



Bill Rowland

Final Analysis
Legislative Service Commission

Am. S.B. 20
123rd General Assembly
(As Passed by the General Assembly)

Sens. Cupp, White, Wachtmann, Carnes, Mumper, Nein, Latta, Armbruster, Drake

Reps. Brading, Core, Krebs, Harris, Metzger, Haines, Buehrer, Damschroder, Jordan, Terwilleger, Distel, Hartnett, Taylor, Ogg, Householder, Stapleton, Hollister, Buchy, Hoops, Williams, Netzley, Vesper, Willamowski, Hood

Effective date: *

ACT SUMMARY

- Defines "historically channelized watercourse" as the portion of a watercourse on which any part of specified types of improvements was constructed pursuant to existing soil and water conservation or ditch laws or similar state laws that preceded them.
- States that a historically channelized watercourse provides technical, social, and economic benefits, and precludes the Director of Environmental Protection from requiring further antidegradation review of a historically channelized watercourse upon making specified findings.
- Requires, where appropriate, the Director of Natural Resources and, if applicable, the Director of Transportation and the board of directors of a conservancy district to make recommendations to a county engineer regarding the use of best management practices in the construction of an improvement under the ditch statutes.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

CONTENT AND OPERATION

Antidegradation review requirements for historically channelized watercourses

Background

Pursuant to the requirements of the federal Clean Water Act, the Director of Environmental Protection has established an antidegradation policy that is applicable to surface waters of the state. The Clean Water Act requires each state to classify the waters within the state according to their intended use. The state then must establish policies to maintain and protect the level of water quality that is necessary to protect those existing uses. However, federal law authorizes a state to allow lower water quality under certain circumstances, provided that existing uses continue to be protected and certain procedural requirements are met. Ohio's antidegradation policy has been established pursuant to those provisions.

Under the antidegradation policy, the Director may allow an increase of pollutants into a receiving body of water following a review of the technical, social, and economic need to do so. The person who wishes to conduct the activity that will cause the increase must provide information for the Director to review. Public notice of the antidegradation review is required. Any increase of pollutants into the body of water that is so approved cannot interfere with the water's existing use.

The act

The act defines "historically channelized watercourse" as the portion of a watercourse on which an improvement was constructed pursuant to existing soil and water conservation or ditch laws or a similar state law that preceded any of those laws and authorized such an improvement. (Sec. 6111.01(M).) For purposes of the act, "improvement" means all of the following:

- (1) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;
- (2) A levee or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water; and
- (3) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run.

For purposes of Ohio's antidegradation policy, the act states that a historically channelized watercourse provides technical, social, and economic benefits. It then precludes the Director from requiring further antidegradation review during the review of an application for and the issuance or denial of a permit under the state Water Pollution Control Law or a water quality certification under section 401 of the Federal Water Pollution Control Act (i.e., Clean Water Act) if the Director makes certain findings. Specifically, after public notice and opportunity for comment, and after a public hearing if significant public interest is shown, the Director must find that all of the following apply:

(1) Work is necessary to restore or maintain a drainage or other improvement provided by a historically channelized watercourse;

(2) The work is performed pursuant to requirements established by the supervisors of the local soil and water conservation district or a petition filed under the ditch statutes;

(3) Without the work, flooding threatens public health and safety or may result in significant damage to public or private property;

(4) The work will not result in the loss of designated or existing beneficial uses as those are described in rules adopted under the Water Pollution Control Law;

(5) The work will not harm or interfere with the protection of federal or state designated endangered or threatened species;

(6) The historically channelized watercourse is not designated in rules adopted under the Water Pollution Control Law as coldwater habitat, exceptional warmwater habitat, or a state resource water;

(7) If information is available concerning resident fishery or macroinvertebrate communities, or both, in the historically channelized watercourse, the historically channelized watercourse does not support a particularly diverse or unique warmwater habitat as defined in rules adopted under the Water Pollution Control Law;

(8) Plans for the work have been submitted to the applicable soil and water conservation district; and

(9) A storm water runoff plan has been developed for the watershed prior to or during planning and design of the work and the work is consistent with the plan. (Sec. 6111.12(C).)

Best management practices for improvements under the ditch statutes

Under the continuing ditch statutes, when a petition for the establishment of an improvement has been approved by a board of county commissioners, the board must certify to the county engineer a copy of the board's findings and orders of the board in favor of the improvement.¹ The engineer must prepare maps, profiles, and plans for the improvement and must submit copies of the plans to the Director of Natural Resources, the Director of Transportation when a state highway is affected, and the board of directors of any conservancy district within which any part of the lands or streams affected by the proposed improvement may lie. Those officials must review the plans and file a report with the county engineer indicating approval or file a report with recommendations. The act requires the approval or report with recommendations to include, where appropriate, recommendations regarding the use of best management practices that are consistent with the original prayer of the petition for the improvement. (Sec. 6131.14.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 20
Reported, S. Energy, Natural Resources, & Environment	03-25-99	p. 241
Passed Senate (32-0)	04-13-99	pp. 277-278
Reported, H. Energy & Environment	06-10-99	pp. 823-824
Passed House (97-2)	06-16-99	pp. 841-844
Senate concurred in House amendments (33-0)	06-22-99	pp. 644-645

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¹ For purposes of the ditch laws, "improvement" is defined to include, in addition to the activities discussed above under, "Antidegradation requirements...; The act," the location, construction, reconstruction, reconditioning, widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse, or floodway and the vacating of a ditch or drain.