(129th General Assembly)
(Substitute House Bill Number 231)

AN ACT

To amend sections 1501.32, 1501.33, 1521.04, 1522.03, and 1522.05, to enact sections 1522.10, 1522.101, and 1522.11 to 1522.20, 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.

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, 1522.14, 1522.15, 1522.16, 1522.17, 1522.18, 1522.19, and 1522.20 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 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.

(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.

(7) The proposed diversion out of the Lake Erie watershed does not qualify as an exception to the prohibition against diversions from the great lakes basin that is established under section 1522.01 of the Revised Code.

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(c) 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)(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)(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) 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) 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) 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~~ April 6, 2007.

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 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 shall submit an application for a permit to the director on a form ~~he~~ the director prescribes, which 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:

(a) The public water system was in operation on the effective date of this section 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 (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 1522.20 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 1522.20 of the Revised Code; to perform watershed and water resources studies for the purposes of water management planning; and to acquire, construct, reconstruct, improve, equip, maintain, operate, and dispose of water management improvements. The chief may fix, alter, charge, and collect rates, fees, rentals, and other charges to be paid into the fund by governmental agencies and persons who are supplied with water by facilities constructed or operated by the department of natural resources in order to amortize and defray the cost of the construction, maintenance, and operation of those facilities.

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

~~(1)~~(A) Adopt rules in accordance with Chapter 119. of the Revised Code for the implementation, administration, and enforcement of ~~this chapter~~ sections 4.8 and 4.9 of 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.~~

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~~ 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~~ related to the great lakes-st. Lawrence river basin water resources compact unless the general assembly enacts legislation ~~after the effective date of the compact~~ authorizing the ~~implementation of the program or~~ adoption of the rules. ~~However, the~~ The governor, the department of natural resources, or any other agency of the state ~~may~~ shall not adopt rules ~~concerning and may implement voluntary~~ establishing a mandatory water conservation ~~and efficiency programs~~ program 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.~~

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

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

(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.

(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 and consumptively use water.

(E) "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.

(F) "Facility" means any site, installation, or building at which water withdrawal and consumptive use activities 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.

(G) "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 1522.11 of the Revised Code. "Facility abandonment" does not include the nonuse or the transfer of a facility's withdrawal and consumptive use capacity.

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

(I) "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.

(J) "Public water system" has the same meaning as in section 6109.01 of

the Revised Code.

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

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

(M) "River or stream under the influence of Lake Erie" means that portion of any river or stream that has a bottom elevation at or below the long-term monthly mean level of Lake Erie, as designated by the United States army corps of engineers, of five hundred seventy-one and nine-tenths feet above the international great lakes datum (IGLD) 1985 and to which both of the following apply:

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

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

The definition of "river or stream under the influence of Lake Erie" applies only to that term as it is used in sections 1522.10 to 1522.20 of the Revised Code.

Sec. 1522.101. (A) For purposes of this chapter, with respect to the definition of "source watershed" in section 1522.01 of the Revised Code, the general assembly declares that "source watershed" means the Lake Erie watershed.

(B) Nothing in sections 1522.10 to 1522.20 of the Revised Code shall 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. 1522.11. (A) For purposes of the great lakes-st. Lawrence river basin water resources 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 that is not otherwise exempt under section 1522.13 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, when operating under intended operating conditions, has a new or increased capacity for withdrawals or consumptive uses from Lake Erie or a river or stream under the influence of Lake Erie of at least five million gallons per day averaged over a ninety-day period.

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

(3) The facility, when operating under intended operating conditions, has a new or increased capacity for withdrawals or consumptive uses of at least three hundred thousand gallons per day averaged over a ninety-day period from any river or stream to which both of the following apply:

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

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

(B) Permits issued under this section shall be issued only for the amount of withdrawal or consumptive use capacity of a facility that exceeds threshold amounts established in division (A) of this section. A permit shall neither address nor 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 and address of the applicant and of a contact person for the applicant;

(2) 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.

(3) A nonrefundable application fee of one thousand dollars the proceeds of which shall be credited to the water management fund created in section 1501.32 of the Revised Code.

The chief shall not require an applicant to submit any information with an application other than the information required by divisions (C)(1) and (2) of this section.

(D) A permit is valid until the facility to which the permit applies is the subject of facility abandonment. Once every five years, the owner or operator of a facility shall certify to the chief that the facility is in compliance with the permit that has been issued for the facility.

(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.

Sec. 1522.12. (A) In making the decision to issue or deny a withdrawal and consumptive use permit, the chief of the division of soil and water resources shall apply the criteria established in section 4.11 of the great lakes-st. Lawrence river basin water resources compact.

For purposes of applying the criteria established in section 4.11 of the great lakes-st. Lawrence river basin water resources compact, all of the following apply:

(1) If a withdrawal by a facility from Lake Erie or a river or stream under the influence of Lake Erie results in a consumptive use that is less than one and five-tenths per cent of the long-term mean annual runoff from the Ohio portion of the Lake Erie watershed, it is irrebuttably presumed that the withdrawal and consumptive use will not cause a significant individual or cumulative adverse impact to the quantity or quality of waters and water dependent natural resources and the Lake Erie watershed. Division (A)(1) of this section does not apply to high quality water.

(2) If a withdrawal by a facility from ground water or a river or stream that is not a river or stream under the influence of Lake Erie results in a consumptive use that is less than seventy-five one hundredths of one per cent of the long-term mean annual runoff from the Ohio portion of the Lake Erie watershed, it is irrebuttably presumed that the withdrawal and consumptive use will not cause a significant individual or cumulative adverse impact to the quantity or quality of waters and water dependent natural resources and the Lake Erie watershed. Division (A)(2) of this section does not apply to high quality water.

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

Within one hundred eighty days of the effective date of this section and for purposes of making the calculations required under divisions (A)(1) and (2) of this section, the chief of the division of soil and water resources shall establish the long-term mean annual runoff from the Ohio portion of the Lake Erie watershed. Beginning ten years after the effective date of this section and every ten years thereafter, the chief shall update the long-term mean annual runoff utilizing the best available published hydrologic data collected over the previous twenty years.

(B) 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 great lakes-st. Lawrence river basin water resources compact to the regional body as defined in section 1.2 of the compact unless regional review is agreed to by the applicant for the permit.

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

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

Sec. 1522.13. 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 1522.11 of the Revised Code;

(B) A baseline facility that has not increased its withdrawal and consumptive use capacity beyond the capacity listed in the baseline report and beyond the thresholds established in section 1522.11 of the Revised Code;

(C) A facility that is required to increase its withdrawal and consumptive use capacity as a result of legal requirements established by federal or state governmental authorities;

(D) A facility making a withdrawal and consumptive use from nonchannelized surface water that is not a river or stream or from an impoundment of water that is isolated and does not depend entirely on ground water for replenishment such as a farm pond, golf course pond, or other similar retention pond. 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.

(E) A facility that is establishing a new or is increasing its withdrawal and consumptive use capacity as a result of an emergency condition that, without the new or increased withdrawal and consumptive use capacity, will result in imminent harm to human health or property;

(F) A facility that is establishing a new or is increasing its withdrawal and consumptive use capacity for testing purposes only if the testing period will last not longer than twenty-four months;

(G) A facility that is establishing a new or is increasing its withdrawal and consumptive use capacity in order to respond to a humanitarian crisis if the new or increased capacity is necessary to assist in the management of that crisis;

(H) A facility that is exempt from the requirement to obtain a permit under divisions (B) and (C) of section 1501.33 of the Revised Code;

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

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

(K) A facility with ground water or surface water withdrawals or consumptive uses that are subject to regulation under a state or federal law other than sections 1522.10 to 1522.20 of the Revised Code. However, the exemption from regulation under a state law established by this division does not apply with respect to state law governing either of the following:

(1) A permit issued under Chapter 6111. of the Revised Code;

(2) A permit issued under section 1501.34 of the Revised Code.

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

(M) A facility that is a public water system that is increasing its withdrawal or consumptive use capacity and the increase is directly related to supplying a major public utility that is subject to regulation under Chapter

4906. of the Revised Code.

Sec. 1522.14. The chief of the division of soil and water resources shall adopt rules in accordance with Chapter 119. of the Revised Code governing the regulation of withdrawals and consumptive uses from high quality water as referred to in division (A)(3) of section 1522.12 of the Revised Code. The rules shall establish standards for what constitutes significant individual or cumulative adverse impact to a high quality water with a drainage area of less than one hundred square miles for purposes of division (A)(3) of section 1522.12 of the Revised Code.

Sec. 1522.15. (A)(1) A permittee may transfer a withdrawal and consumptive use permit upon the sale or transfer of a facility. In addition, the owner of a baseline facility may transfer the withdrawal and consumptive use capacity of the baseline facility upon the sale or transfer of the baseline facility. Transferred capacity of a baseline facility shall 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 a permittee sells or transfers a portion of a facility for which a withdrawal and consumptive use permit has been issued, the permittee may transfer the applicable portion of the withdrawal and consumptive use capacity authorized by the withdrawal and consumptive use permit. 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 based on the threshold amounts established in divisions (A)(1) to (3) of section 1522.11 of the Revised Code, the chief shall issue a new permit to the permittee who transferred the portion of the facility and a new permit to the transferee. Any new permits shall reflect the transfer of the portion of the withdrawal and consumptive use capacity.

(3) If the owner of a baseline facility sells a portion of the baseline facility, the owner may transfer the applicable portion of the withdrawal and consumptive use capacity listed in the baseline report for that facility. 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. Rather, the chief shall update the baseline report to reflect the transfer.

(4) No person shall sell or transfer a withdrawal and consumptive use permit for purposes of evading the requirements established in sections 1522.10 to 1522.20 of the Revised Code.

(B) 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 for the nonuse or the transfer of the facility's baseline capacity.

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

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

(2) 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.

(B) 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.

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

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

Sec. 1522.17. (A) The owner or operator of a facility for which a withdrawal and consumptive use permit has been issued shall utilize environmentally sound and economically feasible water conservation measures in compliance with section 4.11.3 of the great lakes-st. Lawrence river basin water resources compact. The owner or operator may implement those measures in the form of best management practices that are applicable to the facility. The owner or operator has discretion to determine which practices are best management practices. An owner or operator that implements such measures is deemed to be in compliance with section 4.11.3 of the great lakes-st. Lawrence river basin water resources compact. Any reporting that is required by the chief of the division of soil and water resources for purposes of this division is proprietary and shall be confidential and not subject to section 149.43 of the Revised Code.

(B) Nothing in this chapter authorizes the chief or the director of natural resources to adopt rules requiring mandatory conservation of water resources. The general assembly shall not enact any law that would require a mandatory water conservation program without at least a two-thirds majority vote of the senate and house of representatives.

Divisions (A) and (B) of this section comply with the requirements of section 4.11.3 of the great lakes-st. Lawrence river basin water resources compact.

(C) Every five years, the chief shall make an assessment of the cumulative impacts of withdrawals and consumptive uses from the waters of

the Lake Erie watershed for purposes of section 4.15 of the great lakes-st. Lawrence river basin water resources compact. The assessment shall be based on reports, data, and other information relating directly to withdrawals and consumptive uses by facilities that have received a withdrawal and consumptive use permit under this chapter. The chief shall prepare a report of the assessment and shall submit a copy of it to the governor, the speaker of the house of representatives, and the president of the senate.

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

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

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

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

(D) The commission shall adopt rules in accordance with Chapter 119. of the Revised Code governing the procedure for appeals conducted under section 1522.19 of the Revised Code and may adopt rules governing its own internal management that do not affect private rights.

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

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

Sec. 1522.19. (A) A person having a direct economic interest that is or may be adversely affected by a decision or order of the chief of the division of soil and water resources under sections 1522.10 to 1522.20 of the Revised Code may appeal the decision or order. The appeal shall be made by filing a notice of appeal with the water resources review commission for review of the decision or order not later than thirty days after the decision or order is made. The person also shall file a copy of the notice of appeal with the chief not later than three days after filing the notice of appeal with the commission. The notice of appeal shall contain a description of the decision or order complained of and the grounds on which the appeal is based. The commission has exclusive original jurisdiction to hear and decide such appeals. The filing of a notice of appeal under this division does not operate as a stay of any decision or order of the chief.

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

(C) The commission shall affirm the decision or order of the chief unless the commission determines by a preponderance of the evidence that it is arbitrary, capricious, or otherwise inconsistent with law; in that case the commission may modify the decision or order of the chief or vacate it and remand it to the chief for further proceedings that the commission may direct. The commission shall render a decision not later than thirty days after

the hearing.

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

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

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

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

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

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

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

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

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

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

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

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 a withdrawal and consumptive use permit. The order 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 each person whose rights, duties, or privileges are affected. Notice also shall be posted on the web site of the department of natural resources in a manner prescribed by the chief.

(B) The attorney general, upon the request of the chief, may bring an action for injunction against a person who has violated, is violating, or is threatening to violate any provisions of this chapter, rules adopted under it, a withdrawal and consumptive use permit, or an order of the chief issued under division (A) of this section. The action shall be brought in the court of common pleas of the county in which the violation has occurred, is occurring, or is threatened to occur. The court of common pleas in which an action for injunction is filed has jurisdiction to and shall grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated, is violating, or is threatening to violate any provisions of this chapter, rules adopted under it, a permit, or an order of the chief.

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

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

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

SECTION 4. The General Assembly hereby declares that the purpose of

this act is to protect private property rights associated with surface and ground water in Ohio; to promote good stewardship of Ohio's water resources; and to promote economic development and job creation in Ohio by recognizing that abundant fresh water is a highly desirable commodity.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

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 _____