



OHIO WETLANDS ASSOCIATION

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May 18, 2021

Ohio House of Representatives
77 S High St # 12
Columbus, OH 43215

RE: House Bill 175

Dear Chairman Koehler, Vice Chair Creech, Ranking Member Brent, and members of the Agriculture and Conservation Committee,

The Ohio Wetlands Association is a 501(c)3 non-profit dedicated to the protection, restoration and enjoyment of Ohio's wetlands and associated ecosystems through science-based programs, education, and advocacy. Our growing organization appreciates this opportunity to express its concerns regarding House Bill (HB) 175. This bill, if passed into law, will deregulate "ephemeral features," resulting in increased and unmitigated losses to these natural components of healthy, intact watersheds. As these losses mount, the ecological functions and pollutant cleansing capabilities that these ephemeral features provide freely will be diminished, and the quality of our drinking, bathing, and swimming water sources will decline.

This bill represents a major step in the wrong direction in regard to sustaining the improvements that have been made to Ohio waters, and continue to be made through innovative programs such as H2Ohio. If pollution, waste, *etc.* enters an intermittent or perennial stream via periodic flows or overflows from a so-called "ephemeral feature," then this activity would result in the addition of pollutants to other Waters of the State and thus should be regulated. When it comes to the hydrologic cycle, everything is connected, and as the saying goes "we all live downstream." To the extent practicable, all sources of degradation to our public waters and should be prevented if we are to enjoy a sustainable future.

This basic understanding of watershed functions and sources of impairment is not reflected in the HB 175. While Best Management Practices (BMPs) for stormwater management are necessary and prudent, these solutions simply cannot replace the many ecosystem services provided by headwater streams and wetlands. If ephemeral features are disregarded, how can

the State preclude pollution activities from occurring and lowering the water quality of Waters of the State? HB 175 would lead to unregulated pollution and effectively undermine the remaining provisions that currently protect our intermittent and perennial streams and federally jurisdictional wetlands, which are also Waters of the State.

The OWA is concerned that the proposed bill, as written (specifically its “ephemeral features” definition), would remove any regulatory requirements for impacts to wetlands having only precipitation as their source of hydrology. This includes ecologically-important vernal pools that typically hold water for 4-6 months but then go dry in late summer. Because “ephemeral” is defined so broadly, these forested wetland systems may be in peril. HB 175 has the potential to greatly increase the number of isolated wetlands that could be impacted without a permit and does not explain how determinations of meeting the definition of “ephemeral” will be proven prior to impacts. Why would we want to remove protection for any more of our wetlands when Ohio as already lost 90% of its natural wetlands since European settlement?

Introducing another source of confusion, those wetlands that have direct hydrologic connection to intermittent and perennial streams or the local groundwater sources, regardless of the depth to the ground water source, would remain jurisdictional. This raises the question of how the determination will be made as to whether groundwater is or is not a component of a wetland’s hydrology. Will this need to be proven, and if so, could this in turn have a detrimental impact on wetland and stream permitting by increasing the time it takes to receive Agency review? And who will be checking to make sure that those ephemeral features with groundwater sources are not being impacted without a permit?

In addition to the threat HB 175 represents to water quality, it will also have devastating impacts on biota dependent on ephemeral features. Every component of a healthy, functioning watershed, from isolated wetlands and ephemeral streams to our rivers and lakes, are important to specific communities of organisms that have evolved to exist under the precise conditions that prevail within that portion of the watershed. How will the bill protect these diverse life forms that are found in ephemeral features? As a prime example, the Spotted Salamander (*Ambystoma maculatum*), our State Amphibian, is dependent on the habitat provided by ephemeral features (*i.e.*, vernal pools) for survival and reproduction. The Spotted Salamander became the state amphibian through the process of a rule making, and this species is recognized as being highly important to residents of Ohio. Spotted Salamanders are a sentinel species, representing a larger group of organisms, including 25 salamander and 15 frog and toad species, that are adapted to the habitats of what HB 175 may classify as ephemeral features. We are gravely concerned that if this bill passes, it will allow destruction of the special, irreplaceable aquatic resources that support these important species and their codependent flora and fauna.

While we acknowledge that HB 175 attempts to meet the provisions/definitions of the current WOTUS rule (to allow federal and state jurisdiction definitions to match), it is important to remember that states have the ability to protect their aquatic resources at different and higher levels to provide more healthy environmental conditions and quality of life for their citizens and

for wildlife. Unfortunately, HB 175 seems to encourage a “race to the bottom” from an environmental perspective, wholly incongruent with other statewide initiatives, like H2Ohio, that strive to improve water quality and combat harmful algal blooms, across the state.

We also note that the current Waters of the United States (WOTUS) rule, with which HB 175 attempts to align, is being challenged in court on many different grounds. This is occurring because the new WOTUS rule is not backed by defensible science and is clearly in opposition with the basic mission and goals of the Clean Water Act. Therefore, it is highly likely the WOTUS rule will be overturned in the near future.

Any changes to the definition of Waters of the State in Ohio should be tabled until the national level litigation is completed. If Ohio adopts this bill, and national court cases verdicts on WOTUS are as expected, Ohio will, at that time, be forced to abandon the ill-conceived provisions within HB 175. Pursuing this process now is unnecessary and premature and is contradictory to what would be beneficial to the large majority of Ohioans - now and especially in the future.

For all of the reasons stated, OWA believes that enacting House Bill 175 would be detrimental to our entire state and individual communities. We encourage earnest contemplation of whether HB 175 aligns with paramount goals to protect and preserve our valuable resources.

Thank you for the opportunity to submit comments. Please accept them on behalf of the Ohio Wetlands Association, representing thousands of members and supporters across the state. OWA would welcome any opportunity to discuss more specifically any questions you have regarding our comments regarding the protection and improvement of Ohio’s wetlands and other aquatic resources. We can be reached by e-mail at mark@ohwetlands.org and mick@ohwetlands.org, or on our cell phones at 614-531-9156 and 614-403-2085, respectively. Thank you for your consideration of these comments and for hearing our concerns and recommendations.

Respectfully Submitted,



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