

TO: All Ohio Senate Members
FROM: Jack Shaner, Ohio Environmental Council
DATE: May 31, 2005
RE: Final Comments and Amendment Recommendations to Substitute Budget Bill (As Pending in Senate Finance Committee)

The Ohio Environmental Council congratulates the Senate for the several pro-environmental conservation initiatives included in the Substitute Budget Bill pending this morning in the Senate Finance and Financial Institutions Committee. These include both positive initiatives approved by the House, plus new ones added by the Senate:

- Adds \$1.5 million for clean up of local diesel school bus fleets
- Adds strengthened background checks for “factory farm” permit applicants
- Adds \$300,000 earmark for alternative fuels, including bio-diesel
- Adds \$750,000 to statewide trail fund
- Adds \$2 million for wildlife central support
- Keeps proposed Surface Water Protection Fee
- Maintains funding restoration for soil and water conservation

Sadly, though, the Substitute Budget Bill continues to maintain several very negative provisions added by the House – plus adds a few new ones of its own:

- Slashes funding nearly in half for local recycling and litter prevention
- Raids \$750,000 from the Energy Efficiency Loan and Grant Fund
- Weakens environmental protections for hazardous refinery materials
- Goes along with “Bulldozer Amendment” to cripple protections for waterways
- Keeps revocation of local control of fertilizer and seed labeling and use
- Continues to second-guess the OEPA’s regulation of off-spec shale and clay products
- Keeps the House provision to exempt coal mining from waterway-impact fee increase
- Persists in letting producers of hazardous waste off the hook from a fee increase
- Maintains prohibition on the state Consumers’ Counsel establishing a telephone “hot line” for utility customer inquiries and complaints

The OEC applauds the good work of the Senate, but respectfully asks Senate members to correct the Substitute bill’s negative provisions. Here is a list of priority amendment requests:

1. Protect Ohio waterways: Kill the “Bulldozer Amendment” – Homebuilders claim the state review process for waterway-impact permits is slow and unpredictable. But the public record proves otherwise: According to the Ohio EPA, in the last state fiscal year, *not a single waterway impact permit was denied*. Of the 1,034 wetland/stream/lake-destruction projects approved by the state that year, 924 (89%) were automatically approved an existing fast-track review. If anything, the General Assembly should be *strengthening* protections for our state’s valuable water resources, not *weakening* them. But unless the Ohio Senate removes the “Bulldozer Amendment,” many of Ohio’s remaining marshes, bogs, fens and other wetlands will be targeted for destruction. Even State Scenic Rivers and small lake protections are weak-

ened. The Bulldozer Amendment will:

- Water down the requirement to *avoid impacts* to natural wetlands in favor of *destroying natural wetlands* and *constructing man-made wetlands*.
- Strip protections for Ohio's best waters, including State Scenic Rivers.
- Allows developers to attempt to mitigate the destruction of a waterway by constructing an artificial wetland or stream on the other side of the state from the original impact site.
- Enable companies to evade protective efforts altogether by timing their permit applications during periods when tell-tale wetland vegetation is dormant.
- Limit public comment on proposed waterway-impact permits to only 15 days.

Wetlands provide many important benefits to people and wildlife. Wetlands help absorb floodwaters and filter harmful pollutants. Wetlands provide critical habitat to rare and endangered species. Wetlands provide people with opportunities for hunting, fishing, trapping, and nature study. But once destroyed, these precious natural wonders can never be fully replaced. There is no justification for this reckless assault on our waterways. Protect — *not harm* — our wetlands and waterways. Kill the Bulldozer Amendment.

2. Restore vital funding to recycling and litter prevention – Millions of Ohioans rely upon 500 state-supported local drop-off centers and 1,700 local curbside recycling programs to recover materials that otherwise would be destined for a landfill. Recycling saves energy, saves taxpayer money, and saves natural resources. But the Substitute Budget Bill will slash funding for local recycling and litter prevention by nearly half. (Governor's budget=\$7 million per FYI for local recycling and litter prevention grants; House-passed budget=\$1 million per FY; Senate Substitute Budget Bill=only \$2.75 million per FY) Without state funds, nearly half of Ohio's 88 counties likely will stop altogether or cut severely local recycling and litter prevention efforts. Why is the Ohio Senate slashing recycling and litter prevention support? Many revenue sources exist, including tires, solid waste, hazardous waste, computers, and electronic equipment. Most Ohioans are willing to pay a small fee increase on materials that contribute to the waste stream. Please restore state funding for recycling and litter prevention.

3. Protect groundwater from potential contamination, part 1: Strip House-approved amendment that redefines solid waste – In a triumph of political science over natural science, this House amendment second guesses Ohio EPA scientists and reclassifies certain unfired or unglazed structural shale and clay products that are off-specification and supposedly “nontoxic, non-hazardous” as solid waste. This loose language poses a potential risk to groundwater from arsenic and other hazardous materials that can leach from certain clay and shale products that have not been fully fired or glazed during industrial processing. This Senate should dispose of this amendment.

4. Protect groundwater from potential contamination, part 2: Strip Senate amendment to exempt certain refinery catalysts from definition of solid waste – This amendment appears to attempt to reclassify certain hazardous, spent petroleum refinery products, thereby exempting these toxic materials from more protective waste handling, storage, treatment, and disposal laws. In 1998, the United States EPA classified such spent petroleum catalysts as hazardous materials because they “may pose a substantial or potential hazard to human health or the environment” and because of the “substantial risk to consumers of groundwater associated with releases from on-site and off-site Subtitle D land-filling due to benzene and arsenic.” Even if the General Assembly succeeds in reclassifying this hazardous material as solid waste, the USEPA will continue to regulate it as hazardous material, which potentially would threaten the delegation of certain federal programs to the Ohio EPA.

5. Protect consumers' rights, part 1: Strip the House-added amendment to preempt local control of seed and fertilizer – This House amendment revokes local control over the registration, labeling, sale, storage, distribution, use, and application or planting of fertilizer and seed. Consumers have a right to know about safe application practices for fertilizers and whether the food they eat or grow is subject to unknown consequences from toxic-sludge waste fertilizers or from cross-contamination by genetically modified organisms. Local governments should be able to provide minimum standards for safe fertilizer application practices in order to protect our waterways and our health. But thanks to another secret amendment adopted without debate by the Ohio House, local governments will be blocked from controlling the labeling, storage, or use of fertilizer. The amendment even extends to seeds. The unknown author of this amendment has yet to disclose their intended beneficiary nor explain why local governments cannot be trusted with local control. This amendment is a classic solution in search of a problem. At a minimum, it deserves a full debate in a separate bill.

6. Protect consumers' rights, part 2: Strip the House-added amendment to prohibit the Consumers' Counsel from maintaining its consumer hot-line – Every week, more than 2,000 Ohioans call a consumer hot-line maintained by the independent Ohio Consumers' Counsel to ask or complain about utility company practices. Incredibly, the Ohio House abruptly voted to *prohibit* the state's consumer watchdog from maintaining a consumer hot line. Instead, it wants the utility-cozy Public Utilities Commission to field these inquiries – the same agency that has earned a negative reputation of frequently siding with investor-owned utility company interests over consumer interests. The House move will not save the state general revenue fund any money because the Consumers' Counsel is funded by a small assessment on utility bills. Any cut to the Consumers' Counsel budget goes back to the utilities, so cutting its call center will not help either utility customers or taxpayers. It will only limit this independent consumer watchdog's advocacy on behalf of residential consumers. This is another reckless amendment that should be excised.

7. No special favors, part 1: Strip the House amendment that exempts coal mining from the long overdue Surface Water Protection Fee increase – The House approved the Governor's proposed "Surface Water Protection Fee," a long overdue restructuring of water quality certification permit fees collected on homebuilders, mining and utility companies, highway contractors, and others will grant some tax relief to GRF taxpayers and shift the burden of funding this important program to where it belongs: on the industries that profit from impacting wetlands and headwater streams. Under the existing fee schedule (\$15-\$200 per permit), permit holders picked up less than half a penny on the dollar (\$5,600) of this \$1 million program in FY 04, placing an unfair burden on general taxpayers. It is altogether fair to demand that enterprises that profit from impacting waterways bear the cost of this "user fee" -- not the general taxpayer. The House, however, exempted the coal mining industry from the fee increase; the Senate should not grant such preferential treatment. It is true that the law requires the coal mining industry to reclaim lands and waterways impacted by mining – which is more than homebuilders must do. Thus, it would be sensible to charge mining companies a lower fee rate. Still, coal mining should not get a free pass altogether from a fee increase – and pay only \$200 for a waterway impact permit.

8. No special favors, part 2: Raise hazardous waste fees – The Senate, like the House, is asking in its Substitute Budget Bill for fee increases on solid waste and construction and demolition waste – fees paid by the public and Main Street business. But, the Senate, like the House and the Governor, lets off the hook from a fee increase the generators of toxic, hazardous waste. Everyone from individual households to large factories generates waste and all of us should pay our fair share to reduce, reuse, recycle, and, when necessary, safely dispose of our waste. The list of wastes under consideration for a fee increase, however, has a glaring omission: hazardous waste. Industry reported the release of 289 million pounds of toxic wastes in 2003. The budget bill asks the public, local governments, and small business to share that burden of environmental protection and natural resource conservation, but lets the industries that generate more than 289 million pounds of dangerous, toxic waste each year off the hook from a fee increase. A fee mechanism already exists to collect hazardous waste. This is an opportunity for the Senate to demonstrate fiscal fairness and environmental leadership.

9. Stop the \$750,000 raid from the Energy Efficiency Loan and Grant Fund – One of the few pro-consumer provisions included in the electric utility deregulation bill (S.B. 3) in 1999 was a \$10 million low-interest loan fund for energy efficiency improvements for any energy customer: homeowners, Main Street businesses, factories, agriculture, and schools, churches and non-profit organizations. The loan fund has been slow to break out. Still, this is no reason to raid this fund for unrelated rail development projects and industrial site preparation.

Thank you for considering our perspective and recommendations.