

**As Reported by the Senate Agriculture and Natural Resources
Committee**

134th General Assembly

**Regular Session
2021-2022**

Sub. H. B. No. 175

Representative Hillyer

**Cosponsors: Representatives Seitz, Stoltzfus, Kick, Young, T., Creech, Fowler
Arthur, Jones, Callender, Carruthers, Click, Cross, Cutrona, Edwards, Ginter, Hall,
Jordan, Lampton, LaRe, Merrin, Riedel, Stephens, Wiggam**

Senator Schaffer

A BILL

To amend sections 3745.114, 5709.09, 6111.01, and 1
6111.31 and to enact sections 1571.30, 6111.011, 2
6111.311, 6111.312, 6111.313, 6111.314, 3
6111.315, and 6111.316 of the Revised Code to 4
deregulate certain ephemeral water features, 5
make other changes to various water pollution 6
control laws, to authorize a property tax 7
exemption for certain private wetlands, and to 8
make an appropriation. 9

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

Section 1. That sections 3745.114, 5709.09, 6111.01, and 10
6111.31 be amended and sections 1571.30, 6111.011, 6111.311, 11
6111.312, 6111.313, 6111.314, 6111.315, and 6111.316 of the 12
Revised Code be enacted to read as follows: 13

Sec. 1571.30. (A) As used in this section, "class VI 14
injection well" means a well used to inject carbon dioxide into 15

deep rock formations for geologic sequestration. 16

(B) Not later than ninety days after the effective date of 17
this section, the department of natural resources shall initiate 18
a process to work with the United States environmental 19
protection agency and the United States department of energy to 20
develop a statewide underground injection control program for 21
class VI injection wells in order to obtain primary enforcement 22
authority over those wells in this state from the United States 23
environmental protection agency. 24

Sec. 3745.114. (A) A person that applies for a section 401 25
water quality certification under Chapter 6111. of the Revised 26
Code and rules adopted under it shall pay an application fee of 27
two hundred dollars at the time of application plus any of the 28
following fees, as applicable: 29

(1) If the water resource to be impacted is a wetland, a 30
review fee of five hundred dollars per acre of wetland to be 31
impacted; 32

(2) If the water resource to be impacted is a stream one 33
of the following fees, as applicable: 34

~~(a) For an ephemeral stream, a review fee of five dollars-~~ 35
~~per linear foot of stream to be impacted, or two hundred-~~ 36
~~dollars, whichever is greater;~~ 37

~~(b) For an intermittent stream, a review fee of ten~~ 38
dollars per linear foot of stream to be impacted, or two hundred 39
dollars, whichever is greater; 40

~~(c)~~ (b) For a perennial stream, a review fee of fifteen 41
dollars per linear foot of stream to be impacted, or two hundred 42
dollars, whichever is greater. 43

(3) If the water resource to be impacted is a lake, a 44
review fee of three dollars per cubic yard of dredged or fill 45
material to be moved. 46

(B) One-half of all applicable review fees levied under 47
this section shall be due at the time of application for a 48
section 401 water quality certification. The remainder of the 49
fees shall be paid upon the final disposition of the application 50
for a section 401 water quality certification. The total fee to 51
be paid under this section shall not exceed twenty-five thousand 52
dollars per application. However, if the applicant is a county, 53
township, or municipal corporation in this state, the total fee 54
to be paid shall not exceed five thousand dollars per 55
application. 56

(C) All money collected under this section shall be 57
transmitted to the treasurer of state for deposit into the state 58
treasury to the credit of the surface water protection fund 59
created in section 6111.038 of the Revised Code. 60

(D) The fees established under this section do not apply 61
to any state agency as defined in section 119.01 of the Revised 62
Code or to the United States army corps of engineers. 63

(E) The fees established under this section do not apply 64
to projects that are authorized by the environmental protection 65
agency's general certifications of nationwide permits or general 66
permits issued by the United States army corps of engineers. As 67
used in this division, "general permit" and "nationwide permit" 68
have the same meanings as in rules adopted under Chapter 6111. 69
of the Revised Code. 70

(F) Coal mining and reclamation operations that are 71
authorized under Chapter 1513. of the Revised Code are exempt 72

from the fees established under this section for one year after 73
~~the effective date of this amendment~~ March 30, 2006. 74

(G) As used in this section: 75

(1) "Ephemeral ~~stream~~feature" means ~~a stream that flows~~ 76
surface water flowing or pooling only in direct response to 77
~~precipitation in the immediate watershed or in response to the~~ 78
~~melting of a cover of, such as rain or snow and ice and that has~~ 79
~~channel bottom that is always above the local water table.~~ 80
"Ephemeral feature" does not include a wetland as defined in 81
section 6111.02 of the Revised Code. 82

(2) "Intermittent stream" means a stream that is below the 83
local water table and flows for at least a part of each year and 84
that obtains its flow from both surface runoff and ground water 85
discharge. 86

(3) "Perennial stream" means a stream or a part of a 87
stream that flows continuously during all of the calendar year 88
as a result of ground water discharge or surface water runoff. 89
"Perennial stream" does not include an intermittent stream or an 90
ephemeral ~~stream~~feature. 91

Sec. 5709.09. (A) Real property or any estate, interest, 92
or right therein dedicated in accordance with section 1517.05 of 93
the Revised Code is exempt from taxation. 94

(B) Real property is exempt from taxation if the property 95
is owned or held by an organization that is organized for the 96
purpose of natural resources protection, preservation, 97
restoration, or enhancement or water quality improvement and 98
that is described under section 501(c)(3) of the Internal 99
Revenue Code and exempt from taxation under section 501(a) of 100
the Internal Revenue Code and if either of the following apply: 101

(1) The property is subject to an environmental response project described in division (E) (2) of section 5301.80 of the Revised Code. 102
103
104

(2) The property is subject to a nature water project that receives funding from the H2Ohio fund established in section 126.60 of the Revised Code. 105
106
107

Sec. 6111.01. As used in this chapter: 108

(A) "Pollution" means the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state. 109
110
111

(B) "Sewage" means any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities. 112
113
114
115
116

(C) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present. 117
118
119
120
121

(D) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, and other wood debris, lime, sand, ashes, offal, night soil, oil, tar, coal dust, dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste, and any other "pollutants" or "toxic pollutants" as defined in the Federal Water Pollution Control Act that are not sewage, sludge, sludge materials, or industrial waste. 122
123
124
125
126
127
128
129

(E) "Sewerage system" means pipelines or conduits, pumping 130

stations, and force mains, and all other constructions, devices, 131
appurtenances, and facilities used for collecting or conducting 132
water-borne sewage, industrial waste, or other wastes to a point 133
of disposal or treatment, but does not include plumbing 134
fixtures, building drains and subdrains, building sewers, and 135
building storm sewers. 136

(F) "Treatment works" means any plant, disposal field, 137
lagoon, dam, pumping station, building sewer connected directly 138
to treatment works, incinerator, or other works used for the 139
purpose of treating, stabilizing, blending, composting, or 140
holding sewage, sludge, sludge materials, industrial waste, or 141
other wastes, except as otherwise defined. 142

(G) "Disposal system" means a system for disposing of 143
sewage, sludge, sludge materials, industrial waste, or other 144
wastes and includes sewerage systems and treatment works. 145

(H) "Waters of the state" means all streams, lakes, ponds, 146
marshes, watercourses, waterways, wells, springs, irrigation 147
systems, drainage systems, and other bodies or accumulations of 148
water, surface and underground, natural or artificial, 149
regardless of the depth of the strata in which underground water 150
is located, that are situated wholly or partly within, or border 151
upon, this state, or are within its jurisdiction, except those 152
private waters that do not combine or effect a junction with 153
natural surface or underground waters. "Waters of the state" 154
does not include an ephemeral feature for which the United 155
States army corps of engineers lacks the authority to issue a 156
permit under 33 U.S.C. 1344. 157

(I) "Person" means the state, any municipal corporation, 158
any other political subdivision of the state, any person as 159
defined in section 1.59 of the Revised Code, any interstate body 160

created by compact, or the federal government or any department, 161
agency, or instrumentality thereof. 162

(J) "Industrial water pollution control facility" means 163
any disposal system or any treatment works, pretreatment works, 164
appliance, equipment, machinery, pipeline or conduit, pumping 165
station, force main, or installation constructed, used, or 166
placed in operation primarily for the purpose of collecting or 167
conducting industrial waste to a point of disposal or treatment; 168
reducing, controlling, or eliminating water pollution caused by 169
industrial waste; or reducing, controlling, or eliminating the 170
discharge into a disposal system of industrial waste or what 171
would be industrial waste if discharged into the waters of the 172
state. 173

(K) "Schedule of compliance" means a schedule of remedial 174
measures including an enforceable sequence of actions or 175
operations leading to compliance with standards and rules 176
adopted under sections 6111.041 and 6111.042 of the Revised Code 177
or compliance with terms and conditions of permits set under 178
division (J) of section 6111.03 of the Revised Code. 179

(L) "Federal Water Pollution Control Act" means the 180
"Federal Water Pollution Control Act Amendments of 1972," 86 181
Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act 182
of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, and all other 183
amendments to that act. 184

(M) "Historically channelized watercourse" means the 185
portion of a watercourse on which an improvement, as defined in 186
divisions (C) (2) to (4) of section 6131.01 of the Revised Code, 187
was constructed pursuant to Chapter 940., 6131., or 6133. of the 188
Revised Code or a similar state law that preceded any of those 189
chapters and authorized such an improvement. 190

(N) "Sludge" means sewage sludge and a solid, semi-solid, 191
or liquid residue that is generated from an industrial 192
wastewater treatment process and that is applied to land for 193
agronomic benefit. "Sludge" does not include ash generated 194
during the firing of sludge in a sludge incinerator, grit and 195
screening generated during preliminary treatment of sewage in a 196
treatment works, animal manure, residue generated during 197
treatment of animal manure, or domestic septage. 198

(O) "Sludge materials" means solid, semi-solid, or liquid 199
materials derived from sludge and includes products from a 200
treatment works that result from the treatment, blending, or 201
composting of sludge. 202

(P) "Storage of sludge" means the placement of sludge on 203
land on which the sludge remains for not longer than two years, 204
but does not include the placement of sludge on land for 205
treatment. 206

(Q) "Sludge disposal program" means any program used by an 207
entity that begins with the generation of sludge and includes 208
treatment or disposal of the sludge, as "treatment" and 209
"disposal" are defined in division (Y) of section 3745.11 of the 210
Revised Code. 211

(R) "Agronomic benefit" means any process that promotes or 212
enhances plant growth and includes, but is not limited to, a 213
process that increases soil fertility and moisture retention. 214

(S) "Sludge management" means the use, storage, treatment, 215
or disposal of, and management practices related to, sludge and 216
sludge materials. 217

(T) "Sludge management permit" means a permit for sludge 218
management that is issued under division (J) of section 6111.03 219

of the Revised Code.	220
(U) "Sewage sludge" has the same meaning as in division	221
(Y) of section 3745.11 of the Revised Code.	222
<u>(V) "Ephemeral feature" means surface water flowing or</u>	223
<u>pooling only in direct response to precipitation, such as rain</u>	224
<u>or snow. "Ephemeral feature" does not include a wetland, as</u>	225
<u>defined in section 6111.02 of the Revised Code.</u>	226
<u>Sec. 6111.011.</u> (A) <u>The exclusion of certain ephemeral</u>	227
<u>features from the definition of waters of the state under</u>	228
<u>section 6111.01 of the Revised Code does not affect the director</u>	229
<u>of environmental protection's authority to do all of the</u>	230
<u>following:</u>	231
<u>(1) Administer and enforce Chapter 3734. of the Revised</u>	232
<u>Code with regard to any discharge, deposit, dumping, or</u>	233
<u>placement of wastes regulated under that chapter in an ephemeral</u>	234
<u>feature;</u>	235
<u>(2) Administer and enforce Chapter 3714. of the Revised</u>	236
<u>Code with regard to any discharge, deposit, dumping, or</u>	237
<u>placement of construction and demolition debris in an ephemeral</u>	238
<u>feature;</u>	239
<u>(3) Take any other authorized actions under the Revised</u>	240
<u>Code, other than Chapter 6111. of the Revised Code, that apply</u>	241
<u>to the discharge, deposit, dumping, or placement of waste,</u>	242
<u>debris, or other materials in an ephemeral feature.</u>	243
<u>(B) The exclusion of certain ephemeral features from the</u>	244
<u>definition of waters of the state under section 6111.01 of the</u>	245
<u>Revised Code does not affect the authority of any state agency,</u>	246
<u>other than the environmental protection agency, to take any</u>	247
<u>authorized actions under the Revised Code, other than Chapter</u>	248

6111. of the Revised Code, that apply to the discharge, deposit, 249
dumping, or placement of waste, debris, or other materials in an 250
ephemeral feature. 251

Sec. 6111.31. ~~All~~ (A) As used in this section, 252
"interagency review team" means the interagency group of 253
federal, tribal, state, or local regulatory and resource agency 254
representatives established pursuant to 33 C.F.R. 332.8(b) that 255
reviews documentation for and advises the United States army 256
corps of engineers district engineer on the establishment and 257
management of a wetland mitigation bank, stream mitigation bank, 258
in-lieu fee mitigation program, or permittee responsible 259
mitigation. 260

(B) (1) The directors of environmental protection, the 261
department of natural resources, and the department of 262
transportation shall each appoint an agency designee and an 263
alternate to serve as members of the interagency review team. 264
Each appointed person shall have significant experience in at 265
least one of the following: 266

(a) The restoration of wetlands or streams; 267

(b) The enhancement and protection of wetlands or streams; 268

(c) The development of compensatory mitigation plans. 269

(2) At least one of the appointees shall maintain accurate 270
and complete minutes of interagency review team meetings, 271
including documentation of the basis for any comments or 272
decisions of the interagency review team with respect to wetland 273
mitigation banks, stream mitigation banks, in-lieu fee 274
mitigation proposals, permittee responsible mitigation, 275
approvals, credit releases, or management. Minutes kept by an 276
appointee are a public record. 277

(C) (1) Not later than twenty-four months after the 278
effective date of this amendment, the director of environmental 279
protection shall review and adopt, in accordance with sections 280
106.03 and 119.03 of the Revised Code, all substantive wetland, 281
stream, or lake mitigation standards, guidance, guidelines, 282
criteria, scientific methods, processes, or other procedures or 283
policies that are used in a uniform manner by either of the 284
following: 285

(a) The interagency review team to review documentation 286
for and evaluate wetland mitigation bank, stream mitigation 287
bank, in-lieu fee mitigation program, or permittee responsible 288
mitigation; 289

(b) The director of environmental protection in evaluating 290
the adequacy of any of the following in an application for a 291
section 401 water quality certification: a mitigation proposal 292
contained in an application for a section 401 water quality 293
certification shall be adopted and reviewed in accordance with 294
sections 119.03 and 106.03 of the Revised Code before those, 295
including a wetland mitigation bank proposal, stream mitigation 296
bank proposal, in-lieu fee mitigation project proposal, or 297
permittee responsible mitigation, the establishment of 298
performance metrics, a request for credit release, or 299
termination of monitoring requirements. 300

(2) Beginning on the effective date of the actions taken 301
by the director as required under division (C) (1) of this 302
section or beginning twenty-four months after the effective date 303
of this amendment, whichever is earlier, both of the following 304
apply: 305

(a) No such standards, guidance, guidelines, criteria, or 306
scientific methods, processes, or other procedures or policies 307

that are not adopted in accordance with division (C)(1) of this 308
section have the force of law. ~~Until that time, any;~~ 309

(b) Any such mitigation standards, guidance, guidelines, 310
criteria, scientific methods, processes, or other procedures or 311
policies that are not adopted in accordance with division (C)(1) 312
of this section that are used by or approved for use by the 313
director or the interagency review team to evaluate, measure, or 314
determine the success, approval, or denial of a mitigation 315
proposal, ~~but that have not been subject to review under~~ 316
~~sections 119.03 and 106.03 of the Revised Code~~ establishment of 317
performance metrics, request for credit release, or termination 318
of monitoring requirements shall not be used as the basis for 319
review of any certification or permit denial or as a standard 320
applied to mitigation unless the applicant has been notified in 321
advance that additional mitigation standards, criteria, 322
scientific methods, processes, or procedures will be considered 323
as part of the review process. 324

(3) Actions taken by the director under division (C)(1) of 325
this section are not subject to division (F) of section 121.95 326
of the Revised Code. 327

Sec. 6111.311. As used in sections 6111.31 to 6111.316 of 328
the Revised Code: 329

(A) "Area of mitigation" or "AMIT" means the area of 330
mitigation, as calculated using the formula specified in 331
division (A) of section 6111.313 of the Revised Code, expressed 332
in feet squared. 333

(B) Area of the streamway or "ASW" means the area of the 334
streamway, expressed in feet squared. 335

(C) "DA" means drainage area, expressed in square miles. 336

(D) "Eight-digit hydrologic unit," "enhancement," "in-lieu fee mitigation," "mitigation," "mitigation bank service area," "restoration," "wetlands," and "wetland mitigation bank" have the same meanings as in section 6111.02 of the Revised Code. 337
338
339
340

(E) "LV" means the valley length of stream, expressed in feet. 341
342

(F) "Permanent impact" means any impact that is not a temporary impact. 343
344

(G) "Temporary impact" means an impact to an ephemeral feature that is a water of the state and to which all of the following apply: 345
346
347

(1) It facilitates a proposed activity or aids in the access, staging, or development of any construction. 348
349

(2) It will last not more than two years. 350

(3) Upon termination of the impact, the conditions of the ephemeral feature are expected to return to pre-impact functionality or better condition within the twelve months after such termination. 351
352
353
354

(H) "Volume of mitigation" or "VMIT" means the volume of mitigation, as calculated using the formula specified in division (A) of section 6111.313 of the Revised Code, expressed in cubic feet. 355
356
357
358

(I) "Water quality volume" or "WQV" means the surface area divided by the drawdown depth. 359
360

(J) "Width of a streamway" or "WSW" means the width of the streamway, expressed in feet, and calculated as $147 \times DA^{0.38}$. 361
362

Sec. 6111.312. (A) Notwithstanding section 6111.31 of the 363

Revised Code, regarding any proposed impact to an ephemeral 364
feature that is a water of the state, the director shall not 365
impose or require any mitigation standard, criteria, scientific 366
method, process, or other procedure or policy that is not 367
specified in sections 6111.313 to 6111.316 of the Revised Code. 368

(B) Notwithstanding section 6111.31 of the Revised Code, 369
the director shall not impose any requirements beyond those 370
specified in sections 6111.31 to 6111.316 of the Revised Code 371
with respect to any activity impacting an ephemeral feature that 372
is a water of the state in the issuance of a section 401 water 373
quality certification. 374

Sec. 6111.313. (A) For the purposes of division (B) (1) of 375
this section, the AMIT and VMIT shall be calculated as follows: 376

(1) First, calculate the area of the streamway (ASW). The 377
ASW is the WSW multiplied by the LV. 378

(2) Next, calculate the AMIT as follows: 379

(a) For streams with a slope that is less than or equal to 380
two per cent, the AMIT is equal to the ASW divided by two. 381

(b) For streams with a slope that is greater than two but 382
not more than four per cent, the AMIT is equal to the ASW 383
divided by five. 384

(c) For streams with a slope of greater than four per 385
cent, the AMIT is equal to the ASW divided by eight. 386

(3) The VMIT is equal to the AMIT multiplied by one, 387
assuming a one foot stream depth. 388

(4) Site-specific measurements, such as the streambed 389
area, bankfull width, entrenchment ratio, or flood prone area, 390
may be substituted for AMIT and VMIT calculations in instances 391

where site geology or geomorphic conditions differ from the AMIT 392
calculations specified in divisions (A) (1) to (3) of this 393
section. 394

(B) Except as otherwise provided in section 6111.316 of 395
the Revised Code, the director may require a person proposing to 396
impact an ephemeral feature that is a water of the state to 397
conduct mitigation in accordance with the following: 398

(1) If the proposal will have permanent impacts, the 399
director may require the person to do any of the following: 400

(a) Provide mitigation by constructing an equivalent area 401
of channel at a one-to-one ratio using the required AMIT or 402
site-specific measurements specified under division (A) (4) of 403
this section for the ephemeral feature that is a water of the 404
state being impacted to provide a geomorphically stable feature 405
within the impacted eight-digit hydrologic unit watershed; 406

(b) Provide bioretention on the project site in accordance 407
with the rainwater manual utilized by the environmental 408
protection agency using the required AMIT or site-specific 409
measurements specified under division (A) (4) of this section. 410
Performance and monitoring of performance shall be no more than 411
normally required for a bioretention structure. 412

(c) Provide increased volume and surface area to the WQV 413
using the required VMIT or site-specific measurements specified 414
under division (A) (4) of this section. The WQV shall be 415
increased by the required VMIT without increasing the maximum 416
WQV discharge. Drawdown times may be increased proportionally. 417
The additional required surface area may be in the form of a 418
wetland shelf as part of a wet extended detention basin sized 419
using the rainwater and land development manual. Where no onsite 420

stormwater detention is planned, surface water storage volume 421
with slow discharge may be provided using the required volume of 422
mitigation as the temporary storage volume. When mitigation will 423
be conducted using storage practices, performance and monitoring 424
of performance shall be no more than normally required for a 425
particular storage structure. 426

(d) Provide equivalent area of channel at a one-to-one 427
ratio using the required AMIT or site-specific measurements for 428
streambed area calculations by purchasing credits at an approved 429
wetland mitigation bank or in-lieu fee mitigation program for 430
the ephemeral feature that is a water of the state being 431
impacted within the impacted eight-digit hydrologic unit 432
watershed. If there are no wetland mitigation bank credits or 433
in-lieu fee mitigation credits within the mitigation bank 434
service area that includes the impacted eight-digit hydrologic 435
unit watershed, credits may be purchased from another provider 436
in the state. When mitigation will occur at an approved wetland 437
mitigation bank, in-lieu fee mitigation program, or mitigation 438
paid to the department of natural resources, mitigation credits 439
shall be acquired based on the acreage of streambed impacted and 440
proof of acquisition shall be sent to the director of 441
environmental protection before any impact may occur. 442

(e) Provide equivalent area of channel at a one-to-one 443
ratio using the required AMIT or site-specific streambed 444
measurements for area calculations by contributing funds to the 445
department of natural resources for the purpose of stream 446
improvement activities to address acid mine drainage or other 447
water quality impacts. This mitigation may occur outside of the 448
eight-digit hydrologic unit watershed where the impacts will 449
occur. 450

(2) If the proposal will have temporary impacts, the 451
director shall require the person to do the following: 452

(a) Restore any ephemeral feature that is a water of the 453
state that is impacted upon completion of the temporary impact; 454

(b) Restore the flow regime to that of the pre-impact 455
ephemeral flow regime or better; 456

(c) Restore the physical integrity of the ephemeral 457
feature that is a water of the state to its pre-impact or better 458
condition; 459

(d) Provide at least three high resolution color 460
photographs taken at the restored area, including one facing 461
upstream, one facing downstream, and a closeup that clearly 462
depicts the substrate composition and size for each restored 463
ephemeral feature that is a water of the state. Photographs 464
shall accurately depict the quality of the ephemeral feature 465
that is a water of the state and shall not include excessive 466
cover that would prevent the observation of substrates, such as 467
leaf litter, snow, or ice. 468

(e) Continue to conduct monitoring or implement additional 469
measures to meet performance standards if the restoration areas 470
are not meeting restoration performance criteria within two 471
years following the completion of restoration activities. 472

Sec. 6111.314. (A) The director of environmental 473
protection may impose all of the following mitigation reporting 474
and monitoring requirements on any person performing mitigation 475
as required under division (B) (1) (a) of section 6111.313 of the 476
Revised Code: 477

(1) A requirement that all mitigation for an ephemeral 478
feature that is a water of the state be monitored for up to two 479

years following the completion of mitigation construction 480
activities. If the mitigation areas meet or exceed the 481
performance criteria before the end of the second year of 482
mitigation monitoring, no further monitoring shall be required. 483
If the mitigation areas are not meeting the performance criteria 484
by the end of the second year of mitigation monitoring, the 485
monitoring period may be extended and the existing mitigation 486
plan may be revised. 487

(2) A requirement that construction of any required 488
mitigation shall commence not later than thirty days after 489
completion of fill activities and shall be completed not later 490
than one year thereafter unless additional time is required for 491
the project at issue; 492

(3) Annual monitoring reports that shall be submitted to 493
the director not later than the thirty-first day of December of 494
each year following the end of the first full growing season and 495
completion of mitigation construction until the mitigation area 496
is determined to meet its performance criteria. Each report 497
shall contain all of the following information, as applicable: 498

(a) The status of all mitigation required for the project; 499

(b) Current contact information for all responsible 500
parties including phone numbers, electronic mail addresses, and 501
mailing addresses; 502

(c) Clear identification of the specific monitoring period 503
the report is intended to represent, as well as the calendar 504
year the monitoring occurred; 505

(d) A summary of current mitigation status comparing the 506
monitoring information from the prior year with the current 507
report; 508

<u>(e) A list of native seed mixes planted in all mitigation areas;</u>	509
	510
<u>(f) For the first year's report, plan views, longitudinal profiles, and cross sections of the as-built mitigation area including the location of native seed mixes in plan views;</u>	511
	512
	513
<u>(g) A physical integrity assessment for each ephemeral feature that is a water of the state on the project site consisting of measurements of streambed width, incision (bank height) ratio measured as the lowest bank height divided by the maximum bankfull depth, substrate composition, and riparian composition on each side of the stream with the riparian area being measured as two times the streambed width divided equally on both sides of the stream. (For example, for an ephemeral feature that is a water of the state with a streambed width of two feet, then two feet on each side of the feature.)</u>	514
	515
	516
	517
	518
	519
	520
	521
	522
	523
<u>(h) At least three high resolution color photographs taken for each mitigation feature, including one facing upstream, one facing downstream, and a closeup that clearly depicts the substrate composition and size for each ephemeral feature that is a water of the state proposed for impact. Photographs shall accurately depict the quality of the feature and shall not include excessive cover that would prevent the observation of substrates, such as leaf litter, snow, or ice.</u>	524
	525
	526
	527
	528
	529
	530
	531
<u>(B) Not later than two years after completion of construction of any required mitigation, the director may require a person who impacted an ephemeral feature that is a water of the state to do any of the following:</u>	532
	533
	534
	535
<u>(1) Provide the minimum acreage of the mitigation of the ephemeral feature that is a water of the state, as necessary;</u>	536
	537

(2) Demonstrate that the physical integrity assessment of the mitigation is equal to or better than the physical integrity assessment of the originally impacted ephemeral feature that is a water of the state; 538
539
540
541

(3) Demonstrate that the mitigation of the ephemeral feature that is a water of the state, including upstream and downstream of the mitigation, is stable and shows no signs of excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation. 542
543
544
545
546

Sec. 6111.315. The director of environmental protection may require any person required to perform mitigation under division (B) (1) (a) or (B) (2) of section 6111.313 of the Revised Code to also perform best management practices. Best management practices include the following: 547
548
549
550
551

(A) All ephemeral features that are a water of the state that are to be avoided shall be clearly indicated on site drawings, demarcated in the field, and protected with suitable materials, such as silt fencing, prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process and removed after completion of construction. 552
553
554
555
556
557
558

(B) Unless subject to a more specific stormwater NPDES permit, stormwater management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available on the environmental protection agency's web site, or any watershed specific construction general permit. 559
560
561
562
563
564

(C) Sediment and erosion control measures shall be designed, installed, and maintained in effective operating 565
566

condition at all times during construction activities. Any such 567
maintenance shall ensure that corrective measures will be 568
implemented for failed controls as soon as practicable. 569

(D) Straw bales shall not be used as a form of sediment 570
control unless used in conjunction with another structural 571
control such as silt fencing. Straw bales may be utilized for 572
purposes of erosion control such as ditch checks. 573

(E) Disturbance and removal of vegetation from the project 574
construction area is to be avoided where possible and minimized 575
to the maximum extent practicable. 576

(F) Entry to surface waters shall be through a single 577
point of access to the maximum extent practicable to minimize 578
disturbance to riparian habitat. 579

(G) Heavy equipment shall not be placed below the ordinary 580
high water mark of any surface water, except when no other 581
alternative is practicable. 582

(H) Fill material shall consist of suitable nonerodible 583
material and shall be maintained and stabilized to prevent 584
erosion. 585

(I) All dewatering activities shall be conducted in such a 586
manner that does not result in a violation of water quality 587
standards. 588

(J) All disturbed areas which remain dormant in excess of 589
fourteen days shall be protected from erosion within seven days 590
of the last earth disturbing activity. 591

(K) All areas of final grade shall be protected from 592
erosion within seven days of the last earth disturbing activity. 593

(L) In the event of in-channel feature activities, 594

provisions shall be established to temporarily or permanently 595
redirect the stream flow around or through active areas of 596
construction in a stabilized, nonerosive manner to the maximum 597
extent possible. 598

(M) Materials used for fill or bank protection shall 599
consist of suitable material free from toxic contaminants in 600
other than trace quantities. Broken asphalt shall not be used as 601
fill or bank protection. 602

(N) To be used for fill or bank stabilization, concrete 603
rubble shall be in accordance with department of transportation 604
specifications, free of exposed re-bar, and free of all debris, 605
soil, and fines. 606

(O) Chemically treated lumber, which may include chromated 607
copper arsenate and creosote treated lumber, shall not be used 608
in structures that come into contact with waters of the state. 609

(P) At the completion of construction activities, all 610
temporary fill material shall be removed to an area that has no 611
waters of the state and the ephemeral feature that is a water of 612
the state shall be restored and replanted with native seed mixes 613
to the maximum extent practicable. 614

Sec. 6111.316. Sections 6111.31 to 6111.315 of the Revised 615
Code do not apply to, and the director of environmental 616
protection shall not impose any additional requirements upon, an 617
activity associated with an ephemeral feature that is a water of 618
the state if the activity is either of the following: 619

(A) A restoration or enhancement project that will result 620
in a net improvement of water quality. Such projects may include 621
a project under section 319 of the Federal Water Pollution 622
Control Act, an H2Ohio project, a water resource restoration 623

sponsor program, a wetland mitigation bank, or an in-lieu fee 624
mitigation project. To qualify under this exception, a person 625
shall submit a demonstration as part of a mitigation proposal 626
that the project will result in a net improvement in water 627
quality. 628

(B) A project for the filling or discharge of dredged 629
material into an ephemeral feature that is a water of the state 630
that impacts three one-hundredths of an acre or less of 631
streambed. For purposes of this division, if culvert maintenance 632
or replacement is involved in the project, only an impact to an 633
ephemeral feature that is a water of the state that goes beyond 634
the enclosed configuration of the existing culvert structure 635
shall be included in the calculation of the impacted streambed 636
acreage. 637

Section 2. That existing sections 3745.114, 5709.09, 638
6111.01, and 6111.31 of the Revised Code are hereby repealed. 639

Section 3. The amendment by this act of section 5709.09 of 640
the Revised Code applies to tax years ending on or after the 641
effective date of this section. 642

Section 4. Until the effective date of the actions taken 643
by the director that are required by division (C)(1) of section 644
6111.31 of the Revised Code, as amended by this act, or until 645
twenty-four months after the effective date of this section, 646
whichever is earlier, the director of environmental protection 647
may continue to evaluate the adequacy of a mitigation proposal 648
contained in an application for a section 401 water quality 649
certification in accordance with section 6111.31 of the Revised 650
Code as it existed prior to its amendment by this act. 651

Section 5. All items in this act are hereby appropriated 652

as designated out of any moneys in the state treasury to the 653
 credit of the designated fund. For all operating appropriations 654
 made in this act, those in the first column are for fiscal year 655
 2022 and those in the second column are for fiscal year 2023. 656
 The operating appropriations made in this act are in addition to 657
 any other operating appropriations made for the FY 2022-FY 2023 658
 biennium. 659

660

	1	2	3	4	5
A	DNR DEPARTMENT OF NATURAL RESOURCES				
B	General Revenue Fund				
C	GRF	725520	Special Projects	\$500,000	\$0
D	TOTAL GRF General Revenue Fund			\$500,000	\$0
E	TOTAL ALL BUDGET FUND GROUPS			\$500,000	\$0

SPECIAL PROJECTS 661

Of the foregoing appropriation item 725520, Special 662
 Projects, \$250,000 shall be used by the Director of Natural 663
 Resources for weed harvesting operations at Indian Lake. 664

Of the foregoing appropriation item 725520, Special 665
 Projects, the Director of Natural Resources shall use up to 666
 \$250,000 to enter into a memorandum of understanding with the 667
 Indian Lake Watershed Project to support the Indian Lake 668
 Watershed Project's weed harvesting operations. 669

An amount equal to the unexpended, unencumbered portion 670

remaining in appropriation item 725520, Special Projects, at the 671
end of fiscal year 2022 is hereby reappropriated for the same 672
purposes in fiscal year 2023. 673

Section 6. Within the limits set forth in this act, the 674
Director of Budget and Management shall establish accounts 675
indicating the source and amount of funds for each appropriation 676
made in this act, and shall determine the form and manner in 677
which appropriation accounts shall be maintained. Expenditures 678
from operating appropriations contained in this act shall be 679
accounted for as though made in H.B. 110 of the 134th General 680
Assembly. The operating appropriations made in this act are 681
subject to all provisions of H.B. 110 of the 134th General 682
Assembly that are generally applicable to such appropriations. 683