



**Interested Party Testimony of Jack Shaner, Deputy Director & Trent Dougherty, Managing Director of Legal Affairs Governor's Operating Budget - House Bill 64 (As Introduced)  
Presented to the Ohio House Finance Committee  
March 24, 2015 - Ohio Statehouse**

Chairman Smith, Vice Chair Schuring, Ranking Member Driehaus, and Members of the Ohio House Finance Committee:

Thank you for this opportunity to present Interested Party testimony on the Governor's Operating Budget, House Bill 64 (As Introduced). This testimony is presented jointly on behalf of the Ohio Environmental Council by Jack Shaner, OEC Deputy Director and Trent Dougherty, OEC Legal Affairs Director. The OEC is a not-for profit network of more than 100 group-members and several thousand citizen-members. Our mission is to secure clean air, land, and water for all who call Ohio home.

Our testimony summarizes our thoughts and recommendations for important parts of the Governor's Budget regarding land and water conservation and environmental protection. In keeping with the Governor's "Blueprint for a New Ohio" theme for his Executive Budget, we respectfully ask the Committee to amend this "Blueprint" with the following modifications to:

- **RENOVATE** or amend certain features of the Executive Budget that we believe are headed in the right direction and that could be even more effective with a tweak or two or additional funding
- **CONSTRUCT** or enact or add new budget features that we believe are missing
- **DEMOLISH** or reject certain proposed budget features that we believe are counterproductive

Draft amendment language is included at the end of this document. As always, we look forward to working with all members of the Committee to build on the progress of the Executive Budget. Thank you.

## **1. PUBLIC TRANSPORTATION**

### **Challenge/Opportunity: Invest in public transit + local transportation priorities**

Yesterday's Toledo Blade editorial fairly summed up the critical need to make Ohio's transportation network more accessible to all its users: "Ohio ranks near the bottom among states in spending on public transportation — just 63 cents per person annually, or less than 1 percent of its transportation budget. The result is an uncompetitive, unbalanced, and inadequate network of mass transit systems in Ohio that must cut service despite growing demands for ridership, raise fares, or both (<http://goo.gl/dcddXk>)." Less pithy but equally damning conclusions were reached in the recent Ohio Statewide Public Transit Needs Study (<http://goo.gl/akTEZg>) released in January by ODOT:

- Ohio's transit systems need to provide an additional 37.5M public transportation trips over current levels (to meet existing unmet demand. (Ohio's transit agencies currently deliver 115M transit trips/CY.

- In 2015, an additional \$96.7M in operating funding is needed to expand service to meet existing unmet demand, \$47.5M for urban systems and \$49.2M for rural systems. In 2015, an additional \$192.4M in capital investment is necessary to purchase new vehicles and infrastructure to meet current unmet demand.
- By 2025, an additional 140.2M additional transit trips over current levels are estimated to meet future demand. An additional \$592M in annual operating funding is estimated to meet this future demand. This includes a projected demand for 5M new rural transit trips, including to the 27 rural counties that currently do not have public transit service.
- To meet the 2025 funding gap, funding from all sources (federal, state, local, fares, other) needs to approximately double.
- If state funds covered 10% of transit spending, costs would equal:
  - 2015: \$37M capital + \$83M operating = \$120M total ODOT funding goal
  - 2025: \$55M capital + \$130M operating = \$185M total ODOT funding goal

**Recommendations:**

**Boost GRF funding for public transit** to make progress toward providing the study's recommendation of the state funding 10% of Ohio's local transit funding needs, estimated at \$83M in operating fund needs in CY 2015.

**Create a Transportation Choice Fund** to match local, non-highway transportation projects, including walking, biking, and transit, financed by \$75M per FY in flexible federal highway funds.

**2. LAKE ERIE + INLAND LAKE PROTECTION**

**Challenge/Opportunity: Further protect shoreline communities + economies from toxic algae**

The General Assembly is on the threshold of adopting significant legislation to address nutrient pollution from the agriculture sector. The OEC supports that legislation. But, as identified by successive studies including the 2012 Ohio Directors' Report on Agricultural Nutrients and Water Quality (<http://goo.gl/qxZ1mF>), more efforts will be needed to protect Ohio's North Coast and inland shoreline economies that are so dependent upon good water quality and the local economies that fishing and other outdoor activities support.

**OEC Recommendations:**

**Boost GRF funding** by \$0.5M per FY for both the Ohio Sea Grant and Heidelberg University's National Center for Water Quality Research; boost funding as well for the ODNR Healthy Lake Erie Fund.

**Designate the western Lake Erie Watersheds as a Critical Natural Resource Area.** This recommendation is right out of the 2012 "Directors' Report," calling for the development of nutrient management plans for crop and livestock operations to implement nutrient management plans using results from appropriate nutrient soil tests and adherence to a minimum set of best management practices based, in part, on the 4R model of using the Right Source of Nutrients at the Right Rate and Right Time in the Right Place;

**Close the "Manure Loophole"** by requiring CAFO operators and Certified Livestock Managers to annual report to the ODAg director, by sub-watershed, the total amount of livestock manure that is applied by the owner or CLM or the ultimate recipient to which the livestock manure is sold or transferred. This will better enable the ODAg to better track nutrient applications and any correlated stream hot spots for excessive nutrient loading.

**3. SOIL + WATER CONSERVATION**

**Challenge/Opportunity: Help farmers keep their soil**

Researchers estimate that the U.S. is losing soil 10 times faster than the natural replenishment rate. One rainstorm, some scientists estimate, can wash away 1 mm (.04 inches) of soil. If left to natural processes, it can take years,

even decades, to replace that loss. Erosion promotes critical losses of water, nutrients, soil organic matter and soil biota; reduces soil productivity; and contaminates water with excessive nutrients and pesticides.

**OEC Recommendations:**

**Boost GRF funding for ODNR Soil and Water Conservation Districts by \$2M per FY** so that the state to county match nears a 1:1 match, rather than the current 80:20 level. The Governor's Budget flat funds this program at \$2.9M million per FY, the same level as for FY2015. Increased funding will enhance the efforts of local districts to assist farmers to effectively implement the "4 R" practices and make other soil and water conservation improvements.

#### **4. STATE + PRIVATE FOREST CONSERVATION**

**Challenge/Opportunity: Balance state forest development with conservation and preservation**

The OEC is very concerned with the management philosophy of the ODNR Division of Forestry (DOF). We believe:

- Forest "development," i.e. timber production, dominates DOF thinking and forest management for old-growth forest is all but an afterthought.
- The public is not receiving the full benefit of its state forest system. See the comprehensive "Shawnee State Forest Economic Study" from October 2010 by Greenfire Consulting Group (<http://goo.gl/4Pcut4Q>).
- DOF has poorly managed cuts near popular hiking trails and state near preserves. In addition to devastating the visitor experience, clear cuts invite destructive invasive species, expose soil to erosion, and forestall the restoration of old-growth forest.

**OEC Recommendations:**

**Amend the statutory mission of the DOF** to emphasize that the DOF shall be concerned with both forest development and forest conservation, including the designating and managing of forest lands for the goals of reestablishing and protecting in perpetuity mature, old-growth, and future-old-growth forest habitat.

**Require the DOF to annually report to the General Assembly** its timber harvesting program costs, including the cost of forest road maintenance.

**Offer tax incentives for private woodlot owners** to restore and preserve mature forest habitat and/or stream or wetland buffers.

#### **5. OHIO NATURAL AREAS AND PRESERVES + NATURAL HERITAGE DATABASE**

**Challenge/Opportunity: Rescue Ohio's struggling preserves + heritage database**

Conkle's Hollow. Hueston Woods. Clear Fork Gorge. Lake Katharine. Irwin Prairie. Hills Creek Woods. These and other State Nature Preserves and are among Ohio's natural jewels—the finest remnants of our remaining gorges, prairies, old-growth forests, bogs and fens, and other natural wonders of state significance. But Ohio's fragile natural treasures need continuous care to protect them from abuse, poaching, and destructive invasive species. In addition, Ohio's once thriving Natural Heritage Database has waned, depriving state managers updated information to help steer development projects around sensitive areas.

**OEC Recommendations:**

**Boost GRF funding for Ohio's 30,000-acre preserve system** which is managed by ODNR Division of Parks and Recreation supervisors and barely sustained by flat funding of \$1.7M per FY.

**Restore Ohio's once thriving Natural Heritage Database**, which also has waned, depriving rare and endangered plant and animal species of the protection they deserve. This emaciated program and its skeletal staff catalogues data on the presence of rare and endangered plant and animal species, helps inform the sound guidance to public works and commercial development.

## 6. STREAM + WETLAND PROTECTION

### **Challenge/Opportunity, Part-1: Privatizing Ohio's water pollution control certification**

We are leery of the Governor's Budget proposal to privatize a portion of Ohio's water pollution regulation via the establishment of private, independent Certified Water Quality Professionals under R.C.§6111.30. These provisions create a certified water quality professional (CWQP) program, along with striking the requirement for a "use attainability analysis" to be conducted on streams and wetlands, and replace it with "data sufficient to determine the existing aquatic life use". Given Ohio EPA's 35-plus years of conducting use attainability analyses as a routine part of their overall support for the water programs we are at a loss as to why the current law must be replaced, and even more concerned why it must be replaced with the privatization of the program. OEC believes that this novel proposal is not ready for prime-time and needs to be vetted with stakeholders and the public before the General Assembly even considers moving forward on any further discussion or deliberation of this proposal. Thus, we recommend that the Committee remove these provisions from the bill. If the Committee however wishes to move forward, OEC has recommendations for providing necessary transparency and public accountability for the CWQPs as well as the ability for Ohio EPA staff to audit CWQP reports concerning impacts on sensitive watersheds and/or significantly sized projects.

### **OEC Recommendations, Part-1: Setting aside an unbalanced proposal**

**Preferred action: Reject the proposed authorization of independent Certified Water Quality Professionals.**

**Alternative action 1.: Strengthen OEPA random audit provision** of Governor's Budget to keep private consultants' efforts honest by authorizing discretionary and random audits prior to the issuance of 401 project certifications.

**Alternative action 2.: Authorize OEPA to require public disclosure of certified water quality professionals,** including posting information on the OEPA webpage identifying the certified professional and all documents submitted to the OEPA by the certified professional and any agency audits.

### **Challenge/Opportunity, Part-2: Water withdrawals from small streams by oil + gas production wells**

Current Ohio law requires the applicant for an oil and gas production permit to identify each source of ground and surface water to be used at an oil and gas production well as well as the estimated rate and volume of any water withdrawals. Ohio law does now, however, empower ODNR to restrict water withdrawals.

### **OEC Recommendations, Part-2:**

**Require ODNR to consult** with the ODNR Wildlife Division and the US Fish and Wildlife Service to determine whether a withdrawal will impact any state or federally listed or endangered and threatened species. Also, require the ODNR to consult with the ODNR Division of Soil and Water Resources if the withdrawal is proposed to be from a primary headwater habitat stream to determine any impact of the withdrawal.

## 7. EMERGENCY RESPONSE

### **Challenge/Opportunity: "undue delay" in disclosure of trade secret chemicals in emergency**

The Governor's Budget directs an oil and gas well owner to submit specified public officials the identification of trade secret chemicals involved in an emergency situation to specified officials, with "undue delay." Because "undue delay" is not defined, the provision could actually cause delay.

**Recommendation:** To avoid any legal ambiguity and to help ensure the protection of health and safety, we urge an amendment to place a limit of one hour on the submission of the specified information.

### **Challenge/Opportunity: protecting against a Charleston, WV-type chemical storage tank spill**

It has been more than a year since Charleston WV experienced serious water contamination following the rupture of a chemical storage tank and massive leak of chemicals into Elk Creek. This is a wake up call that Ohio can and should heed.

**Recommendation:** Directs the State Emergency Response Commission (SERC) to review emergency response capabilities and recommend best practices for the incident command in response to the need of state and local responders.

## 8. COMMUNITY PROTECTION

### **Challenge/Opportunity: Singling out oil and gas industry for chemical inventory reporting + EPCRA**

Together, proposed sections 1509.23 and 1509.231 of the Governor's budget bill revises the state's compliance with the Federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 by requiring specified chemical inventory information be filed with the ODNR Oil + Gas chief in place of reporting to the State Emergency Response Commission, local emergency planning committees, and the local fire departments which have jurisdiction over a facility, as is required by all other industries using chemicals over a certain threshold in Ohio.

These provisions pose several concerns from the OEC's perspective:

- This proposal stops direct reporting from drillers to state and local emergency planners and fire departments nearest each well. Direct reporting was just reinstated a year ago, after a 12 year lapse. .
- The onus will be placed on local emergency responders and firefighters to seek out chemical inventory information from the ODNR, instead of having the information immediately and automatically provided to them by the industry.
- The ODNR Oil + Gas chief would have the discretion to decide whether and to what extent to share the chemical information with the public, despite the fact that federal EPCRA law requires that information about chemical inventories at facilities be made available to the public.
- ODNR's proposed primary means of providing chemical information to first responders, through an internet-based database, will not always be accessible, especially in rural areas with unreliable internet access.
- Federal emergency planning law and Ohio emergency planning law both make hazardous chemical information available to the public for every other industry in the state. Why an exception for oil and gas drillers?
- Federal emergency planning law states that facilities must report information directly to state and local emergency planners and the fire departments nearest each facility, and says that states enacting their own emergency planning laws must make them consistent in "scope, content and coverage" with the federal law. No provision is made for a third party agency to receive this information.

**Recommendation:** **Reject the provision.** If modernizing Ohio's EPCRA compliance is a priority, we recommend that it be a priority for all industries that are subject to EPCRA, and that a proper statewide stakeholder process be developed to properly update the law.

## 9. OIL + GAS PRODUCTION + WASTE DISPOSAL

### **Challenge/Opportunity:**

OEC continues to commend Governor Kasich and Director Zehringer for their continuing efforts to improve Ohio's oversight of the state's booming horizontal drilling operations. The OEC generally supports the statutory changes related to Oil & Gas regulation proposed in the Governor's Budget, and feel that most of the provisions improve upon current law. Specifically we support, and urge the Committee to conserve the following are provisions in the Governor's proposed budget:

- **Requiring oil and gas operators to register and submit to verification of background information under R.C.§1509.051**
- **Notification of emergencies concerning oil and gas operations under R.C.§1509.232**
- **Modernizing compulsory unitization of oil and gas operations under R.C.§1509.28**
- **Strengthening penalties for violations under R.C.§§1509.33 and 1509.99**

We recommend, though, several provisions in the Governor's Budget for renovation and new construction.

### **Idle and Orphaned Well Program**

An improvement to Ohio oil and gas law important to, which the House of Representatives was key in developing address safety of citizens in districts throughout the state unfortunately is missing from the Governor's proposal.

In HB375 in the 130<sup>th</sup> General Assembly, OEC worked with House leadership and the industry on a proposal to increase the efficiency, accountability, and transparency of the ODNR Idle and Orphan Well Program. These abandoned and unused wells -- especially the legacy wells that were abandoned before the existence of modern regulations -- can pose risks to safety, the environment, and development. These wells are scattered around the state and can be found in rural as well as urban areas. Experts believe that thousands of these wells likely exist in Ohio.

Our proposal, as passed by the House, would have required the ODNR Division of Oil and Gas Resources to:

- Provide sufficient staff to identify, locate, and plug idle and orphaned wells located in Ohio;
- Develop and maintain an inventory of all known and suspected idle and orphaned wells located in this state;
- Prioritize the plugging of idle and orphaned wells identified in that inventory based on the relative risk of those wells to public health and safety;
- Report annually to the General Assembly on actual and projected expenditures and related well plugging activity for the immediate preceding and immediate upcoming fiscal years, respectively.

While that bill was not adopted by the Senate, the need for identifying and plugging idle and orphan wells is still an environmental and human safety priority. We believe that codifying the program along with the other statutory directives will results in increased productivity, efficiency, and accountability by the ODNR.

**OEC thus recommends the Committee amend HB64 to include the reforms passed by the previous House in HB375 (130 GA).**

### **Other reforms to Ohio Oil & Gas Law**

While, again, we commend the Administration for proposing *some* improvements to Ohio's oil and gas law, OEC still feels that there is work to be done to make sure our laws and regulations meet or exceed those in other shale producing states. For example, OEC has drafted amendments for:

- Increased setbacks or buffer zones between horizontal wells and homes, horizontal wells and drinking water supplies, and horizontal wells and ecologically sensitive areas;
- Emergency rules mandating that all horizontal wells adopt approved spill prevention measures and approved secondary containment systems;
- Prohibition on water withdrawals for horizontal wells from headwater streams, streams with low flow, and streams with federally or state endangered species.

We hope to work with members of the Committee and other stakeholders to continue the efforts over the past few years to improve Ohio law.

**Chairman Smith and Members of the Committee, thank you for considering our recommendations and perspective.**

**NOTE: Pasted below is draft language for our amendment recommendations.**

## **1. PUBLIC TRANSPORTATION - Transportation Choice Fund**

"Section 203.\_\_\_\_. TRANSPORTATION CHOICE FUND

*Authorization:* The Director of Budget and Management, at the request of the Director of Transportation, shall transfer \$40,000,000 cash in state fiscal year 2016 (SFY16) and \$75,000,000 in state fiscal year 2017 (SFY17) from the Highway Operating Fund (Fund 7002) to the Transportation Choice Fund, which is hereby established in the state treasury to provide funding exclusively for the Transportation Choice initiative. This initiative will expand transportation choices for the efficient movement of people, raw materials, goods, and finished products in the state.

Each applicant shall provide any required matching funds:

The state shall set aside the following federal funds to endow the Transportation Choice Fund:

- (1) \$20,000,000 in both SFY16 and SFY17 from the Congestion Mitigation and Air Quality (CMAQ) Program;
- (2) \$13,000,000 in both SFY16 and SFY17 from Transportation Alternatives Program (TAP), excluding funds subject to section 213(c)(1)(A) of the United States Code;
- (3) \$12,000,000 in both SFY16 and SFY17 from the Highway Safety Improvement Program (HSIP); and
- (4) \$30,000,000 in SFY2017 from the Surface Transportation Program (STP), excluding funds subject to section 134(d)(1)(A) of the United States Code;

*Competitive grants and distribution of funds.* The Transportation Choice initiative shall be administered as a competitive grant program within each highway construction district established by the Department of Transportation. The amount of funds available for awards within a highway district shall be based on a ratio of the population of the highway construction district to the total population of the State multiplied by the total amount of funding made available for the Transportation Choice initiative.

Except as provided below, the applications for funds shall be selected by the Department within each district using the selection criteria established for the Transportation Choice initiative. However, funds within a construction district attributable to the population located within a metropolitan planning area under section 134 of title 23, United States Code, shall be transferred to the applicable metropolitan planning organization. In such instances the metropolitan planning organization shall administer a competitive grant program.

*Eligible Applicant.* The following entities are eligible to submit applications for award of funds under the Transportation Choice initiative: (1) local governments; (2) transit agencies; (3) metropolitan planning organizations

...serving a metropolitan planning area with a population less than 200,000; (4) a school district; and (5) a regional transportation authority.

*Eligible Projects:* Eligible projects under the Transportation Choice initiative shall include: (1) transit capital (including, but not limited to, bus rapid transit, bus acquisition, commuter rail, streetcars, light rail, and related facilities); (2) operating assistance, subject to federal law and limitations; (2) infrastructure projects for biking and walking; (3) electric vehicle infrastructure; (4) public and private fleet conversion to electric or alternative fuel vehicles; and (5) intermodal freight rail projects.

*Apportionment of Funds:* Transportation Choice funds shall be suballocated to Metropolitan Planning Organizations (MPOs) and Ohio Department of Transportation Districts based on their relative share of the state population. For MPOs located within an ODOT District with a population of 200,000 or greater, or which cross into multiple Districts, the MPO shall receive funds based on its share of the population of that District or Districts.

*Project Selection Criteria:* The Department of Transportation and metropolitan planning organizations serving a metropolitan planning area with a population greater than 200,000 shall develop project selection criteria when obligating funds from the Transportation Choice fund. Projects shall be assessed based upon the extent to which they: (1) improve accessibility and affordability; (2) provide for long-term economic development; (3) improve the safety of the surface transportation system for all users, regardless of age or ability level; (4) protect or enhance the environment; (5) reduce transportation-related energy consumption on a per capita basis; and (6) promote innovation.

*Intent of funds.* The funds transferred under this section shall not be used to reduce or supplant funds currently used for transit and other non-highway uses by the Department. In SFY16 and SFY17, the Department shall obligate an amount at least equal to the amount obligated in SFY13 for transit and other non-highway uses in addition to amounts obligated under the Transportation Choice Initiative.

## SYNOPSIS

Department of Transportation

Section 203.\_\_\_\_.

Requires the Director of Budget and Management, upon request from the Director of Transportation, to transfer \$40,000,000 in cash in state fiscal year 2016 (SFY16) and \$75,000,000 in state fiscal year 2017 (SFY17) from the Highway Operating Fund (Fund 7002) to the Transportation Choice Fund for the Transportation Choice initiative, and creates that fund in the state treasury. The Transportation Choice initiative will provide critical transportation choices to all residents of the state by allocating state and federal dollars as permitted by law, including but not limited to Surface Transportation Program funds, Congestion Mitigation and Air Quality Program funds, Transportation Alternatives Program funds, and Highway Safety Improvement Program funds for various types of projects.

## **2. LAKE ERIE + INLAND LAKE PROTECTION - Critical Natural Resource Areas**

## **The Problem – Agricultural Operations in the Western Lake Erie Basin are a major cause of Harmful Algal Blooms**

Numerous reports and studies identify agricultural operations as a major source of nutrient pollution that causes western Lake Erie's harmful algal blooms. While voluntary adoption of conservation practices help, we cannot rely on them alone. Ideally, all farmers and livestock operators in Ohio would develop and follow nutrient management plans informed by soil testing, but especially those located in western Lake Erie Basin watersheds. Additionally, crop producers in these watersheds should follow some common sense best management practices.

## **The Solution - Designate the western Lake Erie Watersheds as a Critical Natural Resource Area**

In 2012, the Ohio Dept. of Agriculture and the Ohio EPA issued a report titled, "Directors' Agricultural Nutrients and Water Quality Working Group: Final Report and Recommendations." Members of the working group included research scientists, agribusiness leaders, and environmentalists whose purpose was, "to discuss how agricultural practices may be contributing to the deteriorating conditions in Lake Erie and to develop recommendations on how the State of Ohio can partner with the agricultural community to encourage agricultural production practices that promote nutrient stewardship," (p. 1). Among the recommendations was a Critical Natural Resource Area designation for western Lake Erie watersheds, which would require the Ohio Dept. of Natural Resources Director to develop programs and procedures to help minimize agricultural pollution flowing into western Lake Erie. The report also recommended Ohio should develop an implement as state-wide standardized soil testing program. Ultimately, these recommendations informed part of Ohio's Nutrient Reduction Strategy that established a framework for reducing nutrient pollution in the Lake Erie and Ohio River watersheds.

We fully support these recommendations and propose the following language to begin implementing these common sense proposals:

### **1511.026 Critical Natural Resource Areas**

- (A) The director of natural resources shall designate the western Lake Erie Basin as a Critical Natural Resource Area that needs special management because of its importance to the well-being of its surrounding communities, the western Lake Erie region, and to the state of Ohio. The director shall promulgate rules to effectively abate agricultural pollution in the western basin, including, but not limited to the following:
- (1) Implementing a Nutrient Management Plan process for agricultural crop lands and/or animal feeding operations;
    - (a) Nutrient Management Plans must be developed using results from appropriate nutrient soil tests, and the director will develop a standardized soil testing program for this purpose.
  - (2) Requiring nutrient application for crop production follow a minimum set of best management practices based, in part, on the 4R model of using the Right Source of Nutrients at the Right Rate and Right Time in the Right Place;
  - (3) Enforcing the nutrient management plans, and ensuring compliance with best management practices.
- (B) As used in this section and section of the Revised Code, "western Lake Erie basin" means land in the state that is located in the following watersheds identified by the specified United States geological survey hydrologic unit code:
- (1) St. Marys watershed, hydrologic unit code 04100004;

- (2) Auglaize watershed, hydrologic unit code 04100007;
- (3) Blanchard watershed, hydrologic unit code 041000008;
- (4) Sandusky watershed, hydrologic unit code 04100011;
- (5) Cedar-Portage watershed, hydrologic unit code 04100010;
- (6) Lower Maumee watershed, hydrologic unit code 04100009;
- (7) Upper Maumee watershed, hydrologic unit code 04100005;
- (8) Tiffin watershed, hydrologic unit code 04100006;
- (9) St. Joseph watershed, hydrologic unit code 04100003;
- (10) Ottawa watershed, hydrologic unit code 04100001;
- (11) River Raisin watershed, hydrologic unit code 04100002.

- (C) Five years after the effective date of this section, and every three years following, the director shall report to the general assembly as to whether the western Lake Erie Basin should remain as a Critical Natural Resource Area, and/or whether other watersheds shall be considered Critical Natural Resource Areas.

## **2. LAKE ERIE + INLAND LAKE PROTECTION - Closing the "Manure Loophole"**

A major problem with manure management are distribution and utilization regulations that provide a mechanism for permitted livestock operations to transfer manure to other people in place of developing and adhering to manure management plans. This allows people who are not trained or certified to receive and apply significant amounts of manure in a year.

Even though the application of transferred or sold manure is supposed to be done in accordance with best management practices detailed in the NRCS 590 Field Office Technical Guide, there is no verification unless a complaint triggers an investigation. Relying on a complaint-driven system to ensure BMP compliance is an unreliable way to reduce nutrient pollution because phosphorous may still enter waterways without creating a discharge that would cause a complaint.

Additionally, current rules require owners and operators of a confined animal feeding facility to [annually report the amount of manure](#) transferred to other persons to the agricultural director, among other things. However, the requirement does not include the location of where the manure goes once it leaves the facility. This information is crucial to better understand how much manure farmers and livestock operators are applying in the western Lake Erie watersheds, and to inform studies analyzing sources of nutrient pollution.

### ***The Solution – Improve Loophole Reporting***

While some would suggest we need to eliminate the ability of permitted CAFOs to send their manure elsewhere, some farmers do benefit from using this manure to fertilize their crops. However, state and federal agencies need to better understand where this manure goes in order to create plans to reduce agricultural pollution and to focus monitoring efforts. Lawmakers recognized the need for such transparency, and drafted amendment language for Senate Bill 1 and House Bill 61 that unfortunately were tabled. [Here is an amendment for HB 61 that can be adapted for HB 64](#)

#### 4. STATE + PRIVATE FOREST CONSERVATION

##### A. Revise ODNR Forestry Division's statutory mission to make it more conservation and preservation oriented

###### 1503.011 Conservation and development of forests - duties of chief.

The chief of the division of forestry shall be responsible for the conservation, preservation, and development of forests within this state. The chief shall be concerned with silvicultural practices, including the proper planting, growing, protecting, harvesting, and managing of trees for such purposes as watershed and soil protection, timber production and utilization, recreation, aesthetics, wildlife habitat development, and urban enhancement and for all benefits that forests provide. The chief also shall be concerned with conservation and preservation practices, including the designating and managing of forest lands for the primary goals of reestablishing and protecting in perpetuity mature, old-growth, and future-old-growth forest habitat.

The chief may do any or all of the following:

(A) Provide rural forestry assistance to nonindustrial private forest landowners, including advice in tree planting, forest improvement, harvesting, and all aspects of conservation and preservation;

(B) Provide urban forestry assistance to individuals, nonprofit organizations, and political subdivisions to manage their urban forest resource and develop comprehensive tree care programs;

(C) Provide wood utilization, marketing, and rural forestry development assistance to forest industries, political subdivisions and agencies thereof, and state and federal agencies for the purpose of establishing and maintaining a viable, economically sound wood-based industry while expanding the forest resource of this state;

(D) Provide forest pest protection assistance to forest landowners, political subdivisions and agencies thereof, and state and federal agencies on assessing and evaluating the health and vigor of the forest resource;

(E) Provide technical assistance to landowners in developing forest windbreaks, filter strips, and other forest management practices that provide conservation benefits;

(F) Provide technical assistance to landowners in developing goals and management plans for the establishment, retention, and protection of mature, old-growth, and future-old-growth forest habitat.

~~(F)~~ (G) Provide awareness of and education concerning the programs provided for under divisions (A) to (E) of this section;

~~(G)~~ (H) Enter into agreements with political subdivisions and agencies thereof, state and federal agencies, firefighting agencies and private fire companies, as those terms are defined in section 9.60 of the Revised Code, nonprofit organizations, and individuals to meet the needs of forestry assistance in this state and, in accordance with section 1503.01 of the Revised Code, develop and administer grant programs for any of those entities requesting assistance.

The chief shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code establishing such requirements and procedures as are necessary to implement this division.

As used in this section, "nonprofit organization" has the same meaning as in section 4141.01 of the Revised Code.

### **B. ODNR Division of Forestry - require annual report on forest timber sales costs**

1503.44 By September 30 of each year, the chief shall annually publish a report that discloses all state forest timber sold and all merchandising conducted for the previous fiscal year. The report shall include maps that provide GIS layers illustrating all commercial harvesting from the previous fiscal year. The report shall disclose all fiscal year costs associated with the state's timber harvesting program, including all costs associated with the creation and maintenance of forest roads, whether those costs are incurred by the division of forestry, the department of transportation, or any other agency of the state. The report shall be made publicly available on the division's website.

### **C. Private Forest Land - tax incentive for stream buffers and preservation**

Privately owned forest land which the owner thereof devotes exclusively to the restoration and preservation of mature forest habitat and/or stream or wetland buffer shall be taxed annually at fifty per cent of the otherwise applicable CAUV rate.

## **6. STREAM + WETLAND PROTECTION**

### **Clean Water Act Sec. 401 Water Quality Certification Reviews**

**Amendment A - Reject Governor's Budget proposal for independent "certified water quality professionals"**  
Delete lines 71757-71758; restore language deleted in lines 71756-71757; delete lines 71863-71928.

**Amendment B - Strengthen OEPA random audit provision of Governor's Budget; authorize OEPA to require public disclosure of certified water quality professionals**

(6) Authorize discretionary audits and random audits by the director of documentation developed or submitted by certified water quality professionals to ensure compliance with requirements established in rules adopted under division (J)(7) of this section; all audits shall occur prior to the issuance of 401 certification;

(8) Authorize the director to require the public disclosure of all certified water quality professionals. In doing so, the director shall publish on the agency's webpage, the following information for each certified water quality professionals:

1. Name of certified professional,
2. qualifications and credentials,
3. certification test results,
4. all documents and reports submitted by the certified professional; and
5. all documentation and results of agency audits of the certified professional

## Headwater Stream Protection from Water Withdrawals for Oil and Gas Wells

1509.06 (A)(8)

(a) An identification, to the best of the owner's knowledge, of each proposed source of ground water and surface water that will be used in the production operations of the well. The identification of each proposed source of water shall indicate if the water will be withdrawn from the Lake Erie watershed or the Ohio river watershed, as well as identification of the withdrawal by specific sub-watershed by Eight-digit hydrologic unit. Upon receipt of this information the chief shall consult with the United States Fish and Wildlife Service and the division of wildlife prior to withdrawing from waters of the state to determine any impact of the withdrawal to state or federally listed of endangered and threatened species. If the withdrawal is proposed to be from a primary headwater habitat stream, as that term is defined in Administrative code section 3745-4-02 (P), the chief shall consult with the division of soil and water resources prior to withdrawing from waters of the state to determine any impact of the withdrawal. In addition, the owner shall provide, to the best of the owner's knowledge, the proposed estimated rate and volume of the water withdrawal for the production operations. If recycled water will be used in the production operations, the owner shall provide the estimated volume of recycled water to be used. The owner shall submit to the chief an update of any of the information that is required by division (A)(8)(a) of this section if any of that information changes before the chief issues a permit for the application.

### 7. EMERGENCY RESPONSE

#### A. Clarify meaning of “undue delay” re disclosure of trade secret chemicals to emergency responders

**PROBLEM:** The Governor's Budget directs an oil and gas well owner to submit specified public officials the identification of trade secret chemicals involved in an emergency situation to specified officials, with "undue delay." Because "undue delay" is not defined, the provision could actually cause delay. The draft amendment puts a limit of one hour on submitting the information.

Line 12982 – after “delay” insert “, not to exceed one hour,”

Line 71628 – after “delay” insert “, not to exceed one hour,”

#### B. SERC report on best practices for state and local emergency response

**PROBLEM:** It has been more than a year since Charleston WV experienced serious water contamination following the rupture of a chemical storage tank and massive leak of chemicals into Elk Creek. This is a wake up call that Ohio should heed. The draft amendment directs the [State Emergency Response Commission](#) (SERC) to review emergency response capabilities and recommend best practices for the incident command in response to the need of state and local responders.

**Temporary Language Section X.** Within 60 days of the effective date of this Act, the chairperson of the state emergency response commission shall convene a meeting of the state emergency response commission to develop a committee of the commission to review environmental emergency response capabilities within the state, and provide recommendations on best practices for the incident command in response to an emergency, human and financial resource needs of state and local responders, training needs for state and local responders, and how local and state officials more effectively communicate concerning issues of environmental releases.

Within 12 months of the effective date of this Act, the state emergency response commission shall deliver to the speaker of the house and the president of the senate a report detailing its review of Ohio's environmental emergency response and its recommendations for the adoption of best practices.

## 8. COMMUNITY PROTECTION

**Reject the Governor's Budget proposal re Federal EPCRA Community Right to Know**  
Delete lines 13408-13445



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**Interested Party Testimony of Jack Shaner, Deputy Director & Trent Dougherty, Managing Director of Legal Affairs Governor's Operating Budget - House Bill 64 (As Introduced)  
Presented to the Ohio House Finance Committee  
March 24, 2015 - Ohio Statehouse**

Chairman Smith, Vice Chair Schuring, Ranking Member Driehaus, and Members of the Ohio House Finance Committee:

Thank you for this opportunity to present Interested Party testimony on the Governor's Operating Budget, House Bill 64 (As Introduced). This testimony is presented jointly on behalf of the Ohio Environmental Council by Jack Shaner, OEC Deputy Director and Trent Dougherty, OEC Legal Affairs Director. The OEC is a not-for profit network of more than 100 group-members and several thousand citizen-members. Our mission is to secure clean air, land, and water for all who call Ohio home.

Our testimony summarizes our thoughts and recommendations for important parts of the Governor's Budget regarding land and water conservation and environmental protection. In keeping with the Governor's "Blueprint for a New Ohio" theme for his Executive Budget, we respectfully ask the Committee to amend this "Blueprint" with the following modifications to:

- **RENOVATE** or amend certain features of the Executive Budget that we believe are headed in the right direction and that could be even more effective with a tweak or two or additional funding
- **CONSTRUCT** or enact or add new budget features that we believe are missing
- **DEMOLISH** or reject certain proposed budget features that we believe are counterproductive

Draft amendment language is included at the end of this document. As always, we look forward to working with all members of the Committee to build on the progress of the Executive Budget. Thank you.

## **1. PUBLIC TRANSPORTATION**

### **Challenge/Opportunity: Invest in public transit + local transportation priorities**

Yesterday's Toledo Blade editorial fairly summed up the critical need to make Ohio's transportation network more accessible to all its users: "Ohio ranks near the bottom among states in spending on public transportation — just 63 cents per person annually, or less than 1 percent of its transportation budget. The result is an uncompetitive, unbalanced, and inadequate network of mass transit systems in Ohio that must cut service despite growing demands for ridership, raise fares, or both (<http://goo.gl/dcddXk>)." Less pithy but equally damning conclusions were reached in the recent Ohio Statewide Public Transit Needs Study (<http://goo.gl/akTEZg>) released in January by ODOT:

- Ohio's transit systems need to provide an additional 37.5M public transportation trips over current levels (to meet existing unmet demand. (Ohio's transit agencies currently deliver 115M transit trips/CY.

- In 2015, an additional \$96.7M in operating funding is needed to expand service to meet existing unmet demand, \$47.5M for urban systems and \$49.2M for rural systems. In 2015, an additional \$192.4M in capital investment is necessary to purchase new vehicles and infrastructure to meet current unmet demand.
- By 2025, an additional 140.2M additional transit trips over current levels are estimated to meet future demand. An additional \$592M in annual operating funding is estimated to meet this future demand. This includes a projected demand for 5M new rural transit trips, including to the 27 rural counties that currently do not have public transit service.
- To meet the 2025 funding gap, funding from all sources (federal, state, local, fares, other) needs to approximately double.
- If state funds covered 10% of transit spending, costs would equal:
  - 2015: \$37M capital + \$83M operating = \$120M total ODOT funding goal
  - 2025: \$55M capital + \$130M operating = \$185M total ODOT funding goal

**Recommendations:**

**Boost GRF funding for public transit** to make progress toward providing the study's recommendation of the state funding 10% of Ohio's local transit funding needs, estimated at \$83M in operating fund needs in CY 2015.

**Create a Transportation Choice Fund** to match local, non-highway transportation projects, including walking, biking, and transit, financed by \$75M per FY in flexible federal highway funds.

**2. LAKE ERIE + INLAND LAKE PROTECTION**

**Challenge/Opportunity: Further protect shoreline communities + economies from toxic algae**

The General Assembly is on the threshold of adopting significant legislation to address nutrient pollution from the agriculture sector. The OEC supports that legislation. But, as identified by successive studies including the 2012 Ohio Directors' Report on Agricultural Nutrients and Water Quality (<http://goo.gl/qxZ1mF>), more efforts will be needed to protect Ohio's North Coast and inland shoreline economies that are so dependent upon good water quality and the local economies that fishing and other outdoor activities support.

**OEC Recommendations:**

**Boost GRF funding** by \$0.5M per FY for both the Ohio Sea Grant and Heidelberg University's National Center for Water Quality Research; boost funding as well for the ODNR Healthy Lake Erie Fund.

**Designate the western Lake Erie Watersheds as a Critical Natural Resource Area.** This recommendation is right out of the 2012 "Directors' Report," calling for the development of nutrient management plans for crop and livestock operations to implement nutrient management plans using results from appropriate nutrient soil tests and adherence to a minimum set of best management practices based, in part, on the 4R model of using the Right Source of Nutrients at the Right Rate and Right Time in the Right Place;

**Close the "Manure Loophole"** by requiring CAFO operators and Certified Livestock Managers to annual report to the ODAg director, by sub-watershed, the total amount of livestock manure that is applied by the owner or CLM or the ultimate recipient to which the livestock manure is sold or transferred. This will better enable the ODAg to better track nutrient applications and any correlated stream hot spots for excessive nutrient loading.

**3. SOIL + WATER CONSERVATION**

**Challenge/Opportunity: Help farmers keep their soil**

Researchers estimate that the U.S. is losing soil 10 times faster than the natural replenishment rate. One rainstorm, some scientists estimate, can wash away 1 mm (.04 inches) of soil. If left to natural processes, it can take years,

even decades, to replace that loss. Erosion promotes critical losses of water, nutrients, soil organic matter and soil biota; reduces soil productivity; and contaminates water with excessive nutrients and pesticides.

**OEC Recommendations:**

**Boost GRF funding for ODNR Soil and Water Conservation Districts by \$2M per FY** so that the state to county match nears a 1:1 match, rather than the current 80:20 level. The Governor's Budget flat funds this program at \$2.9M million per FY, the same level as for FY2015. Increased funding will enhance the efforts of local districts to assist farmers to effectively implement the "4 R" practices and make other soil and water conservation improvements.

#### **4. STATE + PRIVATE FOREST CONSERVATION**

**Challenge/Opportunity: Balance state forest development with conservation and preservation**

The OEC is very concerned with the management philosophy of the ODNR Division of Forestry (DOF). We believe:

- Forest "development," i.e. timber production, dominates DOF thinking and forest management for old-growth forest is all but an afterthought.
- The public is not receiving the full benefit of its state forest system. See the comprehensive "Shawnee State Forest Economic Study" from October 2010 by Greenfire Consulting Group (<http://goo.gl/4Pcut4Q>).
- DOF has poorly managed cuts near popular hiking trails and state near preserves. In addition to devastating the visitor experience, clear cuts invite destructive invasive species, expose soil to erosion, and forestall the restoration of old-growth forest.

**OEC Recommendations:**

**Amend the statutory mission of the DOF** to emphasize that the DOF shall be concerned with both forest development and forest conservation, including the designating and managing of forest lands for the goals of reestablishing and protecting in perpetuity mature, old-growth, and future-old-growth forest habitat.

**Require the DOF to annually report to the General Assembly** its timber harvesting program costs, including the cost of forest road maintenance.

**Offer tax incentives for private woodlot owners** to restore and preserve mature forest habitat and/or stream or wetland buffers.

#### **5. OHIO NATURAL AREAS AND PRESERVES + NATURAL HERITAGE DATABASE**

**Challenge/Opportunity: Rescue Ohio's struggling preserves + heritage database**

Conkle's Hollow. Hueston Woods. Clear Fork Gorge. Lake Katharine. Irwin Prairie. Hills Creek Woods. These and other State Nature Preserves and are among Ohio's natural jewels—the finest remnants of our remaining gorges, prairies, old-growth forests, bogs and fens, and other natural wonders of state significance. But Ohio's fragile natural treasures need continuous care to protect them from abuse, poaching, and destructive invasive species. In addition, Ohio's once thriving Natural Heritage Database has waned, depriving state managers updated information to help steer development projects around sensitive areas.

**OEC Recommendations:**

**Boost GRF funding for Ohio's 30,000-acre preserve system** which is managed by ODNR Division of Parks and Recreation supervisors and barely sustained by flat funding of \$1.7M per FY.

**Restore Ohio's once thriving Natural Heritage Database**, which also has waned, depriving rare and endangered plant and animal species of the protection they deserve. This emaciated program and its skeletal staff catalogues data on the presence of rare and endangered plant and animal species, helps inform the sound guidance to public works and commercial development.

## 6. STREAM + WETLAND PROTECTION

### **Challenge/Opportunity, Part-1: Privatizing Ohio's water pollution control certification**

We are leery of the Governor's Budget proposal to privatize a portion of Ohio's water pollution regulation via the establishment of private, independent Certified Water Quality Professionals under R.C.§6111.30. These provisions create a certified water quality professional (CWQP) program, along with striking the requirement for a "use attainability analysis" to be conducted on streams and wetlands, and replace it with "data sufficient to determine the existing aquatic life use". Given Ohio EPA's 35-plus years of conducting use attainability analyses as a routine part of their overall support for the water programs we are at a loss as to why the current law must be replaced, and even more concerned why it must be replaced with the privatization of the program. OEC believes that this novel proposal is not ready for prime-time and needs to be vetted with stakeholders and the public before the General Assembly even considers moving forward on any further discussion or deliberation of this proposal. Thus, we recommend that the Committee remove these provisions from the bill. If the Committee however wishes to move forward, OEC has recommendations for providing necessary transparency and public accountability for the CWQPs as well as the ability for Ohio EPA staff to audit CWQP reports concerning impacts on sensitive watersheds and/or significantly sized projects.

### **OEC Recommendations, Part-1: Setting aside an unbalanced proposal**

**Preferred action: Reject the proposed authorization of independent Certified Water Quality Professionals.**

**Alternative action 1.: Strengthen OEPA random audit provision** of Governor's Budget to keep private consultants' efforts honest by authorizing discretionary and random audits prior to the issuance of 401 project certifications.

**Alternative action 2.: Authorize OEPA to require public disclosure of certified water quality professionals,** including posting information on the OEPA webpage identifying the certified professional and all documents submitted to the OEPA by the certified professional and any agency audits.

### **Challenge/Opportunity, Part-2: Water withdrawals from small streams by oil + gas production wells**

Current Ohio law requires the applicant for an oil and gas production permit to identify each source of ground and surface water to be used at an oil and gas production well as well as the estimated rate and volume of any water withdrawals. Ohio law does now, however, empower ODNR to restrict water withdrawals.

### **OEC Recommendations, Part-2:**

**Require ODNR to consult** with the ODNR Wildlife Division and the US Fish and Wildlife Service to determine whether a withdrawal will impact any state or federally listed or endangered and threatened species. Also, require the ODNR to consult with the ODNR Division of Soil and Water Resources if the withdrawal is proposed to be from a primary headwater habitat stream to determine any impact of the withdrawal.

## 7. EMERGENCY RESPONSE

### **Challenge/Opportunity: "undue delay" in disclosure of trade secret chemicals in emergency**

The Governor's Budget directs an oil and gas well owner to submit specified public officials the identification of trade secret chemicals involved in an emergency situation to specified officials, with "undue delay." Because "undue delay" is not defined, the provision could actually cause delay.

**Recommendation:** To avoid any legal ambiguity and to help ensure the protection of health and safety, we urge an amendment to place a limit of one hour on the submission of the specified information.

### **Challenge/Opportunity: protecting against a Charleston, WV-type chemical storage tank spill**

It has been more than a year since Charleston WV experienced serious water contamination following the rupture of a chemical storage tank and massive leak of chemicals into Elk Creek. This is a wake up call that Ohio can and should heed.

**Recommendation:** Directs the State Emergency Response Commission (SERC) to review emergency response capabilities and recommend best practices for the incident command in response to the need of state and local responders.

## 8. COMMUNITY PROTECTION

### **Challenge/Opportunity: Singling out oil and gas industry for chemical inventory reporting + EPCRA**

Together, proposed sections 1509.23 and 1509.231 of the Governor's budget bill revises the state's compliance with the Federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 by requiring specified chemical inventory information be filed with the ODNR Oil + Gas chief in place of reporting to the State Emergency Response Commission, local emergency planning committees, and the local fire departments which have jurisdiction over a facility, as is required by all other industries using chemicals over a certain threshold in Ohio.

These provisions pose several concerns from the OEC's perspective:

- This proposal stops direct reporting from drillers to state and local emergency planners and fire departments nearest each well. Direct reporting was just reinstated a year ago, after a 12 year lapse. .
- The onus will be placed on local emergency responders and firefighters to seek out chemical inventory information from the ODNR, instead of having the information immediately and automatically provided to them by the industry.
- The ODNR Oil + Gas chief would have the discretion to decide whether and to what extent to share the chemical information with the public, despite the fact that federal EPCRA law requires that information about chemical inventories at facilities be made available to the public.
- ODNR's proposed primary means of providing chemical information to first responders, through an internet-based database, will not always be accessible, especially in rural areas with unreliable internet access.
- Federal emergency planning law and Ohio emergency planning law both make hazardous chemical information available to the public for every other industry in the state. Why an exception for oil and gas drillers?
- Federal emergency planning law states that facilities must report information directly to state and local emergency planners and the fire departments nearest each facility, and says that states enacting their own emergency planning laws must make them consistent in "scope, content and coverage" with the federal law. No provision is made for a third party agency to receive this information.

**Recommendation:** **Reject the provision.** If modernizing Ohio's EPCRA compliance is a priority, we recommend that it be a priority for all industries that are subject to EPCRA, and that a proper statewide stakeholder process be developed to properly update the law.

## 9. OIL + GAS PRODUCTION + WASTE DISPOSAL

### **Challenge/Opportunity:**

OEC continues to commend Governor Kasich and Director Zehringer for their continuing efforts to improve Ohio's oversight of the state's booming horizontal drilling operations. The OEC generally supports the statutory changes related to Oil & Gas regulation proposed in the Governor's Budget, and feel that most of the provisions improve upon current law. Specifically we support, and urge the Committee to conserve the following are provisions in the Governor's proposed budget:

- **Requiring oil and gas operators to register and submit to verification of background information under R.C.§1509.051**
- **Notification of emergencies concerning oil and gas operations under R.C.§1509.232**
- **Modernizing compulsory unitization of oil and gas operations under R.C.§1509.28**
- **Strengthening penalties for violations under R.C.§§1509.33 and 1509.99**

We recommend, though, several provisions in the Governor's Budget for renovation and new construction.

### **Idle and Orphaned Well Program**

An improvement to Ohio oil and gas law important to, which the House of Representatives was key in developing address safety of citizens in districts throughout the state unfortunately is missing from the Governor's proposal.

In HB375 in the 130<sup>th</sup> General Assembly, OEC worked with House leadership and the industry on a proposal to increase the efficiency, accountability, and transparency of the ODNR Idle and Orphan Well Program. These abandoned and unused wells -- especially the legacy wells that were abandoned before the existence of modern regulations -- can pose risks to safety, the environment, and development. These wells are scattered around the state and can be found in rural as well as urban areas. Experts believe that thousands of these wells likely exist in Ohio.

Our proposal, as passed by the House, would have required the ODNR Division of Oil and Gas Resources to:

- Provide sufficient staff to identify, locate, and plug idle and orphaned wells located in Ohio;
- Develop and maintain an inventory of all known and suspected idle and orphaned wells located in this state;
- Prioritize the plugging of idle and orphaned wells identified in that inventory based on the relative risk of those wells to public health and safety;
- Report annually to the General Assembly on actual and projected expenditures and related well plugging activity for the immediate preceding and immediate upcoming fiscal years, respectively.

While that bill was not adopted by the Senate, the need for identifying and plugging idle and orphan wells is still an environmental and human safety priority. We believe that codifying the program along with the other statutory directives will results in increased productivity, efficiency, and accountability by the ODNR.

**OEC thus recommends the Committee amend HB64 to include the reforms passed by the previous House in HB375 (130 GA).**

### **Other reforms to Ohio Oil & Gas Law**

While, again, we commend the Administration for proposing *some* improvements to Ohio's oil and gas law, OEC still feels that there is work to be done to make sure our laws and regulations meet or exceed those in other shale producing states. For example, OEC has drafted amendments for:

- Increased setbacks or buffer zones between horizontal wells and homes, horizontal wells and drinking water supplies, and horizontal wells and ecologically sensitive areas;
- Emergency rules mandating that all horizontal wells adopt approved spill prevention measures and approved secondary containment systems;
- Prohibition on water withdrawals for horizontal wells from headwater streams, streams with low flow, and streams with federally or state endangered species.

We hope to work with members of the Committee and other stakeholders to continue the efforts over the past few years to improve Ohio law.

**Chairman Smith and Members of the Committee, thank you for considering our recommendations and perspective.**

**NOTE: Pasted below is draft language for our amendment recommendations.**

## **1. PUBLIC TRANSPORTATION - Transportation Choice Fund**

"Section 203.\_\_\_\_. TRANSPORTATION CHOICE FUND

*Authorization:* The Director of Budget and Management, at the request of the Director of Transportation, shall transfer \$40,000,000 cash in state fiscal year 2016 (SFY16) and \$75,000,000 in state fiscal year 2017 (SFY17) from the Highway Operating Fund (Fund 7002) to the Transportation Choice Fund, which is hereby established in the state treasury to provide funding exclusively for the Transportation Choice initiative. This initiative will expand transportation choices for the efficient movement of people, raw materials, goods, and finished products in the state.

Each applicant shall provide any required matching funds:

The state shall set aside the following federal funds to endow the Transportation Choice Fund:

- (1) \$20,000,000 in both SFY16 and SFY17 from the Congestion Mitigation and Air Quality (CMAQ) Program;
- (2) \$13,000,000 in both SFY16 and SFY17 from Transportation Alternatives Program (TAP), excluding funds subject to section 213(c)(1)(A) of the United States Code;
- (3) \$12,000,000 in both SFY16 and SFY17 from the Highway Safety Improvement Program (HSIP); and
- (4) \$30,000,000 in SFY2017 from the Surface Transportation Program (STP), excluding funds subject to section 134(d)(1)(A) of the United States Code;

*Competitive grants and distribution of funds.* The Transportation Choice initiative shall be administered as a competitive grant program within each highway construction district established by the Department of Transportation. The amount of funds available for awards within a highway district shall be based on a ratio of the population of the highway construction district to the total population of the State multiplied by the total amount of funding made available for the Transportation Choice initiative.

Except as provided below, the applications for funds shall be selected by the Department within each district using the selection criteria established for the Transportation Choice initiative. However, funds within a construction district attributable to the population located within a metropolitan planning area under section 134 of title 23, United States Code, shall be transferred to the applicable metropolitan planning organization. In such instances the metropolitan planning organization shall administer a competitive grant program.

*Eligible Applicant.* The following entities are eligible to submit applications for award of funds under the Transportation Choice initiative: (1) local governments; (2) transit agencies; (3) metropolitan planning organizations

...serving a metropolitan planning area with a population less than 200,000; (4) a school district; and (5) a regional transportation authority.

*Eligible Projects:* Eligible projects under the Transportation Choice initiative shall include: (1) transit capital (including, but not limited to, bus rapid transit, bus acquisition, commuter rail, streetcars, light rail, and related facilities); (2) operating assistance, subject to federal law and limitations; (3) infrastructure projects for biking and walking; (4) electric vehicle infrastructure; (5) public and private fleet conversion to electric or alternative fuel vehicles; and (6) intermodal freight rail projects.

*Apportionment of Funds:* Transportation Choice funds shall be suballocated to Metropolitan Planning Organizations (MPOs) and Ohio Department of Transportation Districts based on their relative share of the state population. For MPOs located within an ODOT District with a population of 200,000 or greater, or which cross into multiple Districts, the MPO shall receive funds based on its share of the population of that District or Districts.

*Project Selection Criteria:* The Department of Transportation and metropolitan planning organizations serving a metropolitan planning area with a population greater than 200,000 shall develop project selection criteria when obligating funds from the Transportation Choice fund. Projects shall be assessed based upon the extent to which they: (1) improve accessibility and affordability; (2) provide for long-term economic development; (3) improve the safety of the surface transportation system for all users, regardless of age or ability level; (4) protect or enhance the environment; (5) reduce transportation-related energy consumption on a per capita basis; and (6) promote innovation.

*Intent of funds.* The funds transferred under this section shall not be used to reduce or supplant funds currently used for transit and other non-highway uses by the Department. In SFY16 and SFY17, the Department shall obligate an amount at least equal to the amount obligated in SFY13 for transit and other non-highway uses in addition to amounts obligated under the Transportation Choice Initiative.

## SYNOPSIS

Department of Transportation

Section 203.\_\_\_\_.

Requires the Director of Budget and Management, upon request from the Director of Transportation, to transfer \$40,000,000 in cash in state fiscal year 2016 (SFY16) and \$75,000,000 in state fiscal year 2017 (SFY17) from the Highway Operating Fund (Fund 7002) to the Transportation Choice Fund for the Transportation Choice initiative, and creates that fund in the state treasury. The Transportation Choice initiative will provide critical transportation choices to all residents of the state by allocating state and federal dollars as permitted by law, including but not limited to Surface Transportation Program funds, Congestion Mitigation and Air Quality Program funds, Transportation Alternatives Program funds, and Highway Safety Improvement Program funds for various types of projects.

## **2. LAKE ERIE + INLAND LAKE PROTECTION - Critical Natural Resource Areas**

## **The Problem – Agricultural Operations in the Western Lake Erie Basin are a major cause of Harmful Algal Blooms**

Numerous reports and studies identify agricultural operations as a major source of nutrient pollution that causes western Lake Erie's harmful algal blooms. While voluntary adoption of conservation practices help, we cannot rely on them alone. Ideally, all farmers and livestock operators in Ohio would develop and follow nutrient management plans informed by soil testing, but especially those located in western Lake Erie Basin watersheds. Additionally, crop producers in these watersheds should follow some common sense best management practices.

## **The Solution - Designate the western Lake Erie Watersheds as a Critical Natural Resource Area**

In 2012, the Ohio Dept. of Agriculture and the Ohio EPA issued a report titled, "Directors' Agricultural Nutrients and Water Quality Working Group: Final Report and Recommendations." Members of the working group included research scientists, agribusiness leaders, and environmentalists whose purpose was, "to discuss how agricultural practices may be contributing to the deteriorating conditions in Lake Erie and to develop recommendations on how the State of Ohio can partner with the agricultural community to encourage agricultural production practices that promote nutrient stewardship," (p. 1). Among the recommendations was a Critical Natural Resource Area designation for western Lake Erie watersheds, which would require the Ohio Dept. of Natural Resources Director to develop programs and procedures to help minimize agricultural pollution flowing into western Lake Erie. The report also recommended Ohio should develop an implement as state-wide standardized soil testing program. Ultimately, these recommendations informed part of Ohio's Nutrient Reduction Strategy that established a framework for reducing nutrient pollution in the Lake Erie and Ohio River watersheds.

We fully support these recommendations and propose the following language to begin implementing these common sense proposals:

### **1511.026 Critical Natural Resource Areas**

- (A) The director of natural resources shall designate the western Lake Erie Basin as a Critical Natural Resource Area that needs special management because of its importance to the well-being of its surrounding communities, the western Lake Erie region, and to the state of Ohio. The director shall promulgate rules to effectively abate agricultural pollution in the western basin, including, but not limited to the following:
- (1) Implementing a Nutrient Management Plan process for agricultural crop lands and/or animal feeding operations;
    - (a) Nutrient Management Plans must be developed using results from appropriate nutrient soil tests, and the director will develop a standardized soil testing program for this purpose.
  - (2) Requiring nutrient application for crop production follow a minimum set of best management practices based, in part, on the 4R model of using the Right Source of Nutrients at the Right Rate and Right Time in the Right Place;
  - (3) Enforcing the nutrient management plans, and ensuring compliance with best management practices.
- (B) As used in this section and section of the Revised Code, "western Lake Erie basin" means land in the state that is located in the following watersheds identified by the specified United States geological survey hydrologic unit code:
- (1) St. Marys watershed, hydrologic unit code 04100004;

- (2) Auglaize watershed, hydrologic unit code 04100007;
- (3) Blanchard watershed, hydrologic unit code 041000008;
- (4) Sandusky watershed, hydrologic unit code 04100011;
- (5) Cedar-Portage watershed, hydrologic unit code 04100010;
- (6) Lower Maumee watershed, hydrologic unit code 04100009;
- (7) Upper Maumee watershed, hydrologic unit code 04100005;
- (8) Tiffin watershed, hydrologic unit code 04100006;
- (9) St. Joseph watershed, hydrologic unit code 04100003;
- (10) Ottawa watershed, hydrologic unit code 04100001;
- (11) River Raisin watershed, hydrologic unit code 04100002.

- (C) Five years after the effective date of this section, and every three years following, the director shall report to the general assembly as to whether the western Lake Erie Basin should remain as a Critical Natural Resource Area, and/or whether other watersheds shall be considered Critical Natural Resource Areas.

## **2. LAKE ERIE + INLAND LAKE PROTECTION - Closing the "Manure Loophole"**

A major problem with manure management are distribution and utilization regulations that provide a mechanism for permitted livestock operations to transfer manure to other people in place of developing and adhering to manure management plans. This allows people who are not trained or certified to receive and apply significant amounts of manure in a year.

Even though the application of transferred or sold manure is supposed to be done in accordance with best management practices detailed in the NRCS 590 Field Office Technical Guide, there is no verification unless a complaint triggers an investigation. Relying on a complaint-driven system to ensure BMP compliance is an unreliable way to reduce nutrient pollution because phosphorous may still enter waterways without creating a discharge that would cause a complaint.

Additionally, current rules require owners and operators of a confined animal feeding facility to [annually report the amount of manure](#) transferred to other persons to the agricultural director, among other things. However, the requirement does not include the location of where the manure goes once it leaves the facility. This information is crucial to better understand how much manure farmers and livestock operators are applying in the western Lake Erie watersheds, and to inform studies analyzing sources of nutrient pollution.

### ***The Solution – Improve Loophole Reporting***

While some would suggest we need to eliminate the ability of permitted CAFOs to send their manure elsewhere, some farmers do benefit from using this manure to fertilize their crops. However, state and federal agencies need to better understand where this manure goes in order to create plans to reduce agricultural pollution and to focus monitoring efforts. Lawmakers recognized the need for such transparency, and drafted amendment language for Senate Bill 1 and House Bill 61 that unfortunately were tabled. [Here is an amendment for HB 61 that can be adapted for HB 64](#)

#### 4. STATE + PRIVATE FOREST CONSERVATION

##### A. Revise ODNR Forestry Division's statutory mission to make it more conservation and preservation oriented

###### 1503.011 Conservation and development of forests - duties of chief.

The chief of the division of forestry shall be responsible for the conservation, preservation, and development of forests within this state. The chief shall be concerned with silvicultural practices, including the proper planting, growing, protecting, harvesting, and managing of trees for such purposes as watershed and soil protection, timber production and utilization, recreation, aesthetics, wildlife habitat development, and urban enhancement and for all benefits that forests provide. The chief also shall be concerned with conservation and preservation practices, including the designating and managing of forest lands for the primary goals of reestablishing and protecting in perpetuity mature, old-growth, and future-old-growth forest habitat.

The chief may do any or all of the following:

(A) Provide rural forestry assistance to nonindustrial private forest landowners, including advice in tree planting, forest improvement, harvesting, and all aspects of conservation and preservation;

(B) Provide urban forestry assistance to individuals, nonprofit organizations, and political subdivisions to manage their urban forest resource and develop comprehensive tree care programs;

(C) Provide wood utilization, marketing, and rural forestry development assistance to forest industries, political subdivisions and agencies thereof, and state and federal agencies for the purpose of establishing and maintaining a viable, economically sound wood-based industry while expanding the forest resource of this state;

(D) Provide forest pest protection assistance to forest landowners, political subdivisions and agencies thereof, and state and federal agencies on assessing and evaluating the health and vigor of the forest resource;

(E) Provide technical assistance to landowners in developing forest windbreaks, filter strips, and other forest management practices that provide conservation benefits;

(F) Provide technical assistance to landowners in developing goals and management plans for the establishment, retention, and protection of mature, old-growth, and future-old-growth forest habitat.

~~(F)~~ (G) Provide awareness of and education concerning the programs provided for under divisions (A) to (E) of this section;

~~(G)~~ (H) Enter into agreements with political subdivisions and agencies thereof, state and federal agencies, firefighting agencies and private fire companies, as those terms are defined in section 9.60 of the Revised Code, nonprofit organizations, and individuals to meet the needs of forestry assistance in this state and, in accordance with section 1503.01 of the Revised Code, develop and administer grant programs for any of those entities requesting assistance.

The chief shall adopt, and may amend and rescind, rules in accordance with Chapter 119. of the Revised Code establishing such requirements and procedures as are necessary to implement this division.

As used in this section, "nonprofit organization" has the same meaning as in section 4141.01 of the Revised Code.

### **B. ODNR Division of Forestry - require annual report on forest timber sales costs**

1503.44 By September 30 of each year, the chief shall annually publish a report that discloses all state forest timber sold and all merchandising conducted for the previous fiscal year. The report shall include maps that provide GIS layers illustrating all commercial harvesting from the previous fiscal year. The report shall disclose all fiscal year costs associated with the state's timber harvesting program, including all costs associated with the creation and maintenance of forest roads, whether those costs are incurred by the division of forestry, the department of transportation, or any other agency of the state. The report shall be made publicly available on the division's website.

### **C. Private Forest Land - tax incentive for stream buffers and preservation**

Privately owned forest land which the owner thereof devotes exclusively to the restoration and preservation of mature forest habitat and/or stream or wetland buffer shall be taxed annually at fifty per cent of the otherwise applicable CAUV rate.

## **6. STREAM + WETLAND PROTECTION**

### **Clean Water Act Sec. 401 Water Quality Certification Reviews**

**Amendment A - Reject Governor's Budget proposal for independent "certified water quality professionals"**  
Delete lines 71757-71758; restore language deleted in lines 71756-71757; delete lines 71863-71928.

**Amendment B - Strengthen OEPA random audit provision of Governor's Budget; authorize OEPA to require public disclosure of certified water quality professionals**

(6) Authorize discretionary audits and random audits by the director of documentation developed or submitted by certified water quality professionals to ensure compliance with requirements established in rules adopted under division (J)(7) of this section; all audits shall occur prior to the issuance of 401 certification;

(8) Authorize the director to require the public disclosure of all certified water quality professionals. In doing so, the director shall publish on the agency's webpage, the following information for each certified water quality professionals:

1. Name of certified professional,
2. qualifications and credentials,
3. certification test results,
4. all documents and reports submitted by the certified professional; and
5. all documentation and results of agency audits of the certified professional

## Headwater Stream Protection from Water Withdrawals for Oil and Gas Wells

1509.06 (A)(8)

(a) An identification, to the best of the owner's knowledge, of each proposed source of ground water and surface water that will be used in the production operations of the well. The identification of each proposed source of water shall indicate if the water will be withdrawn from the Lake Erie watershed or the Ohio river watershed, as well as identification of the withdrawal by specific sub-watershed by Eight-digit hydrologic unit. Upon receipt of this information the chief shall consult with the United States Fish and Wildlife Service and the division of wildlife prior to withdrawing from waters of the state to determine any impact of the withdrawal to state or federally listed of endangered and threatened species. If the withdrawal is proposed to be from a primary headwater habitat stream, as that term is defined in Administrative code section 3745-4-02 (P), the chief shall consult with the division of soil and water resources prior to withdrawing from waters of the state to determine any impact of the withdrawal. In addition, the owner shall provide, to the best of the owner's knowledge, the proposed estimated rate and volume of the water withdrawal for the production operations. If recycled water will be used in the production operations, the owner shall provide the estimated volume of recycled water to be used. The owner shall submit to the chief an update of any of the information that is required by division (A)(8)(a) of this section if any of that information changes before the chief issues a permit for the application.

### 7. EMERGENCY RESPONSE

#### A. Clarify meaning of “undue delay” re disclosure of trade secret chemicals to emergency responders

**PROBLEM:** The Governor's Budget directs an oil and gas well owner to submit specified public officials the identification of trade secret chemicals involved in an emergency situation to specified officials, with "undue delay." Because "undue delay" is not defined, the provision could actually cause delay. The draft amendment puts a limit of one hour on submitting the information.

Line 12982 – after “delay” insert “, not to exceed one hour,”

Line 71628 – after “delay” insert “, not to exceed one hour,”

#### B. SERC report on best practices for state and local emergency response

**PROBLEM:** It has been more than a year since Charleston WV experienced serious water contamination following the rupture of a chemical storage tank and massive leak of chemicals into Elk Creek. This is a wake up call that Ohio should heed. The draft amendment directs the [State Emergency Response Commission](#) (SERC) to review emergency response capabilities and recommend best practices for the incident command in response to the need of state and local responders.

**Temporary Language Section X.** Within 60 days of the effective date of this Act, the chairperson of the state emergency response commission shall convene a meeting of the state emergency response commission to develop a committee of the commission to review environmental emergency response capabilities within the state, and provide recommendations on best practices for the incident command in response to an emergency, human and financial resource needs of state and local responders, training needs for state and local responders, and how local and state officials more effectively communicate concerning issues of environmental releases.

Within 12 months of the effective date of this Act, the state emergency response commission shall deliver to the speaker of the house and the president of the senate a report detailing its review of Ohio's environmental emergency response and its recommendations for the adoption of best practices.

## 8. COMMUNITY PROTECTION

**Reject the Governor's Budget proposal re Federal EPCRA Community Right to Know**  
Delete lines 13408-13445



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