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Final Analysis

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SUMMARY

Statewide Watershed Planning and Management Program

- Creates the Statewide Watershed Planning and Management Program for the improvement and protection of Ohio's watersheds.
- Requires the Director of Agriculture to administer the program.
- As part of the program, requires the Director to categorize watersheds in Ohio and appoint at least one watershed planning and management coordinator in each categorized watershed region.
- Requires a coordinator to coordinate watershed planning in the assigned watershed, including assisting each soil and water conservation district to identify sources and areas of water quality impairment.
- Requires the Director to assist soil and water conservation districts in watershed planning and management.
- Requires a soil and water conservation district board to consult and work with the coordinator appointed to the watershed region.
- Exempts from public record laws certain data or records of a person's agricultural operations, conservation or water quality improvement practices, or proposed utilization of those practices.
- Authorizes the Department of Agriculture to share data or records of conservation or water quality improvement practices with state agencies and higher education institutions for water quality research under certain circumstances.

Intent statement

- States that it is the General Assembly's intent to collaborate with organizations representing agriculture, conservation, the environment, and higher education to establish a certification program for farmers who utilize practices designed to minimize impacts to water quality.

Watershed pilot program

- Requires the Department, in consultation with the Lake Erie Commission and the Ohio Soil and Water Conservation Commission, to establish a pilot program that assists farmers, agricultural retailers, and soil and water conservation districts in reducing phosphorus in a watershed.
- Specifies the purposes for which the pilot program funding is to be used, including purchasing equipment for subsurface placement of nutrients into the soil and equipment for nutrient placement based on geographic information system data.

Voluntary nutrient management plan: public records exemption

- Specifies that information associated with a voluntary nutrient management plan developed under continuing law is not a public record subject to the Ohio's law governing public records.

Regional water and sewer districts

- Allows a regional water and sewer district to make loans and grants to and enter into cooperative agreements with any person (an individual, firm, partnership, association, or corporation) or political subdivision, rather than only with political subdivisions.
- Expands a district's authority to offer discounted rentals or charges to any person who is of low or moderate income or qualifies for the homestead exemption, instead of only to those who are 65 or older and meet that criteria as in prior law.

CAUV eligibility of land used for biofuel production

- Modifies the requirements that land used in biofuel production must meet in order to be valued for property tax purposes at its current agricultural use value (CAUV).

DETAILED ANALYSIS

Statewide Watershed Planning and Management Program

The act creates the Statewide Watershed Planning and Management Program for the improvement and protection of Ohio's watersheds. The Director of Agriculture must administer the program.¹

¹ R.C. 940.36(B)(1).

Watershed planning and management coordinator

Under the program, to coordinate watershed planning, the Director must appoint at least one watershed planning and management coordinator in each watershed region of Ohio as categorized by the act (see below). A coordinator must have experience or education related to water quality improvement or watershed planning and management.

A watershed planning and management coordinator must do all of the following in the watershed region in which the coordinator is appointed:

1. Assist each soil and water conservation district in identifying sources and areas of water quality impairment, including total phosphorous, dissolved reactive phosphorous, and nitrogen nutrient loading. A coordinator also may assist any Ohio political subdivision or organization engaged in water quality improvement activities in the watershed region to address water quality impairment.
2. Engage in watershed planning, restoration, protection, and management activities. These activities may include assisting a political subdivision or organization in developing and formulating a nine-element plan or its equivalent. A nine-element plan generally means a strategic implementation plan that a political subdivision, organization, or individual engaged in water quality improvements may utilize to obtain federal funding for projects that address nonpoint source pollution (pollution from an undefined source, such as runoff from streets and highways).
3. Collaborate with state agencies engaged in water quality activities; and
4. Provide an annual report to the Director about water quality.²

The act states that nothing in it can be construed to prevent or limit a watershed planning and management coordinator from providing assistance for projects or activities that have been determined to improve water quality impaired from point sources of phosphorus, dissolved reactive phosphorus, and nitrogen nutrients.³

Watershed regions

The Director must categorize watersheds in Ohio, identified by the specified U.S. Geological Survey six-digit hydrologic unit codes, into the following watershed regions:⁴

Watershed region	Watersheds included in the region
Region 1	Western Lake Erie Basin Watershed, hydrologic unit code 041000.
Region 2	1. Central Lake Erie Basin Watershed, hydrologic unit code 041100; and 2. Conneaut Creek Watershed, hydrologic unit code 041201.

² R.C. 940.36(A), (B)(2), and (C).

³ R.C. 940.36(E).

⁴ R.C. 940.36(D).

Watershed region	Watersheds included in the region
Region 3	1. Wabash River Basin Watershed, hydrologic unit code 051200; 2. Great Miami River Watershed, hydrologic unit code 050800; and 3. Little Miami River Watershed, hydrologic unit code 050902.
Region 4	Scioto River Watershed, hydrologic unit code 050600.
Region 5	Muskingum River Watershed, hydrologic unit code 050400.
Region 6	Mahoning River Watershed, hydrologic unit code 050301.
Region 7	1. Hocking River and Ohio River Tributaries Watershed, hydrologic unit code 050302; and 2. Raccoon Creek Watershed, hydrologic unit code 050901.

Assigned duties

The act assigns watershed planning and management program duties to the Director and boards of supervisors of soil and water conservation districts. Under prior law, the Director had to assist in expediting state responsibilities for watershed development and other natural resource conservation works of improvement. The act: (1) modifies the above duty by requiring the Director to assist in expediting state responsibilities for other soil and water conservation works of improvement, rather than natural resource conservation works of improvement, and (2) requires the Director to assist in watershed planning and management.⁵

It requires a board to consult and work with the watershed planning and management coordinator appointed to the watershed region in which the soil and water conservation district is located.⁶

Public records exemption

The act exempts from public records laws any data or records of a person's agricultural operations, conservation or water quality improvement practices, or proposed utilization of those practices collected or maintained by any of the following entities:

1. The Department of Agriculture;
2. A soil or water conservation district;
3. A higher education institution; or
4. Any other state agency.⁷

However, the Department may share that data or records with state agencies and institutions of higher education for water quality research if all of the following apply:

⁵ R.C. 939.02(C).

⁶ R.C. 940.06(U).

⁷ R.C. 940.37(A).

1. The data or records of conservation or water quality improvement practices are aggregated.
2. The aggregated data or records do not include any information that identifies an individual.
3. The aggregated data or records include a description of the conservation or water quality improvement practices.
4. The aggregated data or records identify the watershed, by the watershed's hydrologic unit code, where the conservation or water quality improvement practices are being or have been utilized.⁸

Intent statement

The act states that it is the General Assembly's intent to collaborate with both of the following to establish a certification program for farmers that utilize practices designed to minimize impacts to water quality:

1. Organizations representing agriculture, conservation, and the environment; and
2. Higher education institutions engaged in water quality research.

It specifies that the Director must undertake all actions necessary to ensure that assistance and available funding are provided to farmers who participate in the certification program.⁹

Watershed pilot program

The act authorizes the Department of Agriculture, in consultation with the Lake Erie Commission, the Ohio Soil and Water Conservation Commission, and the Ohio State University Extension, to establish a pilot program that assists farmers, agricultural retailers, and soil and water conservation districts in reducing phosphorus and dissolved reactive phosphorous in a watershed to be determined by the Department. If the program is established, the Department must fund it via appropriations under the Department's budget that support water quality initiatives. Program funding must be used to support the following:

1. Equipment for subsurface placement of nutrients into the soil;
2. Equipment for nutrient placement based on geographic information system data;
3. Soil testing;
4. Implementation of variable rate technology;
5. Equipment involved with manure transformation and manure conversion technologies;
6. Tributary monitoring;
7. Water management and edge-of-field drainage management strategies; and

⁸ R.C. 940.37(B).

⁹ R.C. 940.38.

8. Implementation of nutrient best management practices according to data collected by soil and water conservation districts.

The data and any associated records under the pilot program are not a public record subject to disclosure under the law governing public records.¹⁰

Voluntary nutrient management plans

The act specifies that information, data, and any associated record used in the development, approval, and implementation of a voluntary nutrient management plan or used to determine compliance with a plan is not a public record subject to the Ohio's law governing public records.¹¹

Under continuing law, a person who owns or operates agricultural land may develop a voluntary nutrient management plan (or have specified entities develop a plan on the person's behalf). A voluntary nutrient management plan generally provides for the proper application of fertilizer. A person who applies fertilizer in accordance with a plan receives an affirmative defense in civil claims involving the application of fertilizer.¹²

Regional water and sewer districts

Cooperative agreements and loans and grants

The act expands a regional water and sewer district's ability to make loans and grants and enter into cooperative agreements. Under continuing law, a district can make loans and grants to and enter into cooperative agreements for water resource projects with political subdivisions. The act adds that the district also may make loans and grants to and enter into cooperative agreements with any person (an individual, firm, partnership, association, or corporation) for water resource projects. Further, it authorizes a district to provide loans and grants for the design of water resource projects, in addition to providing loans and grants for the acquisition and construction of water resource projects, as allowed under continuing law.¹³

Discounts

The act expands a district's authority to offer discounted rentals or charges for water resource projects, which include drinking water and sewer services. Under prior law, a district could only offer discounts to individuals who were 65 or older of low or moderate income or qualify for the homestead exemption. The act, instead, allows a district to offer discounts to any individual, regardless of age, provided the individual is of low or moderate income or qualifies for the homestead exemption.¹⁴

¹⁰ Section 3.

¹¹ R.C. 905.324(C).

¹² R.C. 905.31, 905.323, and 905.325, not in the act.

¹³ R.C. 6119.06 and 6119.09.

¹⁴ R.C. 6119.091.

CAUV eligibility of land used for biofuel production

The act modifies the requirements that land used in biofuel production must meet in order to be valued for property tax purposes at its current agricultural use value (CAUV). Pursuant to authority granted in the Ohio Constitution, farmland may be valued at its CAUV – its value considering only its use for agriculture – rather than its fair market value. This usually results in a lower tax bill for farm owners because the land is often valued below its actual market value, particularly in areas where farmland is in demand for development purposes.

Under prior law, land used for biofuel production qualified for the CAUV program if (1) the production facility was located on, or on property contiguous to, farmland under common ownership and (2) at least 50% of the feedstock used in the production came from land under common ownership or leasehold. Biofuel production involves using feedstock to produce biodiesel, biomass energy, electric or heat energy, or biologically derived methane gas.

The act makes three changes to these requirements. First, in lieu of the 50% threshold, the act instead requires that, of the feedstock used in the biofuel production, at least 50% must be “agricultural feedstock” (defined as manure or food waste) and at least 20% of the agricultural feedstock used in production must come from land under common ownership or leasehold. Second, it requires that none of the feedstock used in the production can include human waste. Third, it specifies that the production facility may be part of or continuous to land that is under common leasehold, and not just under common ownership.¹⁵

These CAUV changes apply to tax years beginning on and after the act’s April 12, 2021, effective date.¹⁶

HISTORY

Action	Date
Introduced	05-13-19
Reported, H. Finance	06-19-19
Passed House (90-3)	06-20-19
Reported, S. Finance	12-08-20
Passed Senate (30-0)	12-09-20
House concurred in Senate amendments (86-3)	12-17-20

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¹⁵ R.C. 5713.30(A)(1)(b).

¹⁶ Section 4.