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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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H.B. 7
133rd General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Ghanbari and Patterson

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SUMMARY

- Creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio's lakes and rivers.
- Requires the Ohio Water Development Authority (OWDA) to act as trustee of the H2Ohio Trust Fund and grants the OWDA full power to invest fund money.
- Creates the H2Ohio Advisory Council to establish priorities for use of the fund for water quality initiatives.
- Designates the Treasurer of State or the Treasurer's designee as the Executive Director of the fund and requires the Treasurer to provide for the coordination of efforts between the OWDA, the H2Ohio Advisory Council, and the Treasurer with respect to the fund.
- Authorizes the OWDA to disburse money from the fund (up to \$100 million per fiscal year) by issuing loans and awarding grants to applicants that are approved by the Council to address water quality issues in Ohio consistent with the priorities established by the Council.
- If fund money is disbursed specifically to the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency, requires the Directors of those state agencies to each prepare an annual plan detailing how the money will be spent.
- Requires the Council to review and approve each agency's annual plan or portions of the plan before the ODWA may disburse money to the agency.
- Requires the OWDA to make recommendations to the Treasurer of State regarding issuing obligations (revenue bonds) to raise money for deposit in the H2Ohio Trust Fund.

- Authorizes the Treasurer to issue revenue bonds to generate money for deposit in the H2Ohio Trust Fund to be disbursed by the OWDA for water quality initiatives.
- Specifies that the revenue bonds do not constitute debt for which the full faith and credit of the state may be pledged.
- Creates the H2Ohio Bond Service Fund consisting of all money received and required by the bond proceedings, and all other money transferred or allocated to or received for the purposes of that fund.
- Requires the Director of Natural Resources to establish a pilot program to study the environmental impact of water withdrawals on stream flow using continuous stream flow monitoring technology.

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DETAILED ANALYSIS

H2Ohio Trust Fund

Overview

The bill creates the H2Ohio Trust Fund to provide for the protection, preservation, and restoration of the water quality of Ohio’s lakes and rivers. The fund is in the custody of the Treasurer of State, but is not a part of the state treasury.

The existing Ohio Water Development Authority (OWDA) is the trustee of the fund and has full power to invest fund money. The OWDA is tasked with making recommendations to the Treasurer regarding the issuance of obligations (revenue bonds) to raise money for deposit in the H2Ohio Trust Fund. It also may engage in real property transactions and disburse money

from the fund (up to \$100 million per fiscal year), in the form of loans and grants, to applicants approved by the H2Ohio Advisory Council, which is created by the bill.

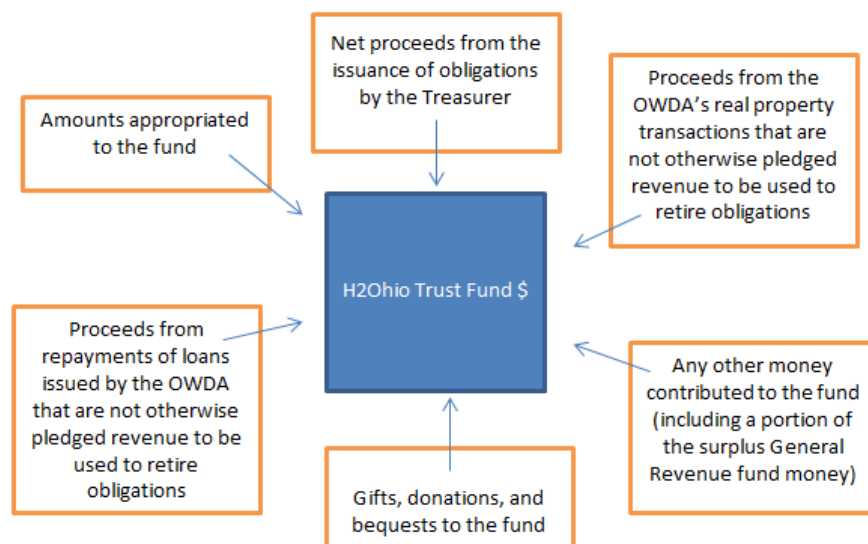
The Treasurer or the Treasurer's designee is the Executive Director of the fund and is tasked with issuing revenue bonds to provide revenue for deposit in the fund. The Treasurer or the Treasurer's designee also must provide for the coordination of efforts between the OWDA, the H2Ohio Advisory Council, and the Treasurer with respect to the fund.

The H2Ohio Advisory Council, which is created by the bill, is tasked with establishing priorities for use of the fund and notifying the OWDA as to what loans and grants should be disbursed from the fund to address water quality issues in Ohio. If the Department of Natural Resources, Department of Agriculture, or the Environmental Protection Agency seeks disbursement from the fund, the Directors of those agencies each must prepare an annual plan detailing how the money will be spent and submit the plan to the Council. The Council must review and approve each plan or part of a plan before the OWDA may disburse money to an agency.

Based on the OWDA's recommendations, the Treasurer may issue revenue bonds to generate money for the fund. The revenue bonds are secured by pledged revenues, including loan repayments. The bonds are not general obligation bonds backed by the full faith and credit of the state.¹

H2Ohio Trust Fund: purposes

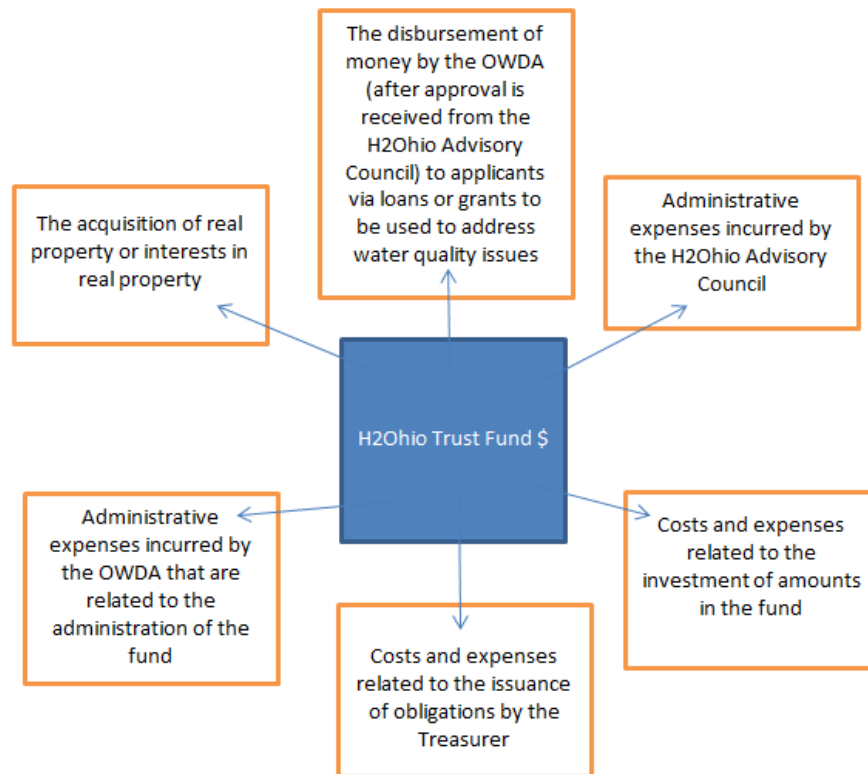
The H2Ohio Trust Fund consists of all of the following money sources:²



¹ R.C. 126.601 through 126.68.

² R.C. 126.601(A).

The fund may be used for any of the following purposes:³



H2Ohio Trust Fund: Investing authority

As indicated above, the OWDA is and acts as the fund's trustee and has full power to invest money in the fund. No purchase or sale of any investment can be made except as authorized by the OWDA.⁴ The OWDA and other fiduciaries must do both of the following:

1. Discharge their duties with respect to the fund for the fund's specified purposes and defray reasonable expenses of administering the fund with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.
2. Diversify the fund's investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

³ R.C. 126.601(B).

⁴ R.C. 126.601(C).

All investment earnings of the fund are credited to the fund.⁵

To facilitate investment of the fund, the OWDA may establish a partnership, trust, limited liability company, corporation, nonprofit corporation, or any other legal entity authorized to transact business in Ohio. In exercising its fiduciary responsibility with respect to the investment of the fund, the OWDA must give consideration to investments that enhance the general welfare of Ohio and its citizens where the investments offer quality, return, and safety comparable to other investments currently available to the OWDA. The OWDA must give equal consideration to investments otherwise qualifying that involve minority and women owned and controlled firms.⁶

The OWDA must adopt, in a regular meeting, policies, objectives, or criteria for the operation of the investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines. The OWDA must adopt any amendments and additions to the policies and criteria in a regular meeting as well and must publish its policies, objectives, and criteria at least once annually and make copies available to interested parties. In adopting policies and criteria for the selection of agents with whom the OWDA may contract for the administration of the fund, the OWDA must give equal consideration to all of the following that otherwise meet the policies and criteria established by the OWDA:

1. Minority owned and controlled firms;
2. Firms owned and controlled by women; and
3. Ventures involving minority owned and controlled firms and firms owned and controlled by women.

When reporting on the performance of investments, the OWDA must comply with the performance presentation standards established by the CFA Institute (formerly the Association for Investment Management and Research).⁷

All investments must be purchased at current market prices and the evidences of title of the investments must be given to the Treasurer, who is the designated custodian, or to the Treasurer's authorized agent. The Treasurer may deposit evidences of title of the purchased investments for safekeeping with an authorized agent who is a qualified trustee. The Treasurer or the agent must collect the principal, dividends, distributions, and interest as they become due and payable and place them when so collected into the fund.

The Treasurer must pay for investments purchased by the OWDA on receipt of written or electronic instructions from the OWDA or the OWDA's designated agent authorizing the

⁵ R.C. 126.601(C) and (G).

⁶ R.C. 126.601(D)(1) and (2).

⁷ R.C. 126.601(D)(3) and (4); see <https://www.cfainstitute.org/>.

purchase and pending receipt of the evidence of title of the investment by the Treasurer or the Treasurer's authorized agent.

The OWDA may sell investments held by the OWDA, and the Treasurer or the Treasurer's authorized agent must accept payment from the purchaser and deliver evidence of title of the investment to the purchaser after the OWDA or the OWDA's designated agent authorizes the sale. The sale proceeds must be deposited into the fund. The OWDA and the Treasurer may enter into agreements to establish procedures for the purchase and sale of investments and the custody of the investments.⁸

Any statement or financial position distributed by the OWDA must include the fair value, as of the statement date, of all investments held by the OWDA with respect to the bill's provisions.⁹

Other duties

As part of the OWDA's duties regarding the fund, the OWDA may do both of the following:

1. Appoint or provide for the appointment of agents, consultants, independent contractors, or any other type of administrative, investment, financial, or accounting experts as are necessary, in the judgment of the Board; and
2. Buy, sell, and lease real property or interests in real property.¹⁰

H2Ohio Trust Fund: Treasurer as Executive Director

The bill specifies that the Treasurer or the Treasurer's designee must act as the Executive Director of the H2Ohio Trust Fund and must provide for the coordination of efforts between the OWDA, the H2Ohio Advisory Council, and the Treasurer.

The Treasurer, acting as Executive Director of the fund, must submit to the Director of Budget and Management, by June 1 each year, a request for surplus revenue to be transferred to the H2Ohio Trust Fund in an amount determined by the OWDA. Prior to transfer, that amount must be approved by the Controlling Board.¹¹

Under current law, by July 31 of each year, the Director of Budget and Management must determine the surplus revenue that existed on the preceding June 30. The Director must then transfer the surplus from the General Revenue Fund (to the extent of the unobligated, unencumbered balance on the preceding June 30 in excess of 0.5% of the General Revenue Fund revenues in the preceding fiscal year) to the Budget Stabilization Fund and the Income Tax Reduction Fund. Currently, the surplus is first transferred to the Budget Stabilization Fund in an

⁸ R.C. 126.601(D)(5) and (6).

⁹ R.C. 126.601(F).

¹⁰ R.C. 126.65(D) and (E).

¹¹ R.C. 126.65(A) and (B).

amount necessary for the balance of that fund to equal 8.5% of the General Revenue Fund revenues of the preceding fiscal year. The remaining surplus is transferred to the Income Tax Reduction Fund.

The bill requires the Director of Budget and Management to transfer an amount that is up to the amount requested by the Treasurer to the H2Ohio Trust Fund (after transferring money to the Budget Stabilization Fund, but before transferring the surplus to the Income Tax Reduction Fund).¹²

H2Ohio Advisory Council

The H2Ohio Advisory Council, created by the bill, is not subject to sunset review¹³ and consists of the following 18 members:

1. The Director of Agriculture (or the Director's designee);
2. The Director of Environmental Protection (or the Director's designee);
3. The Director of Natural Resources (or the Director's designee);
4. The Executive Director of the Ohio Lake Erie Commission (who serves as a nonvoting, ex officio member);
5. Two members appointed by the President of the Senate (one member of the majority party and one member of the minority party) who serve at the pleasure of the President;
6. Two members appointed by the Speaker of the House of Representatives (one member of the majority party and one member of the minority party) who serve at the pleasure of the Speaker; and
7. Ten members appointed by the Governor with the advice and consent of the Senate (one who represents the interests of counties; one who represents the interests of townships; one who represents the interests of municipal corporations; one who represents the interests of public health; two who represent the interests of business or tourism; two who represent agricultural interests; one who represent statewide environmental advocacy organizations; and one who represents institutions of higher education).¹⁴

The ten members appointed by the Governor must reflect the demographic and economic diversity of the population of Ohio. Additionally, those members must be from geographically diverse areas of Ohio. Of the initial members appointed by the Governor, five are appointed for two years and five are appointed for one year. Thereafter, terms of office for

¹² R.C. 131.44(B)(1).

¹³ R.C. 126.61(F).

¹⁴ R.C. 126.61(A).

those members are four years. The Governor may reappoint a member to the Council.¹⁵ Members appointed by the Governor to represent the interests of institutions of higher education, counties, townships, and municipal corporations do not have a conflict of interest by virtue of their service on the Council.¹⁶

The legislative members of the Council are eligible to serve only so long as they are members of their respective chamber of the General Assembly.¹⁷

The Governor must appoint a member of the Council to serve as the Chairperson of the Council and the Executive Director of the Ohio Lake Erie Commission, unless appointed to be Chairperson, serves as the Vice-Chairperson of the Council. If the Executive Director is the Chairperson, the Council must annually select a person from among its members to serve as Vice-Chairperson. A majority of the voting members of the Council constitutes a quorum and a majority vote of that quorum of the members of the Council is necessary to take action on any matter.¹⁸

All members of the Council must file a disclosure statement with the Ohio Ethics Commission. Members of the Council serve without compensation for attending Council meetings, but receive their annual and necessary traveling and other expenses incurred in the performance of their official duties in accordance with the rules of the Office of Budget and Management.¹⁹

H2Ohio Advisory Council bylaws

The bill requires the H2Ohio Advisory Council to adopt bylaws governing its operation, including bylaws that establish all of the following:

1. The frequency of meetings;
2. Procedures for reviewing annual plans submitted by the Directors of Agriculture, Natural Resources, and Environmental Protection (see below);
3. Procedures for approving or disapproving annual plans submitted by those Directors, including a process for resubmitting disapproved plans or disapproved portions of plans;
4. Procedures for applicants to apply for loans and grants from the H2Ohio Trust Fund; and
5. Procedures for notifying the public how to apply for loans and grants from the fund;
6. A statewide strategic vision and comprehensive periodic water protection and restoration strategy that sets forth the priorities for use of the fund;

¹⁵ R.C. 126.61(B)(2).

¹⁶ R.C. 126.61(E).

¹⁷ R.C. 126.61(B)(1).

¹⁸ R.C. 126.61(C).

¹⁹ R.C. 126.61(D).

7. Any other policy or procedure that the Council determines is necessary to carry out its duties.²⁰

The Council may establish a subcommittee comprised of experts in the appropriate fields of science to advise the Council.²¹

H2Ohio Advisory Council – additional duties

The Council, in coordination with the Ohio Lake Erie Commission, also must submit an annual report to the General Assembly and the Governor within 90 days after the end of each fiscal year. The report must address activities undertaken with respect to the H2Ohio Trust Fund during the preceding fiscal year, and revenues and expenses for that year.²²

OWDA disbursement of funds

The bill requires the OWDA to disburse H2Ohio Trust Fund money, in accordance with the priorities established by the H2Ohio Advisory Council and after receiving notification from the Council that a use for the fund has been approved, for any of the following purposes:

1. Grants or loans, or purchases for the development and implementation of projects and programs, including remediation projects, that are designed to address water quality priorities;
2. Funding cooperative research, data gathering and monitoring, and demonstration projects related to water quality priorities;
3. Encouraging cooperation with and among leaders from state legislatures, state agencies, political subdivisions, business and industry, labor, agriculture, institutions of higher education, environmental organizations, and water conservation districts; and
4. Other purposes, policies, programs, and priorities identified by the Ohio Lake Erie Commission in coordination with state agencies or boards responsible for water protection and water management, provided that the purposes, policies, programs, and priorities align with the Council's statewide strategic vision and comprehensive periodic water protection and restoration strategy.²³

At the end of each fiscal period, the OWDA must declare an amount of investment earnings of the fund that must be made available for disbursement in accordance with the bill's provisions. The OWDA cannot disburse an amount from the fund that is in excess of \$100 million each fiscal year.²⁴

²⁰ R.C. 126.62(A).

²¹ R.C. 126.62(B).

²² R.C. 126.63(C).

²³ R.C. 126.63(A).

²⁴ R.C. 126.63(B) and 126.65(F).

State agency plans

The Directors of the Department of Natural Resources, Department of Agriculture, and the Environmental Protection Agency must each prepare an annual plan detailing how H2Ohio Trust Fund money will be used by the agency if the OWDA disburses money to the agency. Each plan, at a minimum, must describe the following:

1. Funding priorities;
2. The specific programs, projects, or entities proposed to receive funding;
3. The internal controls and external accountability measures that will be put in place to ensure that the funding is properly used. The plans must include internal auditing mechanisms that the agency must conduct at least once every 12 months after a funded project is implemented to ensure the project achieves its intended water quality improvements; and
4. Mechanisms by which the agency will improve the water quality benefits of a funded project, or recoup funding, if an internal audit indicates that the project is not achieving its intended water quality improvements.²⁵

Each Director must deliver their respective annual plan to the H2Ohio Advisory Council by March 1 each year.²⁶ The Council must review and approve or disapprove, in whole or in part, each agency's annual plan in accordance with the Council's policies and procedures.²⁷ The OWDA cannot disburse money from the fund to an agency unless the Council approves the agency's plan, or the portion of the plan for which disbursement is sought.²⁸

Debt obligations

The bill requires the OWDA to make recommendations to the Treasurer of State regarding the issuance of obligations to generate money for the H2Ohio Trust Fund.²⁹

When requested to do so by the OWDA, the bill authorizes the Treasurer to issue obligations (also known as revenue bonds) in the amount requested by the OWDA³⁰ to pay for costs related to disbursing money from the H2Ohio Trust Fund for projects for the protection, preservation, and restoration of water quality, including projects for water pollution control and abatement.³¹

²⁵ R.C. 126.64(A).

²⁶ R.C. 126.64(B).

²⁷ R.C. 126.64(C).

²⁸ R.C. 126.64(D).

²⁹ R.C. 126.65(C).

³⁰ R.C. 126.67(B).

³¹ R.C. 126.66(H) and 126.67(A).

The revenue bonds are special obligation bonds and are not general obligations of the state. They do not constitute debt for which the full faith and credit of the state may be pledged. The holder or owner of the bonds has no right to have money obligated or pledged except for pledged revenues and other special funds provided for in the bond proceedings. Each issued bond must bear on its face a statement to that effect.³²

Net proceeds of the issued bonds must be deposited in the H2Ohio Trust Fund.³³ The Treasurer must enter into bond proceedings in the same manner as that of the proceedings entered into by the Department of Development when issuing revenue bonds for the existing Clean Ohio Revitalization Fund.³⁴

The Treasurer may pledge all, or a portion of, the pledged receipts to the payment of the debt service charges on issued bonds and for the establishment and maintenance of any reserves, as provided in the bond proceedings, and make other provisions in the bond proceedings with respect to pledge receipts. Pledged receipts means, unless otherwise provided in the bond proceedings, all of the following:

1. Repayments of loans made from the H2Ohio Trust Fund, including any interest;
2. Money received from the lease, sale, or other disposition or use of projects funded from the fund;
3. Accrued interest received from the sale of obligations;
4. Income from the investment of money in the fund;
5. Any gifts, grants, donations, or pledges, and receipts available for the payment of debt service; and
6. Additional or any other specific revenues or receipts lawfully available to be pledged, and pledged, pursuant to further authorization by the General Assembly, to the payment of debt service.³⁵

The bill authorizes the Treasurer to covenant in the bond proceedings, and those covenants are controlling, notwithstanding any other provision of law, that the state and applicable officers and state agencies, including the General Assembly, must maintain statutory authority for and cause to be collected any pledged receipts so long as any obligations issued are outstanding. The Treasurer may further secure obligations by a trust agreement between the state and a corporate trustee, which may be any trust company or bank with business in Ohio.³⁶

³² R.C. 126.67(G).

³³ R.C. 126.67(C).

³⁴ R.C. 126.66 and 126.67; See R.C. 122.658, not in the bill.

³⁵ R.C. 126.66(G) and 126.67(D).

³⁶ R.C. 126.67(E) and (F).

The bill creates the H2Ohio Bond Service Fund that consists of all money received and required by the bond proceedings, and all other money transferred or allocated to or received for the purposes of the fund, subject to any applicable provisions of the bond proceedings.³⁷

Stream Flow Monitoring Pilot Program

The bill requires the Director of Natural Resources to establish a pilot program to study the environmental impact of water withdrawals on stream flow using continuous stream flow monitoring technology. The study must conclude on or before December 31, 2021.

The Director must adopt policies and procedures for the administration and implementation of the pilot program and after the conclusion of the study, the Director must submit a report of the study's findings to the General Assembly.³⁸

Beginning on October 16, 2019, in accordance with Am. Sub H.B. 166 from the 133rd General Assembly, the Director must establish a pilot program to study the environmental impact of *oil and gas production operations* on stream flow using continuous stream flow monitoring technology. That study must conclude on or before December 31, 2020.³⁹ It is unclear how the pilot program established in this bill will impact the required Am. Sub. H.B. 166 pilot program.

HISTORY

Action	Date
Introduced	05-13-19
Reported, H. Finance	06-19-19
Passed House (90-3)	06-20-19

H0007-PH-133/ec

³⁷ R.C. 126.68.

³⁸ Section 3.

³⁹ Section 715.20, Am. Sub. H.B. 166 from the 133rd Ohio General Assembly.