programs regulating the use, withdrawal, consumptive use, or diversion of water that are in effect on or before the effective date of this section~~ The chief of the division of soil and water resources shall adopt voluntary watershedwide goals, objectives, and standards for water conservation and efficiency consistent with Section 4.2 of the great lakes-st. Lawrence river basin water resources compact.

Sec. 1522.10. As used in sections 1522.10 to 1522.21 of the Revised Code:

(A) "Baseline facility" means a facility identified in the baseline report or a facility added to the baseline report under section 1522.16 of the Revised Code.

(B) "Baseline facility abandonment" means the voluntary and affirmative termination of a baseline facility's withdrawal and consumptive use capacity as listed in the baseline report. "Baseline facility abandonment" does not include the nonuse or the transfer of a baseline facility's withdrawal and consumptive use capacity unless either of the following applies:

(1) The nonuse continues for fifteen consecutive years for a facility with a potential withdrawal from Lake Erie or a recognized navigational channel and the nonuse is not extended in accordance with division (B) of section 1522.16 of the Revised Code.

(2) For a facility to which division (B)(1) of this section does not apply, the nonuse continues for thirty-six consecutive months and is not extended in accordance with division (B) of section 1522.16 of the Revised Code.

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

(D) "Capacity" means the ability of a facility's pumps, pipes, and other appurtenances to withdraw water presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity-limiting factors.

(E) "Compact" means the great lakes-st. Lawrence river basin water resources compact set forth in section 1522.01 of the Revised Code.

(F) "Consumptive use" has the same meaning as in section 1522.01 of the Revised Code. For purposes of determining a new or increased capacity for consumptive use, "consumptive use" is the use based on a coefficient of consumptive use generally accepted in the scientific community that most accurately reflects the process at a facility or the use based on facility specific data, whichever is more accurate.

(G) "Diversion" has the same meaning as in section 1522.01 of the

Revised Code.

(H) "Facility" means any site, installation, or building at which water withdrawal and consumptive use activities take place or are proposed to take place, that is located at a property or on contiguous properties, and that is under the direction of either a private or public entity. "Facility" includes any site, installation, building, or service area of a public water system at or within which water withdrawal and consumptive use activities take place.

(I) "Facility abandonment" means the voluntary and affirmative termination of a facility's withdrawal and consumptive use capacity as listed in a withdrawal and consumptive use permit issued under section 1522.12 of the Revised Code. "Facility abandonment" does not include the nonuse or the transfer of a facility's withdrawal and consumptive use capacity unless either of the following applies:

(1) The nonuse continues for fifteen consecutive years for a facility with a potential withdrawal from Lake Erie or a recognized navigational channel and the nonuse is not extended in accordance with division (B) of section 1522.16 of the Revised Code.

(2) For a facility to which division (I)(1) of this section does not apply, the nonuse continues for thirty-six consecutive months and is not extended in accordance with division (B) of section 1522.16 of the Revised Code.

(J) "High quality water" means a river or stream segment that has been designated by the environmental protection agency under Chapter 3745-1 of the Administrative Code as an exceptional warm water habitat, cold water habitat, outstanding state water, or superior high-quality water.

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

(L) "Public water system" has the same meaning as in section 6109.01 of the Revised Code.

(M) "Recognized navigation channel" means that portion of a river or stream extending from bank to bank that is a direct tributary of Lake Erie and that, as of the effective date of this section, is a state or federally maintained navigation channel.

(N) "River or stream" means a body of water running or flowing, either continually or intermittently, on the earth's surface or a channel in which such flow occurs.

(O) "Water" means ground or surface water contained within the basin of the Lake Erie source watershed.

Sec. 1522.101. For purposes of sections 1522.10 to 1522.21 of the Revised Code, a reference to source watershed or the Lake Erie source

watershed means the Lake Erie watershed considered as a whole.

Sec. 1522.11. (A) No person shall install or operate a facility or equipment that results in a new or increased diversion of any water out of the Lake Erie watershed to another watershed without first obtaining a permit to do so issued by the chief of the division of soil and water resources. An application for such a permit shall be submitted to the chief on a form that the chief prescribes. An application shall be accompanied by a nonrefundable fee of one thousand dollars, which shall be credited to the water management fund created in section 1501.32 of the Revised Code.

(B) The chief shall approve a permit application submitted under this section only if the chief determines that it meets the criteria required to qualify as an exception to the prohibition against diversions established in Section 4.9 of the compact. The chief shall issue or deny a permit through issuance of an order.

Sec. 1522.12. (A) For purposes of the compact, not later than one hundred eighty days after the effective date of this section, the chief of the division of soil and water resources shall establish a program for the issuance of permits for the withdrawal and consumptive use of water from the Lake Erie watershed. Upon establishment of the program, the owner or operator of a facility within the Lake Erie watershed that is not otherwise exempt under section 1522.14 of the Revised Code shall obtain a withdrawal and consumptive use permit from the chief if the facility meets any of the following threshold criteria:

(1) The facility has a new or increased capacity for withdrawals or consumptive uses from Lake Erie or a recognized navigation channel of at least two and one-half million gallons per day.

(2) Except as provided in division (A)(3) of this section, the facility has a new or increased capacity for withdrawals or consumptive uses from any river or stream or from ground water in the Lake Erie watershed of at least one million gallons per day.

(3)(a) Except as provided in division (A)(3)(b) of this section, the facility has a new or increased capacity for withdrawals or consumptive uses from any river or stream in the Lake Erie watershed that is a high quality water of at least one hundred thousand gallons per day. Division (A)(3) of this section does not apply to withdrawals and consumptive uses from outstanding state waters that are designated as such by the environmental protection agency due to their exceptional recreational values.

(b) If a river or stream or segment thereof is designated as a high quality water as of the effective date of this section, the threshold established in division (A)(3)(a) of this section applies to the river or stream or segment

thereof and the entire watershed upstream of that river, stream, or segment. If a river or stream or segment thereof is designated as a high quality water after the effective date of this section, the threshold established in division (A)(3)(a) of this section applies to the river or stream or segment thereof and the entire watershed upstream of that river, stream, or segment, provided that the director of environmental protection and the director of natural resources, or their designees, jointly determine that the proposed withdrawal or consumptive use would cause the high quality water to lose its designation as a high quality water. If the directors determine that the proposed withdrawal or consumptive use would not cause the high quality water to lose that designation, the threshold established in division (A)(2) of this section applies to the withdrawal or consumptive use at a point beginning one thousand feet upstream of the upstream end of the designated high quality water segment or at a point beginning two times the length of the river, stream, or segment that has been designated as a high quality water, whichever is greater.

Upon establishment of the withdrawal and consumptive use permit program under this division, the owner or operator of a facility that is not otherwise exempt under section 1522.14 of the Revised Code and that is subject to a threshold specified in division (A)(1) or (2) of this section, after submitting an application for a permit under this section and a determination by the chief that the application is complete, may commence installation of the facility or equipment that will result in a new or increased withdrawal or consumptive use of water in the Lake Erie watershed prior to issuance of the withdrawal and consumptive use permit.

Upon establishment of the withdrawal and consumptive use permit program under this division, the owner or operator of a facility that is not otherwise exempt under section 1522.14 of the Revised Code and that is subject to a threshold specified in division (A)(3) of this section shall not install or operate the facility or equipment that will result in a new or increased withdrawal or consumptive use of water in the Lake Erie watershed without first obtaining a withdrawal and consumptive use permit.

(B) Permits issued under this section shall be issued only for the amount of withdrawal or consumptive use capacity of a facility that meets or exceeds threshold amounts established in division (A) of this section. A permit shall not be required for the portion of the withdrawal and consumptive use capacity of the facility below that threshold amount.

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

(1) The name, address, and telephone number of the applicant and of a contact person for the applicant;

(2) The names, addresses, and other necessary contact information of any other owners and operators of the facility;

(3) A description of all of the following:

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

(b) The total new or increased daily withdrawal capacity proposed for the facility;

(c) The locations and sources of water proposed to be withdrawn;

(d) The locations of proposed discharges or return flows;

(e) The locations and nature of proposed consumptive uses and the applicable consumptive use coefficient for the facility;

(f) The estimated average annual and monthly volumes and rates of withdrawal;

(g) The estimated average annual and monthly volumes and rates of consumptive use;

(h) The environmentally sound and economically feasible water conservation measures to be undertaken by the applicant;

(i) Other ways the applicant's need for water may be satisfied if the application is denied or modified;

(j) Any other information the chief may require to adequately consider the application.

(4) 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.

(D) Provided that a facility meets all applicable permit conditions, a permit for the facility is valid until the facility 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.

(E) No person that is required to do so shall fail to apply for and receive a withdrawal and consumptive use permit.

(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.

(G) The chief shall issue or deny a permit not later than ninety days after receipt of a complete application. If applicable, the chief shall comply with the requirements regarding prior notice established in Section 4.6 of the compact. The chief shall issue or deny a permit through issuance of an

order. The chief shall issue a permit if all applicable criteria for receiving the permit are met as provided in sections 1522.10 to 1522.21 of the Revised Code.

Sec. 1522.13. (A) The chief of the division of soil and water resources shall issue a withdrawal and consumptive use permit for a facility if the chief determines that the facility meets all of the criteria established in Section 4.11 of the compact.

(B) In applying the provision of the decision-making standard established in Section 4.11.2 of the compact, the chief shall require that a withdrawal or consumptive use will be implemented so as to ensure that the withdrawal or consumptive use will result in no significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or of the Lake Erie source watershed considered as a whole. As part of the evaluation of a permit application under Section 4.11.2 of the compact, the chief shall do all of the following:

(1) Rely on the best generally accepted scientific methods appropriate for this state derived from professionally accepted resources and practices;

(2) Consider the long-term mean annual inflow and outflow of the Lake Erie source watershed;

(3) Consider the withdrawal and the portion of the withdrawal that is not returned to the Lake Erie source watershed.

(C) Impacts of a withdrawal or consumptive use on the quantity or quality of waters and water dependent natural resources of more localized areas that affect less than the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole shall be considered as a part of the evaluation of whether a proposed withdrawal or consumptive use is reasonable as provided in Section 4.11.5 of the compact.

(D) The chief shall not submit an application for a withdrawal and consumptive use permit for regional review under Section 4.5.2(c)(ii) of the compact to the regional body as defined in Section 1.2 of the compact unless regional review is agreed to by the applicant.

(E) Nothing in sections 1522.10 to 1522.21 of the Revised Code shall be construed to affect, limit, diminish, or impair any rights validly established and existing under the laws of this state as of December 8, 2008, including, but not limited to, sections 1506.10 and 1521.17 of the Revised Code, or to limit a person's right to the reasonable use of ground water, water in a lake, or any other watercourse in contravention of Section 19b of Article I, Ohio Constitution.

Sec. 1522.131. (A) To encourage the development of innovative water

use practices and technologies that ensure sustainable water use for industrial, commercial, residential, agricultural, or public purposes, including recreational and cultural resources, as a means to facilitate sustainable economic growth and job creation, the chief of the division of soil and water resources, with the approval of the director of natural resources, may issue experimental use permits. An experimental use permit may be issued in lieu of a withdrawal and consumptive use permit as determined appropriate by the chief.

(B) An experimental use permit may be issued if all of the following apply:

(1) The experimental use is reasonable based on a consideration of the factors specified in Section 4.11.5 of the compact.

(2) The experimental use will use no more water than is necessary to determine the effectiveness and economic feasibility of the experimental use.

(3) The experimental use does not reduce the protection afforded the waters and water dependent natural resources of the source watershed as defined in the compact below what is provided in this chapter and rules adopted under it.

(C) The chief may refuse to issue an experimental use permit if the chief determines that the proposed use will result in significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole.

(D) The chief shall issue or deny a permit under this section through issuance of an order.

(E) The chief shall establish the terms and conditions of an experimental use permit and may suspend such a permit, at any time, if the chief finds that its terms or conditions are being violated or that its terms and conditions are inadequate to avoid significant individual or cumulative adverse impacts on the quantity or quality of the waters and water dependent natural resources of the great lakes basin considered as a whole or the Lake Erie source watershed considered as a whole.

(F) An experimental use permit issued under this section shall expire not later than twenty-four months after the date of issuance of the permit.

Sec. 1522.14. The following are exempt from the requirement to obtain a withdrawal and consumptive use permit:

(A) A facility or proposed facility that has a withdrawal and consumptive use capacity or proposed capacity below the threshold amounts established in divisions (A)(1) to (3) of section 1522.12 of the Revised

Code:

(B) A facility that has a new or increased withdrawal capacity above an applicable threshold amount established in section 1522.12 of the Revised Code if either of the following apply:

(1) Except as provided in division (B)(2) of this section, the new or increased maximum daily withdrawal of the facility is less than the applicable threshold amount when averaged over any ninety-day period.

(2) The new or increased maximum daily withdrawal of the facility is less than the applicable threshold amount when averaged over any forty-five-day period with regard to a facility with withdrawals from a river or stream that is a high quality water when the withdrawals are made at a point where the area of the watershed of the river or stream is less than one hundred square miles but greater than fifty square miles.

Division (B) of this section does not apply to withdrawals of a facility from a river or stream that is a high quality water when the withdrawals are made at a point where the area of the watershed of the river or stream is fifty square miles or less.

(C) A baseline facility that has not increased its withdrawal and consumptive use capacity beyond the capacity listed in the baseline report and beyond the threshold amounts established in section 1522.12 of the Revised Code:

(D) An electric generating facility that increases its consumptive use due to a requirement imposed by a federal regulation that is unrelated to an increase in production at the facility:

(E) A facility making a withdrawal and consumptive use from an impoundment of water collected primarily from diffused surface water sources, including a farm pond, golf course pond, nursery pond, stormwater retention pond, or other private pond; or a facility making a withdrawal and consumptive use from any stream or river to augment the water supply of an impoundment of water if the impoundment is used, at least in part, for firefighting purposes. The exemption established by this division does not apply to a facility making a withdrawal and consumptive use for industrial purposes or for public water supply purposes.

(F) A facility that must temporarily establish a new or increased withdrawal and consumptive use capacity as a result of an emergency for the duration of that emergency that, without the new or increased withdrawal and consumptive use capacity, will result in imminent harm to human health or property:

(G) A facility that is establishing a new or is increasing its withdrawal and consumptive use capacity in compliance with an experimental use

permit issued under section 1522.131 of the Revised Code:

(H) A facility that must temporarily establish a new or increased withdrawal and consumptive use capacity in order to respond to a humanitarian crisis for the duration of that crisis if the new or increased capacity is necessary to assist in the management of that crisis;

(I) A facility that is exempt from the requirement to obtain a permit under division (B) or (C) of section 1501.33 of the Revised Code;

(J) A facility that is subject to regulation under Chapter 1514. of the Revised Code;

(K) A facility that purchases all of its water from a public water system;

(L) A facility that is withdrawing or consumptively using water from an off-stream impoundment that has been substantially filled with a stream withdrawal by a baseline facility or with a stream withdrawal that is subject to a withdrawal and consumptive use permit;

(M) A facility that is increasing its withdrawal or consumptive use capacity directly related to supplying a major electric generating facility that is subject to regulation under Chapter 4906. of the Revised Code.

Sec. 1522.15. (A)(1) Transfer of a withdrawal and consumptive use permit upon the sale or transfer of a facility may occur so long as the location of the facility, the source of water, and the withdrawal and consumptive use capacities do not change. Transfer of the baseline withdrawal and consumptive use capacity of a baseline facility upon the sale or transfer of the baseline facility may occur so long as the location of the facility, the source of water, and the withdrawal and consumptive use capacities do not change. Transferred capacity of a baseline facility does not require a withdrawal and consumptive use permit.

Notice of a transfer shall be provided to the chief of the division of soil and water resources in a manner prescribed by the chief.

(2) If the owner of a facility for which a withdrawal and consumptive use permit has been issued sells or transfers a portion of the facility, transfer of the applicable portion of the withdrawal and consumptive use capacity authorized by the withdrawal and consumptive use permit may occur so long as the location of the facility, the source of water, and the total withdrawal and consumptive use capacities do not change. The permittee shall provide notice of such a transfer to the chief in a manner prescribed by the chief. Upon receipt of the notice and if a permit is required for the transferred portion based on the threshold amounts established in divisions (A)(1) to (3) of section 1522.12 of the Revised Code, the chief shall issue a new permit for the transferred portion of the facility to the transferee and a modified permit for the remaining portion of the facility to the original

permittee upon a showing that the transferee will meet the conditions of the original permit and all applicable requirements of this chapter and rules adopted under it. Any new permit shall reflect the portion of the withdrawal and consumptive use capacity that has been transferred.

(3) If the owner of a baseline facility sells or transfers a portion of the baseline facility, transfer of the applicable portion of the withdrawal and consumptive use capacity listed in the baseline report for that facility may occur so long as the location of the facility, the source of water, and the total withdrawal and consumptive use capacities do not change. The owner shall provide notice of such a transfer to the chief in a manner prescribed by the chief. The chief shall not require the owner of the baseline facility or the transferee to obtain a withdrawal and consumptive use permit, but shall update the baseline report to reflect the transfer.

(4) The chief may deny a transfer under this section by issuing an order denying the transfer and sending written notice to the permittee and the transferee not later than thirty days after notice of the intended transfer. The chief shall deny the transfer if the chief determines that the transfer will result in noncompliance with this chapter, rules adopted under it, or the terms and conditions of a withdrawal and consumptive use permit.

(5) The chief shall remove a facility from the baseline report when the facility is subject to baseline facility abandonment. However, a baseline facility shall not be removed from the baseline report due to the transfer of the facility's baseline capacity.

(B) No person shall sell or transfer a withdrawal and consumptive use permit for purposes of evading the requirements established in sections 1522.10 to 1522.21 of the Revised Code.

Sec. 1522.16. (A)(1) The owner or operator of a facility may petition the chief of the division of soil and water resources for either of the following:

(a) Inclusion in the baseline report if the owner or operator believes that the facility was erroneously excluded from the report;

(b) The amendment of the amount of a withdrawal and consumptive use or other information included in the baseline report regarding the facility if the owner or operator believes that the information is incorrect.

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

(3) The chief shall adopt rules in accordance with Chapter 119. of the Revised Code that establish procedures for the submission of petitions under this division.

(B) With regard to the nonuse of a baseline facility's or a facility's

withdrawal and consumptive use capacity, not later than sixty days after the time period specified in division (B)(1) or (2) or (I)(1) or (2) of section 1522.10 of the Revised Code, the owner or operator of the facility may request an extension from the chief to retain the facility's active status. The request shall be made in a manner prescribed by the chief. The chief shall determine the appropriate terms and conditions of the extension, if approved, based on information submitted by the owner or operator. The chief shall issue an order approving or disapproving the request and shall do so in a manner prescribed by the chief.

Sec. 1522.17. (A) The owner or operator of a facility who is applying for a withdrawal and consumptive use permit shall submit to the chief of the division of soil and water resources a facility water conservation plan that incorporates environmentally sound and economically feasible water conservation measures in accordance with Section 4.11.3 of the compact. If the plan reasonably incorporates environmentally sound and economically feasible water conservation measures applicable to the facility, it shall be deemed to be in compliance with Section 4.11.3 of the compact.

(B) The chief shall keep confidential any portions of a facility water conservation plan that constitute a trade secret as defined in section 1333.61 of the Revised Code as follows:

(1) During the period of time after confidentiality is requested under division (C) of this section and until the chief makes a determination to approve or disapprove the request:

(2) On and after the date on which the chief approves a request for confidentiality under division (C) of this section.

Any portions of a facility water conservation plan that are kept confidential as provided in this division are not subject to section 149.43 of the Revised Code.

(C)(1) The owner or operator of a facility may request that any portions of a facility water conservation plan be kept confidential. The request for confidentiality shall be submitted at the same time that an owner or operator submits a facility water conservation plan under division (A) of this section. The owner or operator shall clearly indicate the information that the owner or operator considers a trade secret and shall label it as "trade secret." Failure to make such a request shall constitute a waiver of the right to prevent public disclosure of the information. A request for confidentiality shall be accompanied by documents that support the request. The documents shall describe the measures that the requestor has taken to safeguard the confidentiality of the information and indicate whether or not others are bound by a confidentiality agreement related to the information.

(2) The chief, by order, shall issue a decision regarding the confidentiality request not later than forty-five days after the receipt of the request. Until the decision is issued, the information that is the subject of the request shall be confidential and maintained by the chief in a separate file labeled "confidential." The applicant shall be notified by mail of the decision.

Sec. 1522.18. The chief of the division of soil and water resources, on the chief's own initiative or upon written complaint by any person, may investigate or make inquiries into any alleged failure to comply with this chapter, any rule adopted under it, any order issued under it, or the terms and conditions of a permit issued under it. The chief or the chief's duly authorized representative may enter at reasonable times on any private or public property to inspect and investigate conditions relating to any such alleged act of noncompliance and, if necessary, may apply to the court of common pleas having jurisdiction for a warrant permitting the entrance and inspection.

Sec. 1522.19. No person shall violate any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it.

Sec. 1522.20. (A)(1) The chief of the division of soil and water resources may issue an order to a person that the chief determines has violated, is violating, or is threatening to violate any provisions of this chapter, rules adopted under it, or permits or orders issued under it. The order shall be effective upon issuance and shall identify the facility where the violation has occurred, is occurring, or is threatened to occur, the specific violation, and actions that the owner or operator of the facility must take to comply with the order. The order shall establish a reasonable date by which the owner or operator must comply with the order.

(2) An order issued under division (A)(1) of this section shall be in writing and shall contain a finding of the facts on which the order is based. Notice of the order shall be given by certified mail to the applicable owner or operator of a facility. Notice also shall be provided to a person who initiated a complaint that resulted in the order and shall be posted on the web site of the department of natural resources in a manner prescribed by the chief.

(B)(1) The chief, by order, may propose to suspend or revoke a permit issued under this chapter if the chief determines that any term or condition of the permit is being violated. The chief's order shall identify the facility where the violation allegedly occurred, describe the nature of the violation, and prescribe what action the permittee may take to bring the facility into

compliance with the permit. The chief shall fix and specify in the order a reasonable date or time by which the permittee must comply. The order shall state that the chief may suspend or revoke the permit if the permittee fails to comply with the order by that date or time. If on that date or time the chief finds that the permittee has not complied with the order, the chief may issue a new order suspending or revoking the permit.

(2) The chief or the chief's designee may enter on private or public lands and take action to mitigate, minimize, remove, or abate the conditions caused by a violation that is the subject of an order issued under division (B)(1) of this section.

(C) The attorney general, upon written request of the chief, shall bring an action for an injunction or other appropriate legal or equitable action against any person who has violated, is violating, or is threatening to violate any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it. The attorney general shall bring the action in the court of common pleas of Franklin county or the county where the applicable facility is located. In an action for injunction, any factual findings of the chief presented at a hearing conducted under division (A) of section 1522.21 of the Revised Code is prima-facie evidence of the facts regarding the order that is the subject of the hearing.

(D) A person who violates any provision of this chapter, any rule or order adopted or issued under it, or any term or condition of a permit issued under it is liable to the chief for any costs incurred by the division of soil and water resources in investigating, mitigating, minimizing, removing, or abating the violation and conditions caused by it. Upon the request of the chief, the attorney general shall bring a civil action against the responsible person to recover those costs in the court of common pleas of Franklin county. Moneys recovered under this division shall be deposited in the state treasury to the credit of the water management fund created in section 1501.32 of the Revised Code.

Sec. 1522.21. (A) As used in this section, "person who is or will be aggrieved or adversely affected" means a person with a direct economic or property interest that is or will be adversely affected by an order or rule issued or adopted by the chief of the division of soil and water resources under this chapter.

(B)(1) Before issuance of a final order denying the issuance of a permit under section 1522.11, 1522.12, or 1522.131 of the Revised Code, denying a transfer under section 1522.15 of the Revised Code, denying a petition to the chief under section 1522.16 of the Revised Code, or denying a request for confidentiality under section 1522.17 of the Revised Code, or before the

issuance of a final order under section 1522.20 of the Revised Code, the chief shall issue a proposed order indicating the chief's intent to issue a final order. If the chief receives a written objection from a person who is or will be aggrieved or adversely affected by the issuance of the final order, the chief shall conduct an adjudication hearing with respect to the proposed order in accordance with Chapter 119. of the Revised Code. A person who is or will be aggrieved or adversely affected by the issuance of the final order and who submitted a written objection under this division may be a party to the adjudication.

(2) Any person who is issued a proposed order or a final order by the chief shall be a party in any administrative or legal proceeding in which the proposed order or final order is at issue. This division is in addition to any other rights that a person may have as a person aggrieved or adversely affected.

(C)(1) After the issuance of a final order, a person who is or will be aggrieved or adversely affected by the issuance of the order may appeal the order to the court of common pleas of Franklin county or the court of common pleas of the county in which the facility that is the subject of the order is located. Subject to the exceptions specified in section 2506.03 of the Revised Code, the court is confined to the record as certified to it by the chief if an adjudication hearing was conducted by the chief under division (B) of this section. However, the court also may grant a request for the admission of additional evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the chief. If no adjudication hearing was conducted under division (B) of this section, the court shall conduct a hearing de novo.

(2) The filing of an appeal under division (C)(1) of this section does not automatically suspend the order that is the subject of the appeal. Upon application by the appellant, the court may suspend or stay the order, pending an immediate hearing on the appeal.

(3) If the court finds that the order was lawful and reasonable, it shall issue a written order affirming the order. If the court finds that the order was unreasonable or unlawful, it shall issue a written order vacating or modifying the order. The judgment of the court is final unless reversed, vacated, or modified on appeal.

(4) Attorney's fees shall not be awarded to any party to an administrative or legal proceeding under this section.

SECTION 2. That existing sections 1501.32, 1501.33, 1521.04, 1522.03,

and 1522.05 and section 1522.07 of the Revised Code are hereby repealed.

SECTION 3. (A) The Chief of the Division of Soil and Water Resources in the Department of Natural Resources, not later than ninety days after the effective date of this section, shall convene an advisory group consisting of the Chief and all of the following:

(1) The Chief of the Division of Surface Water in the Environmental Protection Agency or the Chief's designee;

(2) The following members appointed by the Chief of the Division of Soil and Water Resources:

(a) A representative of a statewide environmental advocacy organization;

(b) A water quality expert from the faculty or staff of an Ohio college or university located within the Lake Erie watershed;

(c) A representative of a sustainable economic development organization with a primary interest in the Lake Erie watershed.

(3) The following members appointed by the President of the Senate:

(a) A representative of a statewide business and economic development organization;

(b) A representative of an independent business located within the Lake Erie watershed that owns or operates a registered water withdrawal facility.

(4) The following members appointed by the Speaker of the House of Representatives:

(a) A representative of agribusiness that operates within the Lake Erie watershed;

(b) A representative of an independent business located within the Lake Erie watershed that owns or operates a registered water withdrawal facility.

(B) The Chief of the Division of Soil and Water Resources shall serve as chairperson of the advisory group. All appointments shall be made to the advisory group not later than forty-five days after the effective date of this section. The advisory group shall make legislative recommendations for the application of Section 4.11.2 of the Great Lakes-St. Lawrence River Basin Water Resources Compact. The recommendations shall be designed to ensure that permits issued under section 1522.12 of the Revised Code, as enacted by this act, will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources of the Great Lakes Basin considered as a whole or the Lake Erie watershed considered as a whole. The recommendations shall not include any change to divisions (B) and (C) of section 1522.13 of the Revised Code, as enacted by this act. In developing its recommendations,

the advisory group shall consider the directives in divisions (B) and (C) of that section and shall consider an adaptive management approach taking into account scientific and technological advances in accordance with Sections 1.3 and 1.4 of the Compact.

(C) The advisory group shall meet as necessary to accomplish its purpose and shall submit its final recommendations to the Chief of the Division of Soil and Water Resources not later than eighteen months after the effective date of this section. If the advisory group does not reach a consensus regarding its recommendations, the advisory group may submit recommendations representing each of the minority positions within the advisory group. Upon submission of its recommendations, the advisory group shall cease to exist.

(D) The Chief shall make legislative recommendations for purposes of Section 4.11.2 of the Compact only after full consideration of the advisory group's recommendations, provided that the advisory group's recommendations are submitted to the Chief not later than eighteen months after the effective date of this section. When making legislative recommendations, the Chief shall consider the economic consequences of determining whether an impact is significant.

SECTION 4. The Chief of the Division of Soil and Water Resources shall add to the list of baseline facilities listed in the baseline report any facility that commenced a water withdrawal after December 8, 2009, but not later than one hundred eighty days after the effective date of this section.

SECTION 5. The Chief of the Division of Soil and Water Resources in the Department of Natural Resources shall not adopt rules governing the application of Section 4.11.2 of the Great Lakes-St. Lawrence River Basin Water Resources Compact until the Chief is authorized to do so by the General Assembly.

SECTION 6. If a court of competent jurisdiction holds any part of this act to be void or unenforceable, it shall be considered severable from those portions of the act that are capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect. In addition, if a court of competent jurisdiction holds all or part of this act to be void or unenforceable such that the Chief of the Division of Soil and Water

Resources in the Department of Natural Resources is prohibited from implementing the withdrawal and consumptive use permit program under section 1522.12 of the Revised Code, as enacted by this act, the owner or operator of a facility that otherwise would have been required to obtain a permit under that section instead shall proceed to obtain a permit under section 1501.33 of the Revised Code, as amended by this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. H. B. No. 473

129th G.A.

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

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____