



ENVIRONMENTAL LAW & POLICY CENTER

To: Ohio House Agriculture and Conservation Committee

From: Robert Michaels, Senior Attorney, Environmental Law and Policy Center

Re: House Bill 175

Date: May 25, 2021

Chairman Koehler, Vice Chair Creech, Ranking Member Brent and Members of the Ohio House Agriculture and Conservation Committee, thank you for the opportunity to testify before this committee on House Bill 175 (HB 175). My name is Robert Michaels, Senior Attorney at the Environmental Law & Policy Center (ELPC). ELPC is the Midwest's leading environmental advocacy organization. For more than 25 years, we have been working to protect the environment and public health around the region, with a particular commitment to the health of the Great Lakes.

ELPC strongly opposes House Bill 175 in its entirety because removing all protection for ephemeral streams would greatly worsen water pollution in Ohio. As other commenters noted, Ohio EPA estimates that there are more than 36,000 miles of ephemeral streams across the state. These streams help control runoff and erosion, reduce flooding potential, and help filter pollutants. They are also hydrologically connected to the tributaries that feed into larger water bodies, such as the Maumee River and Lake Erie. That means any actions that contaminate, destroy or fill these ephemeral streams will ultimately pollute larger water bodies, many of which are already seriously impaired, including the Maumee River and Lake Erie.

By removing ephemeral streams from the definition of “waters of the state” in Ohio Revised Code § 6111.01, HB 175 will leave those streams unprotected from industrial, agricultural and municipal waste. Other commenters, including the Toledo Metropolitan Area Council of Governments, Alliance for the Great Lakes, and Lake Erie Waterkeeper, described many of the threats this radical policy change poses, and ELPC shares those concerns. We would also like to highlight two additional points.

First, protecting ephemeral streams is essential to any effort to solve the Lake Erie toxic algae problem. The vast majority of phosphorus that fuels the algal outbreaks enters during large storm events—the same storm events that cause ephemeral streams to form. One study found that between 2002 and 2013, 70–90% of the phosphorus and nitrogen loads discharged from the Maumee River occurred during the highest 20% of the flows from the river. [Baker et al., 2014](#).

As climate change increases the intensity of storm events, we can only expect ephemeral streams to contribute even more significantly to the nutrient loads driving the toxic algae crisis. If

21 W. Broad Street, 8th Floor • Columbus, OH 43215

(612) 569-3872 • www.ELPC.org

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HB 175 becomes law and these ephemeral streams can be polluted without limit, Ohio will not be able to keep its promise under Annex 4 of the Great Lakes Water Quality Agreement to reduce phosphorus loads by 40% by 2025, and the Lake Erie toxic algae crisis will only get worse.

Second, there is no public demand for the state to relinquish its authority to prevent water pollution. To the contrary, the public cares deeply about access to safe clean water and wants to protect Lake Erie. ELPC recently commissioned a [public opinion poll](#) of over 500 Northwest Ohio residents by J. Ann Selzer, best known for her famously accurate Des Moines Register political polls. The results were overwhelming:

- 93% of voters say access to safe clean water is very important. That's the #1 issue, ranking above health care, jobs and wages, and COVID-19.
- 86% of voters say cleaning up Lake Erie is either very (71%) or fairly (15%) important.
- 81% of voters favor putting into place enforceable regulations to reduce runoff pollution from commercial fertilizers and manure from CAFOs.
- 78% of voters favor requiring permits for *all* CAFOs, regardless of size.
- 55% of voters support a freeze on CAFOs.
- By a huge 7-to-1 margin, voters prefer a candidate who prioritizes cleaning up Lake Erie.
- A majority of voters say this will be a major issue as they consider candidates to support.

HB 175 would flout the will of the people, who have every right to expect the state to fulfil its obligation to protect access to safe, clean water, as well as its more specific commitment under Annex 4 of the Great Lakes Water Quality Agreement to clean up Lake Erie.

For these reasons as well as those expressed by other opponents, we urge the committee to prevent HB 175 from moving forward. We again thank you for the opportunity to comment on HB 175 and for considering our perspective.

/s/ Robert Michaels

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