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A B I L L

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2 To amend section 6111.03, to enact new section
 3 6111.561, and to repeal existing section
 4 6111.03 of the Revised Code, to require the
 5 Director of Environmental Protection to
 6 establish total maximum daily loads in
 7 accordance with stakeholder input, notice,
 8 comment and public hearing procedural
 9 requirements and by an action appealable to
 10 the Environmental Review and Appeals
 11 Commission, that the establishment by the
 12 Director of total maximum daily loads is not
 13 subject to the rule adoption, amendment, and
 14 rescission procedures in Chapters 106, 111,
 15 119, or 121 of the Revised Code, that all total
 16 maximum daily loads approved by the United
 17 States Environmental Protection Agency prior
 18 to March 24, 2015 shall remain in full force
 19 and effect subject to certain appeal rights, to
 20 require the Director to initiate rulemaking
 21 regarding total maximum daily loads, and to
 22 declare an emergency.

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

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28 **Section** 1. That section 6111.03 be amended and new section 6111.561 of
 29 the Revised Code be enacted to read as follows:

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31 Sec. 6111.03. (V) Establish a total maximum daily load (TMDL) for those waters
 32 of the state that require a TMDL and submit the established TMDL to the United
 33 States Environmental Protection Agency for approval.

34 Sec. 6111.561 (A) The director shall establish total maximum daily loads
35 (TMDLs) for those waters of the state where required by section 1313(d) of the
36 Federal Water Pollution Control Act, for each pollutant that the administrator of the
37 United States Environmental Protection Agency identifies under section 1314(a)(2) of
38 the Federal Water Pollution Control Act as suitable for such calculation. A TMDL
39 shall be established at a level necessary to achieve the applicable water quality
40 standards for which the water body is impaired incorporating allowances for seasonal
41 variations and a reasonable margin of safety which takes into account any lack of
42 knowledge concerning the relationship between effluent limitations and water quality.

43 (B) It is the intent of the general assembly that this section is remedial. A TMDL
44 submitted to and approved by the United States Environmental Protection Agency
45 prior to March 24, 2015, shall remain in full force and effect as approved, but may be
46 modified or appealed pursuant to division (C) of this section.

47 (C) In the case of a TMDL which has been submitted to and approved by
48 USEPA prior to the effective date of this section, a person may appeal such TMDL to
49 the Environmental Review Appeals Commission in accordance with Chapter 3745 of
50 the Revised Code. An appeal of a TMDL pursuant to this paragraph shall not be
51 subject to dismissal on grounds that the matter is not ripe for review. Appeals under
52 this paragraph shall be filed within thirty days of the effective date of the first permit
53 renewal issued subsequent to the effective date of this section containing an effluent
54 limit derived from a wasteload allocation established in the TMDL, or within thirty
55 days of the effective date of the director's action on a request to modify an effluent
56 limit derived from a wasteload allocation established in a TMDL that is in effect as of
57 the effective date of this section.

58 As a part of the permit renewal or permit modification requests under this section,
59 Ohio EPA shall notify the permit holder and all significant industrial users listed in the
60 permit holder's annual pretreatment program report of the existence of TMDL based
61 limits.

62 (D) The development, establishment, or modification of TMDLs after March 24,
63 2015, shall not be subject to the rule adoption, amendment, and rescission
64 procedures in Chapters 106, 111, 119, or 121 of the Revised Code.

65 (E) In the case of any TMDL proposed for submission to USEPA after March 24,
66 2015, the director shall provide notice and opportunity for input from potentially

67 affected dischargers, county soil and water conservation district offices, and other
68 interested parties (“stakeholders”) during the development of a TMDL in accordance
69 with this division:

70 (1) As used in this section, “input” means opportunity for comment, and if
71 warranted by the level of interest or the nature of the comments, shall include
72 meetings with stakeholders.

73 Notice of and opportunities for input on a TMDL shall be provided at each of following
74 stages of the TMDL development process:

75 (a) the project assessment study plan including portions of the plan that seek to
76 determine the causes and sources of impairments or threats;

77 (b) the biological and water quality study report or its equivalent;

78 (c) the loading analysis plan which may include but is not limited to, the
79 proposed modeling approach and the water quality restoration targets, goals or
80 criteria;

81 (d) the preliminary modeling results including any management choices, load
82 allocations, wasteload allocations, allowances for margin of safety and future growth,
83 and permit limits necessary to achieve a water quality target, goal, or criterion; and
84 the preliminary TMDL implementation plan establishing specific actions, schedules
85 and monitoring proposed to effectuate a TMDL.

86 (2) For TMDLs under development but not submitted to the United States
87 environmental protection agency for approval prior to the effective date of this
88 section, the director shall provide notice and opportunity for stakeholder input
89 consistent with paragraphs (E)(1)(a)-(d), except that all aspects of the TMDL that
90 have been completed prior to the effective date shall be subject to stakeholder input
91 at such time(s) that then uncompleted aspects of the TMDL are subject to the notice
92 and input required by this section; provided, however, that there shall be at least
93 two opportunities for stakeholder input.

94 (F)(1) In developing wasteload and load allocations for a TMDL, the director
95 shall consider and evaluate, at a minimum:

96 (a) the relative contribution of pollutant loading between point sources and non-
97 point sources;

98 (b) the flow dynamics, including but not limited to periodic or seasonal flow
99 variations, runoff, groundwater, and hydrologic or channel modifications;

100 (c) the degree to which point source reductions would influence attainment of the
101 applicable water quality standards for which the water body is impaired;

102 (d) the degree to which non-point source reductions would influence
103 attainment of the applicable water quality standards for which the water body is
104 impaired;

105 (e) reasonable assurances that reductions can be implemented;

106 (f) the site(s) of the impairment relative to the location of the source(s); and

107 (g) the degree to which habitat affects impairment and restoration potential.

108 (2) In developing wasteload and load allocations, pollution control measures to
109 achieve pollutant load reductions, implementation plans and schedules developed
110 thereunder, the director shall consider and evaluate, at a minimum, unless
111 inconsistent with the Federal Water Pollution Control Act, the following:

112 (a) the feasibility of available demonstrated treatment technology to achieve the
113 degree of pollutant treatment removal necessary to attain the point source reduction
114 recommended by the TMDL wasteload allocation;

115 (b) sources of funding available for point sources and non-point sources;

116 (c) alternative approaches and actions for point and nonpoint sources to achieve
117 TMDL-recommended pollutant reductions, agreements between and among point
118 and non-point sources and indirect dischargers to jointly achieve pollutant load
119 reductions, and adaptive management;

120 (d) the implementation of the recommended wasteload reductions over multiple
121 NPDES permit renewals to achieve compliance with water quality standards as
122 appropriate to balance potential economic impacts of the TMDL's recommended load
123 reductions on such sources;

124 (e) the estimated economic impact, on a categorical basis, on governmental
125 subdivisions, point sources, agricultural operations, and non-point sources; and,

126 (f) Information submitted by indirect dischargers or other interested parties
127 relating but not limited to cost, economic impact, environmental benefit, and technical

128 feasibility.

129 (G) Prior to the establishment of a final TMDL, the director shall prepare a draft
130 TMDL for the impaired water(s), which shall provide, at a minimum, an estimate of
131 the total amount of each pollutant that causes the impairment from all sources and
132 the amount of pollutants that may be added to the water of the state while still
133 allowing the water of the state to achieve and maintain applicable water quality
134 standards.

135 (H) The director shall provide public notice and an opportunity for comment on
136 the draft TMDL, and if there is significant public interest, the opportunity for a public
137 hearing. The public notice shall specify the area of any watershed to which the
138 TMDL relates, the time, date and place of the hearing if applicable, and be sent, at a
139 minimum, to all individual Ohio National Pollutant Discharge Elimination System
140 permittees that discharge into the water of the state to which the TMDL relates, all
141 significant industrial users listed in the permit holders' annual report(s), and any other
142 stakeholders who have provided input. After an opportunity for public comment has
143 expired, the director shall prepare and make available, as part of the public record, a
144 written responsiveness summary to the comments.

145 (I) If, after conclusion of the public comment process and the completion of a
146 responsiveness summary, the director determines it is appropriate to complete the
147 TMDL, the director shall do so as a final action of the director appealable to the
148 environmental review appeals commission in accordance chapter 3745 of the
149 Revised Code. An appeal of a TMDL pursuant to this paragraph shall not be
150 subject to dismissal on grounds that the matter is not ripe for review. The
151 submittal of the final TMDL to the United States environmental protection agency
152 pursuant to 1313(d) of the Federal Water Pollution Control Act is a ministerial act
153 that is not subject to appeal under chapter 3745 of the Revised Code. Any TMDL
154 that is the subject of a successful appeal pursuant to this division and for which no
155 further appeals are permitted shall be amended to conform to the final decision
156 and resubmitted to the United States Environmental Protection Agency for
157 approval. The director shall consider the existence of an appeal of a TMDL and
158 the timeline of the appeal process when establishing compliance schedules in an
159 NPDES permit to meet an effluent limit that is based on the TMDL.

160 (J) The director may modify an established TMDL or a US EPA approved

161 TMDL in accordance with the notice, comment, public hearing provisions of
162 paragraph (H) and the rules promulgated in accordance with paragraph K.

163 (K) Not later than December 31, 2018, the Director shall adopt rules addressing
164 the procedures for providing notice to interested parties and criteria for determining
165 significant public interest in TMDL development.

166 Section 2. That existing section 6111.03 of the Revised Code is hereby
167 repealed.

168 Section 3. This act is hereby declared to be an emergency measure
169 necessary for the immediate preservation of the public peace, health and safety.
170 The reason for such necessity is to enable the TMDL program to proceed in an
171 orderly and timely manner so as to protect and preserve the waters of the state.
172 Therefore, this act shall go into immediate effect.

173 Section 4. It is the intent of the General Assembly that the amendment of
174 section 6111.03 and enactment of section 6111.561 of the Revised Code are to
175 address potential implications of the holding of the Ohio Supreme Court in *Fairfield*
176 *County Board of Commissioners v. Nally*, 2015-Ohio-991, to make division (B)
177 retroactive, to exclude from the rule adoption, amendment, and rescission
178 procedures in Chapters 106, 111, 119, and 121 of the Revised Code, the
179 preparation, adoption, submittal, and administration of TMDLs, to require the
180 establishment of a TMDL in accordance with stakeholder input, notice, and public
181 hearing requirements and by a final action of the Director which is appealable to the
182 Environmental Review Appeals Commission, and to maintain in full force and effect,
183 until revised, TMDLs that have been submitted to and approved by, the United
184 States Environmental Protection Agency prior to March 24, 2015 subject to certain
185 appeal rights, and to require the Director to initiate rulemaking regarding TMDLs.

3745.03 Hearing procedures.

The environmental review appeals commission shall adopt or amend, as appropriate, regulations governing procedure to be followed for hearings before it, including but not limited to, regulations governing expedited hearings and decisions, and stays. No regulation adopted by the commission shall be effective until the tenth day after it has been adopted by the filing of a certified copy thereof with the secretary of state who shall record them under the heading "regulations of the environmental review appeals commission." The regulations shall be numbered consecutively under the heading and shall bear the date of filing. The regulations shall be public records open to public inspection.

No regulation filed in the office of the secretary of state pursuant to this section shall be amended except by a regulation which contains the entire regulation as amended and which repeals the regulation amended. Each regulation which amends a regulation shall bear the same consecutive regulation number as the number of the regulation which it amends, and it shall bear the date of filing.

No regulation filed in the office of the secretary of state pursuant to this section shall be repealed except by a regulation. Each regulation which repeals a regulation shall bear the same consecutive regulation number as the number of the regulation which it repeals, and it shall bear the date of filing.

The authority and the duty of the commission to adopt regulations under this section shall not be governed by or be subject to Chapter 119. of the Revised Code.

The commission shall have available at all times copies of all regulations of the commission which it has filed in the office of the secretary of state pursuant to this section, and shall furnish them free of charge to any person requesting them.

The commission shall maintain and keep available for public inspection, at its principal office, a current register of all appeals filed, hearings pending, its final action thereon, and the dates on which such filings, hearings, and final actions occur.