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Bill Analysis
Legislative Service Commission

S.B. 20
123rd General Assembly
(As Introduced)

Sen. Cupp

BILL SUMMARY

- Defines "historically channelized watercourse" as a watercourse that is subject to an improvement, as defined in the ditch statutes, and that has been subject to an improvement for at least 20 years.
- 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.

CONTENT AND OPERATION

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 bill

The bill defines "historically channelized watercourse" as a watercourse or portion of a watercourse that is subject to an improvement and that has been subject to an improvement for at least 20 years. (Sec. 6111.01(M).) For purposes of the bill, "improvement" has the same meaning as in the ditch statutes and includes all of the following:

(1) 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;

(2) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;

(3) 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;

(4) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run; and

(5) The vacating of a ditch or drain.

For purposes of Ohio's antidegradation policy, the bill 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 subject to requirements established by the supervisors of the local soil and water conservation district or is the subject of 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 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; and

(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. (Sec. 6111.12(C).)

HISTORY

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