



Ohio Environmental Council [Action Fund]

June 29, 2021

The Honorable Mike DeWine
Governor of Ohio
77 S. High St, Fl. 30
Columbus, OH 43215

Dear Governor DeWine,

The Ohio Environmental Council (OEC) Action Fund actively works to protect and restore Ohio's natural resources to strengthen the quality of life for families and communities, and improve the sustainability of Ohio's natural environment and our democracy. In furtherance of that mission we write today to urge you to remove certain provisions from Amended Substitute House Bill 110 (HB 110) that would have a negative effect on Ohio's economic and environmental health, are not in the public interest, and thus should be vetoed.

In February, you introduced one of the most pro-environment and pro-conservation budgets seen in Ohio in decades. The Executive proposal included significant funding to ensure healthier communities today while preserving our natural treasures for tomorrow. Further, it showed that this Administration prioritized access to clean, safe, and affordable drinking water, and more and better public lands. However, through the legislative process, the House of Representatives, Senate, and Conference Committee amended, added, and revised your proposed budget in ways that betray the pro-environment and pro-conservation budget our state deserves. Please find below the provisions within HB 110, and our justifications for each line-item veto request.

DNRCD36 - Oil & Gas Land Management Commission

While the bill presented to you maintains and even expands funding for the maintenance, upkeep, and expansion of our beloved Ohio State Parks and natural areas, it also contains an amendment that fast-tracks drilling in these same lands. The state lands leasing amendment, added by the House and maintained with minor amendments in the Senate, threatens public health, outdoor recreation, and a strong environment by aggressively fast-tracking oil and gas development in Ohio's state public lands. The provision weakens public oversight by eliminating leasing commission consultation from state agency leasing decisions and makes it the policy of the state to "promote" industrial oil and gas drilling in our state parks.

Specifically, Sections 155.30 through 155.36 seek to significantly alter the Oil and Gas Leasing Commission and public lands leasing process established in 2011 (HB 133; R.C. 1509.70 - 1509.77). The leasing commission process established nearly ten years ago is not perfect, but at the very least it established some mechanisms for transparency, objectivity, public oversight, and public involvement. This egregious amendment to that process eliminates those checks and balances and in so doing breaks promises made to the public that have stood for nearly ten years.

The amendment's most egregious provision is that it is now state policy to "promote" drilling in state lands. Specifically, Section 155.31 changes state policy from "providing access and support" for state public lands oil and gas development to "promote" said development. This seemingly small change alters the work of the Commission from determining if we allow drilling in our parks to how quickly can we drill our parks.

No public testimony was offered by proponents of this amendment to explain the reasoning behind any change to the commission's agreed process nor the change for the state's policy to be the promotion of industrial drilling in our state parks. There was no response from legislators nor industry to the scores of testimony opposing these provisions. The state lands leasing commission process was designed in 2011 to be public facing and inclusive of the voices and opinions of all users of our parks. The way this amendment found its way to the final version of HB 110 betrays the ideals of a transparent and public process, and destroys public faith that the process to allow drilling in our state parks will be inclusive. It is impossible to judge whether the changes made to the decade-old compromise benefits the public without a public discussion on the merits. If these amendments are necessary they should be part of a publicly debated stand-alone bill.

Ohioans deserve clean air and safe experiences in our state parks and state public lands. Ohioans also deserve to be part of the decision making process that impacts property they own and enjoy.

Therefore, a veto of this provision is in the best public interest.

SENCD2 - General Assembly intervention in lawsuits

After all of the public testimony concluded in HB 110, the Senate's omnibus amendment added language to substantially quell lawsuits to challenge unconstitutional laws, calling into question the concept of separation of powers by pitting the executive branch's power to enforce the laws that the legislature passes. Specifically, HB110 proposed Section 101.55:

- 1) Allows the House of Representatives, the Senate, and the General Assembly as a whole to intervene at any time in an action in state OR federal court that: (1) Challenges the constitutionality of a statute, facially or as applied, (2) challenges a statute as violating or preempted by federal law, or (3) otherwise challenges the construction or

validity of a statute and can obtain legal counsel other than the Attorney General to represent them;

- 2) Requires the Attorney General to obtain legislative approval before compromising or settling an action brought against the state for injunctive relief or for which there is a proposed consent decree; and
- 3) Provides that only the speaker of the Ohio House or the president of the Ohio Senate shall intervene in redistricting lawsuits and use public funding to do so.

OEC Action Fund opposes this proposed section due to the impact it will have on future litigation (especially environmental litigation) and the judicial system as a whole. The mere threat of a court allowing the General Assembly to intervene in cases where an individual Ohioan or a small Ohio business is already up against a state executive agency **and** the office of the Ohio Attorney General, is enough to stop otherwise important cases from seeing the courtroom. If those cases do come, the ability for the General Assembly to veto a proposed settlement will mean that neither of the original parties will wish to seek settlement resulting in longer and more costly litigation. Furthermore, allowing intervention as of right would most likely unduly delay any and all proceedings where the General Assembly seeks to become a party. All of this, too, done with funding from the state coffers that dwarf many plaintiffs' legal budget. Utilizing the judicial system in a way to force plaintiffs to expend unnecessary resources or be forced to dismiss otherwise colorable claims, should not be the business of the Ohio General Assembly.

What is most egregious, however, is the provision's redistricting language which upends the bipartisan redistricting processes Ohio voters overwhelmingly reformed in 2018, and hands only the majority party an unwarranted seat at the table when Ohio's Supreme Court reviews alleged gerrymandering. The amendment sends a clear signal: some legislators in the General Assembly don't intend to create our new maps in good faith and cannot be trusted to ensure a thorough and transparent redistricting process. This provision gives the majority party in the General Assembly unprecedented power in the redistricting process and in judicial actions at large, and to the detriment of Ohioans and the other elected members of our state government.

Therefore, a veto of this provision is in the best public interest.

Thank you for your consideration of our perspective and the justification for the aforementioned items for line-item veto. If you have any questions on either of these provisions, please do not hesitate to contact me.

Sincerely,

Heather Taylor-Miesle
President