Eric Vendel *Legislative Service Commission*

Am. Sub. H.B. 218

125th General Assembly
(As Passed by the House)

Reps. Grendell, Martin, Young, Callender, Kilbane, Redfern, Jerse, Hollister, Setzer, Buehrer, Carmichael, Cates, Collier, Daniels, DeBose, Distel, Fessler, Flowers, Gibbs, Gilb, Hartnett, Husted, Jolivette, Kearns, Key, Koziura, Latta, Olman, T. Patton, Schaffer, Schmidt, Schneider, Seitz, Sferra, Trakas, Walcher, Willamowski

BILL SUMMARY

Determination of shoreline property boundaries and rights of littoral owners

- Revises the declaration of the boundaries of the land and waters of Lake Erie that are within the public trust by specifying that the boundaries extend from where the waters of Lake Erie make contact with land to the international boundary line between the United States and Canada.

- Specifies by definition that littoral owners have the right to make reasonable use of the submerged lands and waters fronting their land, including construction of piers, fills, breakwalls, or wharves, for the purpose of accessing and using the waters of Lake Erie for navigation, fishing, recreation, or other purposes, including protecting property from erosion, launching and storing watercraft, and wharfing out to navigable waters.

Submerged lands leases and permits for developments and improvements for commercial use

- For purposes of the submerged lands leases and permits program, revises the definition of "territory" to mean the waters and lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled between the ordinary high water mark and the international boundary line with Canada, and defines "ordinary high water mark."

- Limits the application of the submerged lands leases and permits program to developments and improvements for commercial use, and defines "commercial" to mean profit-seeking production, buying, or selling of any good, service, or other product.

- Requires a lease entered into or a permit issued on and after the bill's effective date to be for a period of time that is equal to the life of the development or improvement for commercial use that is the subject of the lease or for which a permit was issued, as applicable.

- Requires the Director of Natural Resources to adopt rules establishing the fee for a submerged lands permit in accordance with rules the Director must adopt under the bill, provided that the fee cannot exceed $500, and states that a permit need not be renewed.

- Requires all of the rentals and fees received under the submerged lands leases and permits program to be paid from the Lake Erie Submerged Lands Fund to the Department of Natural Resources for the administration of the coastal management program, and authorizes the Department to purchase land for public access to Lake Erie and to make grants to a municipal corporation, county, or port authority having shoreline property within its geographical boundaries.

- Requires an additional permit for any changes in structures, facilities, or buildings, for any improvements, or for any changes or expansion in uses, but prohibits the Director from requiring a permit for the rehabilitation of a structure, facility, or building for which a permit previously was issued.

Termination or amendment of submerged lands leases

- Allows a person who has entered into a submerged lands lease under existing law and who is exempt from the lease requirements under the bill to request the state to terminate or amend the lease, and requires the Director to promptly comply with and take all steps that are necessary to implement the request in a timely manner.

- Requires a littoral owner, upon the expiration or termination of a lease, to pay an administrative fee in an amount determined by the Director not to exceed $200, and requires the fee to be deposited to the credit of the Lake Erie Submerged Lands Fund.

Erosion control construction permits and permits for developments or improvements not for commercial use

- Requires the Director of Natural Resources rather than the Chief of the Division of Water to issue permits for the construction of erosion control structures.

- Combines requirements for permits for developments or improvements not for commercial use between the ordinary high water mark and the international boundary line with Canada with the erosion control construction permit program, thus replacing the existing submerged lands leases and permits requirements for noncommercial uses.

- Specifies circumstances under which an application for such a permit is not required to include detailed plans and specifications prepared by a professional engineer.

- Requires the Director to adopt rules establishing a fee schedule that is based on the total square footage of the structure, development, or improvement for which a permit is to be issued, and states that a fee on the schedule cannot exceed $500.

- Requires the Director to notify owners of adjacent littoral real property when a permit application is filed, and establishes a 30-day comment period concerning the application.

- States that nothing in the provisions governing these permits can be construed as determining the boundary of the state's ownership of its portion of Lake Erie.

Application procedures for submerged lands permits for improvements or developments for commercial use and for permits for erosion control structures and improvements or developments not for commercial use

- Establishes procedures for the submission and review of applications for submerged lands permits for improvements or developments for commercial use and for permits for erosion control structures and improvements or developments in the area of the territory for other than commercial use that are nearly identical.

Permit and Lease Fund

- Requires money in the Permit and Lease Fund to be used in part for the provision of technical assistance on shore erosion control measures to shoreline property owners and for purchase of land for public access to Lake Erie.

- Authorizes money in the Permit and Lease Fund to be used to make grants to a municipal corporation, county, or port authority having Lake Erie shoreline property within its geographical boundaries.

Director's right of entry on coastal lands

- Authorizes the Director and any employee of the Department to enter on lands to conduct surveys and inspections for the purposes of the law governing coastal management and coastal erosion, provided that notice to the owners is given and other requirements are satisfied.

Coastal management program

- Revises the definition of "coastal management program."

- Revises the definition of "coastal management program document," and requires the Director to notify by mail the members of the Lake Erie Coastal Advisory Council created by the bill prior to making changes to the document and to consult with the Council prior to adopting rules governing the coastal management program.

- Revises one of the purposes for which the Director may award coastal management assistance grants.

Appeals

- Specifies that an adjudication hearing held or an appeal brought under the Coastal Management Law must be in the county in which the property that is the subject of the final administrative act of the Director or the subject of the appeal, as applicable, is located.

Penalties

- Decreases the maximum fine imposed for a violation of the law governing coastal erosion from $1,000 to $500 for each offense through the application of current law to the bill.

Elimination of Division of Real Estate and Land Management's coastal management authority

- Eliminates the requirements that the Division of Real Estate and Land Management in the Department administer the coastal management program, submerged lands leases and permits program, and submerged lands preserves program on behalf of the Director, thus providing for the Director's direct administration of those programs.

Transfer of Chief of Division of Water's coastal erosion authority to Director

- Requires the Director, rather than the Chief of the Division of Water, to administer the law governing coastal erosion.

Advisory councils

- Abolishes the Submerged Lands Advisory Council.

- Abolishes the Coastal Resources Advisory Council, creates the Lake Erie Coastal Advisory Council with somewhat similar membership and nearly identical duties, and requires the Governor rather than the Director of Natural Resources to appoint most of the members.

Technical changes

- Renumbers certain sections of the Revised Code, and makes other technical changes.

TABLE OF CONTENTS

Determination of shoreline property boundaries and rights of littoral owners 6
Submerged lands leases and permits for developments and improvements for commercial use 7
Consideration for lease 8
Fee for permit 8
Duration of leases and permits 8
Lake Erie Submerged Lands Fund 9
Taxes and assessments 9
Changes in structures, improvements, or changes or expansions in uses under a lease or permit 9
Termination or amendment of submerged lands leases 10
Erosion control construction permits and permits for developments or improvements not for commercial use 10

Application procedures for submerged lands permits for improvements or developments for commercial use and for permits for erosion control structures and improvements or developments not for commercial use....12
Permit and Lease Fund....13
Director's right of entry on coastal lands....13
Coastal management program....14
Definition of "coastal management program"....14
Coastal erosion areas....14
Coastal management program document....14
Rules governing program....15
Coastal management assistance grant program....15
Appeals....16
Penalties....17
Elimination of Division of Real Estate and Land Management's coastal management authority....17
Transfer of Chief of Division of Water's coastal erosion authority to Director....17
Advisory councils....19
Elimination of Submerged Lands Advisory Council....19
Elimination of Coastal Resources Advisory Council and creation of Lake Erie Coastal Advisory Council....19
Technical changes....21

CONTENT AND OPERATION

Determination of shoreline property boundaries and rights of littoral owners

Current law declares that the waters of Lake Erie consisting of the territory within the boundaries of the state, extending from the southerly shore of Lake Erie to the international boundary line between the United States and Canada, together with the soil beneath and their contents, belong to the state as proprietor in trust for the people of the state for the public uses to which they may be adapted. The law subjects that ownership to the powers of the United States government, to the public rights of navigation, water commerce, and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing pass their lands. The bill first revises those boundaries by declaring that the waters of Lake Erie consisting of the territory within the boundaries of the state, extending from where the waters of Lake Erie make contact with land to the international boundary line between the United States and Canada, together with the soil beneath and their contents, belong to the state. (Sec. 1506.10(B)(1).)

Under existing law, any artificial encroachments by public or private littoral owners, which interfere with the free flow of commerce in navigable

channels, whether in the form of wharves, piers, fills, or otherwise, beyond the natural shoreline of those waters, not expressly authorized by the General Assembly cannot be considered as having prejudiced the rights of the public in that domain. The bill instead provides that any artificial encroachments by public or private littoral owners that interfere with the free flow of commerce in navigable channels, whether in the form of wharves, piers, fills, or otherwise, beyond where the waters of Lake Erie make contact with land, not expressly authorized by the General Assembly cannot be considered as having prejudiced the rights of the public in that domain. (Sec. 1506.10(B)(1).)

The bill states that the General Assembly declares that property owners on Lake Erie have the right to exercise littoral rights. However, the exercise of those rights is subject to all applicable provisions of the Revised Code. (Sec. 1506.10(B)(2).) The bill defines "littoral rights" to mean the rights of littoral owners to make reasonable use of the submerged lands and waters fronting their lands, including the construction of such things as piers, fills, breakwalls, or wharves, for the purpose of accessing and using the waters of Lake Erie for navigation, fishing, recreation, or other purposes, including, but not limited to, protecting property from erosion, launching and storing watercraft, and wharfing out to navigable waters (sec. 1506.10(A)).

Submerged lands leases and permits for developments and improvements for commercial use

Under existing law, upon application of any person who wants to develop or improve part of the territory (see below), whenever the state acting through the Director of Natural Resources determines that any part of the territory can be developed and improved or the waters of the territory used as specified in the application without impairment of the public right of navigation, water commerce, and fishery, the Director may lease all or any part of the state's interest in it to the applicant or issue a permit for that purpose. The bill generally retains the requirement that a person obtain a lease or permit for such purposes, but limits its application to developments or improvements for commercial use. In addition, the bill adds that such purposes cannot impair the public right of recreation. (Sec. 1506.11(B).) Under the bill, "commercial" means profit-seeking production, buying, or selling of any good, service, or other product (sec. 1506.01(N)). "Territory" currently means the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada. The bill revises the definition of "territory" to mean the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying the waters of Lake Erie and now artificially filled, between the ordinary high water mark and the international boundary line with Canada.

(Sec. 1506.11(A)(1).) "Ordinary high water mark" means the ordinary high water mark of Lake Erie that is established by the United States Army Corp of Engineers (sec. 1506.01(J)). In addition, the bill states that use of the ordinary high water mark must be for the administration of the provisions governing submerged lands leases and permits for commercial use and cannot be construed to determine any type of property boundary (sec. 1506.11(A)(2)).

Consideration for lease

Under current law, if the Director finds that a lease may be entered into with the applicant or a permit may be issued to the applicant, the Director must determine the consideration to be paid by the applicant. The consideration must exclude the value of the littoral rights of the owner of land fronting on Lake Erie and improvements made or paid for by the owner of land fronting on Lake Erie or that owner's predecessors in title. The bill applies this provision to leases only and eliminates the exclusion of the value of the littoral rights of the owner of land and improvements made or paid for by the owner or that owner's predecessors in title in determining the consideration. (Sec. 1506.11(E).)

Fee for permit

Under the bill, if the Director finds that a permit may properly be issued to the applicant, the Director must determine the fee to be paid for the permit in accordance with the procedure established in rules adopted under the bill. The applicant must pay that fee. (Sec. 1506.11(E).) Current law requires the Director to adopt rules for the implementation, administration, and enforcement of the coastal management program and other provisions of the Coastal Management Law. The bill requires the Director to adopt rules establishing a procedure for determining the amount of the fee to be paid for such a permit. However, the fee cannot exceed $500. (Sec. 1506.02(A)(3).)

Duration of leases and permits

Currently, a lease or permit may be for such periods of time as the Director determines. The bill eliminates the provision under which a lease may be for such periods of time as the Director determines and states that a permit need not be renewed. In addition, on and after the bill's effective date, a lease entered into or a permit issued must be for a period of time that is equal to the life of the development or improvement for commercial use that is the subject of the lease or for which a permit was issued, as applicable. (Sec. 1506.11(E).)

Lake Erie Submerged Lands Fund

Existing law requires rentals received under a lease or permit to be paid into the state treasury to the credit of the Lake Erie Submerged Lands Fund. Of the rentals, 50% must be retained by the Department of Natural Resources for administration of the leases and permit program and for the coastal management assistance grant program, and 50% must be paid to the appropriate municipal corporation, county, or port authority. The bill requires all of the rentals or fees to be distributed to the Department for the administration of the coastal management program. Money in the Fund also may be used for grants to a municipal corporation, county, or port authority having shoreline property within its geographical boundaries and for purchase of land for public access to Lake Erie. (Sec. 1506.11(E).)

Taxes and assessments

Current law provides that if any taxes or assessments are levied or assessed upon property that is the subject of a submerged lands lease or permit, the taxes or assessments are the obligation of the lessee or permit holder. The bill instead provides that if any taxes or assessments are levied or assessed upon a structure, rather than property, that is the subject of such a lease or permit, the taxes or assessments are the obligation of the lessee or permit holder. (Sec. 1506.11(H).)

Changes in structures, improvements, or changes or expansions in uses under a lease or permit

Existing law states that if a lease or permit requires the lessee or permit holder to obtain the approval of the Department or any of its divisions for any changes in structures, facilities, or buildings, for any improvements, or for any changes or expansion in uses, a lessee or permit holder cannot change any structures, facilities, or buildings, make any improvements, or expand or change any uses unless the Director first determines that the proposed action will not adversely affect any current or prospective exercise of the public right of recreation in the territory and in the state's reversionary interest in any territory leased or permitted. The bill eliminates the reference to the divisions of the Department. Further, the bill requires the lessee or permit holder to receive an additional permit for any changes in structures, facilities, or buildings, for any improvements, or for any changes or expansion in uses. However, the Director cannot require a permit for the rehabilitation of a structure, facility, or building for which a permit previously was issued under the submerged lands lease and permit program. (Sec. 1506.11(I).)

Termination or amendment of submerged lands leases

The bill requires the Director, not later than 60 days after its effective date, to provide notice by certified mail to all persons who have entered into a lease with the state or who have been issued a permit prior to the bill's effective date of the right to make a request to terminate a lease if the development or improvement for which the lease was entered into was for other than commercial use. Beginning 120 days after receipt of the notification, a littoral owner may request the state to terminate any such lease. On the date of the termination request, the lease is terminated, and the lessee is released from all obligations under it. If a lease is terminated or expires, the littoral owner must pay an administrative fee in an amount determined by the Director, provided that the fee cannot exceed $200. The Director must deposit the fee in the state treasury to the credit of the Lake Erie Submerged Lands Fund. In addition, on and after the bill's effective date, a littoral owner may request the state to amend a lease that was entered into with the state prior to the bill and any associated fees to include only territory that was developed or improved for commercial use. Upon receipt of a request to terminate or amend a lease, the Director promptly must comply with and take all steps that are necessary to implement the request in a timely manner. (Section 3.)

Erosion control construction permits and permits for developments or improvements not for commercial use

Current law prohibits a person from constructing a beach, groin, or other structure to control erosion, wave action, or inundation along or near the Ohio shoreline of Lake Erie, including related islands, bays, and inlets, without first obtaining a shore structure permit from the Chief of the Division of Water in the Department. The bill revises the permit requirement by requiring a permit to be obtained for construction of the specified structures for the purpose of arresting, as well as controlling, erosion, wave action, or inundation. In addition, the bill prohibits a person from developing or improving part of the territory for other than commercial use without first obtaining a permit. (Sec. 1506.40(B).) Thus, this permit requirement replaces the existing submerged lands leases and permits requirements for noncommercial uses. The bill requires the permit to be obtained from the Director rather than from the Chief. (Sec. 1506.40(B).)

"Territory" has the same meaning as in the submerged lands leases and permits provisions of the Coastal Management Law (see above) (sec. 1506.40(A)(1)). That definition includes a reference to "ordinary high water mark." The bill states that the use of the ordinary high water mark must be used for the administration of the provisions governing this permit and cannot be construed to determine any type of property boundary. (Sec. 1506.40(A)(2).)

In addition, the bill eliminates the references to a "shore structure permit" and instead refers merely to a "permit" (sec. 1506.40(A)). Accordingly, the bill eliminates the definition of "shore structure." Current law defines "shore structure" to include, but not be limited to, beaches; groins; revetments; bulkheads; seawalls; breakwaters; certain dikes designated by the Chief; piers; docks; jetties; wharves; marinas; boat ramps; any associated fill or debris used as part of the construction of shore structures that may affect shore erosion, wave action, or inundation; and fill or debris placed along or near the shore, including bluffs, banks, or beach ridges, for the purpose of stabilizing slopes. (Sec. 1521.01(O).)

Under current law, a temporary shore structure permit may be issued by the Chief or his authorized representative if it is determined necessary to safeguard life, health, or property. The bill authorizes the Director, rather than the Chief or his authorized representative, to issue a temporary permit. (Sec. 1506.40(B).)

Under current law, the application for a permit must include detailed plans and specifications prepared by a registered professional engineer. The bill specifies that the plans and specifications are to be prescribed by the Director. In addition, the bill does not require them to be prepared by a registered professional engineer if they pertain to a project that is or solely involves any of the following: (1) a project that is not an erosion control structure or the rehabilitation of such a structure, (2) the rehabilitation of a structure for which a permit previously was issued, (3) the rehabilitation of a structure that was constructed prior to October 5, 1955, provided that the purpose of the rehabilitation is to return the structure to its condition prior to that date, or (4) beach nourishment with natural sand. (Sec. 1506.40(B).) [1]

Current law requires each application or reapplication for a permit to be accompanied by a non-refundable fee prescribed by the Chief by rule. The bill instead requires each application or reapplication to be accompanied by a non-refundable fee in an amount determined by the Director using the fee schedule established in rules adopted under the bill. (Sec. 1506.40(B).) The bill requires

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[1] *Current law defines "erosion control structure" as anything that is designed primarily to reduce or control erosion of the shore along or near Lake Erie, including, but not limited to, revetments, seawalls, bulkheads, certain breakwaters designated by the Chief, and similar structures. "Erosion control structure" does not include wharves, piers, docks, marinas, boat ramps, and other similar structures. (Sec. 1521.01(R).) The bill relocates the definition and removes the reference in it to the Chief in order to reflect that under the bill the Director, and not the Chief, is authorized to administer the state's coastal erosion law (sec. 1506.01(M)).*

Current law defines "coastal erosion area" as any territory included in Lake Erie coastal erosion areas identified by the Director under current law (sec. 1506.01(I)).

the Director to adopt rules establishing a fee schedule for such permits. The fee schedule must be based on the total square footage of the structure, development, or improvement for which a permit is to be issued. In addition, a fee on the schedule cannot exceed $500. (Sec. 1506.02(A)(3).)

The bill specifies that upon receipt of a permit application, the Director must notify owners of littoral real property that is adjacent to the proposed area of construction, development, or improvement. The notice must be in writing, state that an application for a permit has been filed, summarize the proposed construction, development, or improvement that is the subject of the application, and state that the recipient of the notice may submit comments to the Director concerning the application not later than 30 days following receipt of the notice. (Sec. 1506.40(C).)

Finally, the bill states that nothing in the provisions governing the permits can be construed as determining the boundary of the state's ownership of the waters of Lake Erie as provided in existing law as amended by the bill (sec. 1506.40(F)).

Application procedures for submerged lands permits for improvements or developments for commercial use and for permits for erosion control structures and improvements or developments not for commercial use

The bill establishes procedures for the submission and review of applications for submerged lands permits for improvements or developments for commercial use and for permits for erosion control structures and improvements or developments in the area of the territory for other than commercial use that are nearly identical. Under the bill, not later than 15 days after the Director receives an application for either type of permit, the Director must determine whether the application is complete and provide written notice to the applicant of the Director's determination. If the application is not complete, the Director must include in the notice an itemized list of the information or materials that are necessary to complete the application. If the Director notifies the applicant that information or materials are necessary to complete the application, the applicant must provide the missing information or materials not later than 30 days after receipt of the notice. The applicant may resubmit the application with the necessary information or materials. If the Director fails to make a completeness determination and provide notice to the applicant within 15 days after receiving the application, the application is deemed complete. (Secs. 1506.11(D) and 1506.40(D).)

If the project that is the subject of the application is not for commercial use, the Director must issue or deny the permit not later than 90 days after receipt of a complete application. If the project is for commercial use, the Director must issue

or deny the permit not later than 120 days after receipt of a complete application. If the Director fails to issue or deny the permit within 90 or 120 days, as applicable, after receiving the complete application, the application is deemed approved, and the Director must issue the permit. (Secs. 1506.11(D) and 1506.40(D).)

Permit and Lease Fund

Existing law requires all money derived from the granting of permits and leases for the removal of minerals from and under Lake Erie and from applications for shore structure permits to be paid into the state treasury to the credit of the Permit and Lease Fund. Relevant fines also must be paid into that Fund (see below). The Fund must be administered by the Department of Natural Resources for the protection of Lake Erie shores and waters; investigation and control of erosion; the planning, development, and construction of facilities for recreational use of Lake Erie; implementation of the erosion control structure permitting program; preparation of the state shore erosion plan; and state administration of Lake Erie coastal erosion areas. (Sec. 1521.23.)

Current law requires fines imposed for the violation of the law governing coastal erosion to be paid into the Fund (sec. 1521.23). The bill instead requires only fines imposed for the violation of the portion of the law that establishes requirements concerning erosion control structure permits and permits for improvements or developments not for commercial use to be paid into the Fund. The bill also requires the Fund to be used for the provision of technical assistance on shore erosion control measures to shoreline property owners and for purchase of land for public access to Lake Erie in addition to the other specified purposes. Finally, the bill states that money in the Fund also may be used for grants to a municipal corporation, county, or port authority having Lake Erie shoreline property within its geographical boundaries. (Sec. 1506.41.)

Director's right of entry on coastal lands

The bill authorizes the Director or any employee in the service of the Department to enter on lands to conduct surveys and inspections for the purposes of the law governing coastal management and coastal erosion, provided that at least five business days prior to entry, the Director or employee sends notice by certified mail to the owner of the property that is to be surveyed or inspected. The Director or employee may enter on the land during the period starting on the sixth business day following the mailing of the notice and ending on the 15th business day following the mailing of the notice. The bill states that such an entry does not constitute a civil or criminal trespass when necessary in the discharge of the duties specified in that law. (Sec. 1506.49.)

Coastal management program

Definition of "coastal management program"

Current law designates the Department of Natural Resources as the lead agency for the development and implementation of a coastal management program (sec. 1506.02). "Coastal management program" currently means the comprehensive action of the state and its political subdivisions cooperatively to preserve, protect, develop, restore, or enhance the resources of the coastal area and to ensure wise use of the land and water resources of the coastal area, giving attention to natural, cultural, historic, and aesthetic values; agricultural, recreation, energy, and economic needs; and the national interest. The bill adds that the program must give attention to environmental needs and to the interests of private property owners in the coastal areas. (Sec. 1506.01(B).)

Coastal erosion areas

Existing law requires the Director to identify Lake Erie coastal erosion areas and to establish certain requirements governing permanent structures within those areas. Current law defines "coastal erosion area" to mean any territory included in Lake Erie coastal erosion areas identified by the Director (sec. 1506.01(I)). At least once every ten years, the Director must review and may revise the identification of Lake Erie coastal erosion areas, taking into account any recent natural or artificially induced changes affecting anticipated recession. A person who has received notice that a parcel or any portion of a parcel of real property that the person owns has been included in a Lake Erie coastal erosion area cannot sell or transfer any interest in that property unless the person first provides written notice to the purchaser that the property is included in a Lake Erie coastal erosion area. (Sec. 1506.06.)

Under existing law, a state agency, county, township, or municipal corporation or any other political subdivision or special district in Ohio established by law cannot use the fact that property has been identified as a Lake Erie coastal erosion area as a basis for failing to enter into or renew a lease or to issue or renew a permit under the submerged lands leases and permits program. The bill adds that such identification also cannot be a basis for failing to issue or renew a permit for erosion control structures or developments or improvements for other than commercial use in the defined Lake Erie territory. (Sec. 1506.06.)

Coastal management program document

For purposes of the coastal management program, current law requires the Director to develop and adopt the coastal management program document (sec. 1506.02(A)(1)). "Coastal management program document" means a

comprehensive statement consisting of, without limitation, text, maps, and illustrations that is adopted by the Director in accordance with the Coastal Management Law, describes the objectives, policies, standards, and criteria of the coastal management program for guiding public and private uses of lands and waters in the coastal area, lists the governmental agencies, including, without limitation, state agencies, involved in implementing the coastal management program, describes their applicable policies and programs, and cites the statutes and rules under which they may adopt and implement those policies and programs (sec. 1506.01(C)). Current law allows the Director to amend the document, provided that, prior to making changes in it, the Director notifies by mail those persons who submitted comments and recommendations concerning the original document and appropriate agencies of the state and its political subdivisions. The Director may hold at least one public hearing on the proposed changes. The bill requires the Director also to notify the members of the Lake Erie Coastal Advisory Council that is created by the bill prior to making changes to the document. In addition, the bill requires, rather than allows, the Director to hold at least one public hearing on the proposed changes. (Sec. 1506.02(A)(1).)

Rules governing program

Under existing law, the Director must adopt and may amend or rescind rules in accordance with the Administrative Procedure Act for the implementation, administration, and enforcement of the coastal management program and other provisions of the Coastal Management Law. Before the adoption, amendment, or rescission of rules, the Director must maintain a list of interested public and private organizations and mail notice of any proposed rule, amendment, or rescission to them at least 30 days before any public hearing on the proposal; mail a copy of each proposed rule, amendment, or rescission to any person who requests a copy within five days after receipt of the request; and consult with appropriate statewide organizations and units of local government that would be affected by the proposal. The bill also requires the Director to consult with the Lake Erie Coastal Advisory Council before adopting, amending, or rescinding the rules. (Sec. 1506.02(A)(3).)

Coastal management assistance grant program

Current law requires the Director to establish a coastal management assistance grant program. Grants may be used for all of the following purposes, one of which is revised by the bill:

(1) Feasibility studies and engineering reports for projects that are consistent with the policies in the coastal management program document;

(2) The protection and preservation of wetlands, beaches, fish and wildlife habitats, minerals, natural areas, prime agricultural land, endangered plant and animal species, or other significant natural coastal resources;

(3) The management of shoreline development to prevent loss of life and property in coastal flood hazard areas and coastal erosion areas, to set priorities for water-dependent energy, commercial, industrial, agricultural, and recreational uses, or to identify environmentally acceptable sites for dredge spoil disposal;

(4) Increasing public access to Lake Erie and other public places in the coastal area;

(5) The protection and preservation of historical, cultural, or aesthetic coastal resources;

(6) Improving the predictability and efficiency of governmental decision making related to coastal area management;

(7) Adopting, administering, and enforcing zoning ordinances or resolutions relating to coastal flood hazard areas or coastal erosion areas, revised by the bill to include developing zoning ordinances or resolutions relating to coastal flood hazard areas or coastal erosion areas;

(8) The redevelopment of deteriorating and underutilized waterfronts and ports; and

(9) Other purposes approved by the Director. (Sec. 1506.02(C).)

Appeals

Existing law allows any person who is adversely affected by the final identification of a Lake Erie coastal erosion area or any other final administrative act of the Director under the Coastal Management Law or who receives denial of a permit application under that Law, within 30 days after the identification, act, or denial, to appeal it in accordance with the Administrative Procedure Act. The bill instead allows any person who is affected by any final administrative act of the Director under the Coastal Management Law, within 30 days after the act, to appeal it in accordance with the Administrative Procedure Act, except that any adjudication hearing must be held in the county in which the property that is the subject of the final administrative act of the Director is located, and an appeal brought under the Administrative Procedure Act must be made to the court of common pleas of the county in which the property that is the subject of the appeal is located. (Sec. 1506.08.)

Penalties

Under current law, the penalty for violating the law governing coastal erosion is a fine of not less than $100 nor more than $1,000 for each offense. Each day of violation constitutes a separate offense. (Sec. 1521.99(C).) Through the application of existing law to the bill, each day of violation no longer constitutes a separate violation. In addition, the amount of the maximum fine is decreased to $500. (Sec. 1506.99(A), not in the bill.)

Elimination of Division of Real Estate and Land Management's coastal management authority

Current law requires the Division of Real Estate and Land Management in the Department of Natural Resources, on behalf of the Director, to administer the coastal management program and to consult with and provide coordination among state agencies, political subdivisions, the United States and agencies of it, and interstate, regional, and areawide agencies to assist the Director in executing his duties and responsibilities under that program and to assist the Department as the lead agency for the development and implementation of the program. Current law also requires the Division, again on behalf of the Director, to administer the submerged land leases and permits program (see above) and the submerged lands preserves program. (Sec. 1504.02(A)(3) and (A)(4).)

The bill eliminates these requirements, thus providing for the Director's direct administration of those programs. It states that in administering certain statutory provisions governing the coastal management program, the Director may consult with and provide coordination among state agencies, political subdivisions, the United States and its agencies, and interstate, regional, and areawide agencies (sec. 1501.01).

Transfer of Chief of Division of Water's coastal erosion authority to Director

Current law requires the Chief of the Division of Water in the Department to act as the erosion agent of the state for the purpose of cooperating with the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers. The Chief of the Division of Water must cooperate with the Secretary in carrying out, and may conduct, investigations and studies concerning the prevention, correction, and control of shore erosion and damage from it and the control of inundation of improved property along the Lake Erie shoreline. (Sec. 1521.20.) The bill instead requires the Director to act as the erosion agent of the state for those purposes (sec. 1506.38).

Under current law, the Chief, in the discharge of his duties under the law governing coastal erosion, may call to his assistance, temporarily, any engineers or

other employees in any state department, or in The Ohio State University or other state-financed educational institutions, for the purpose of devising the most effective and economical methods of controlling shore erosion and damage from it and controlling the inundation of improved property by the waters of Lake Erie and its bays and associated inlets (sec. 1521.21). The bill authorizes the Director, rather than the Chief, to call for such assistance. In addition, the bill states that the assistance is for the purpose of devising the most effective and economical methods of controlling shore erosion and inundation along the shore of Lake Erie and its bays and associated inlets, thus eliminating the authority to call for assistance to control damage from shore erosion and the inundation of improved property along the waters of Lake Erie. (Sec. 1506.39.)

Current law authorizes the state, acting through the Chief, to enter into agreements with counties, townships, municipal corporations, park boards, and conservancy districts, other political subdivisions, or any state departments or divisions for the purpose of constructing and maintaining projects to control erosion along the Ohio shoreline and islands of Lake Erie and in any rivers and bays that are connected with Lake Erie and any watercourses that flow into it (sec. 1521.24). The bill authorizes the Director, rather than the Chief, to enter into such agreements (sec. 1506.42). Under current law, the Chief may enter into a contract with any county, township, municipal corporation, conservancy district, or park board that has such an agreement with the state for the construction of a shore erosion project (sec. 1521.25). The bill authorizes the Director, rather than the Chief, to enter into such a contract and accordingly eliminates a requirement that a contract be approved by the Director in order to be valid (sec. 1506.43).

Current law states that any action taken by the Chief under the law governing coastal erosion cannot be deemed in conflict with certain powers and duties conferred upon and delegated to federal agencies and to municipal corporations under the Ohio Constitution or as provided by the law governing the sale or use of Lake Erie water and soils by municipal corporations (sec. 1521.28). The bill replaces the reference to the Chief with a reference to the Director (sec. 1506.46).

Current law authorizes the Chief, in cooperation with the Division of Geological Survey, to prepare a plan for the management of shore erosion in the state along Lake Erie, its bays, and associated inlets, revise the plan whenever it can be made more effective, and make the plan available for public inspection (sec. 1521.29). The bill authorizes the Director, rather than the Chief, to prepare the plan and eliminates the requirement that the plan be prepared in cooperation with the Division of Geological Survey (sec. 1506.47). Under current law, the Chief also may establish a program to provide technical assistance on shore erosion control measures to municipal corporations, counties, townships,

conservancy districts, park boards, and shoreline property owners (sec. 1521.29). The bill authorizes the Director, rather than the Chief, to establish the program (sec. 1506.47).

Advisory councils

Elimination of Submerged Lands Advisory Council

Current law creates the Submerged Lands Advisory Council, which consists of nine members as follows: the Director of Natural Resources or his designee; the Director of the Ohio Historical Society or his designee; and seven members appointed by the Governor who have an interest in or are knowledgeable about the preservation of submerged resources, at least two of whom must be experienced in scuba diving and at least one of whom must be a professional salvor or marine surveyor. Other appointments may include maritime historians, underwater archaeologists, and charter boat operators. Terms of office are three years. (Sec. 1506.37.)

The Council may make recommendations to the Coastal Resources Advisory Council (see below), the Department of Natural Resources, the Ohio Historical Society, and the members of the General Assembly regarding all of the following: (1) the creation and boundaries of Lake Erie submerged land preserves under rules that are adopted concerning the preserves, (2) the issuance of permits for the recovery, alteration, salvage, or destruction of abandoned property that is submerged in Lake Erie, (3) policies and rules needed for the implementation and administration of the law governing Lake Erie submerged lands and abandoned property, and (4) appropriate legislation for the management and preservation of submerged resources (sec. 1506.37).

The bill abolishes the Submerged Lands Advisory Council and transfers all of its assets, liabilities, equipment, and records to the Lake Erie Coastal Advisory Council (see below). Former members of the Submerged Lands Advisory Council may be appointed to the Lake Erie Coastal Advisory Council if the Governor so chooses. (Section 5.)

Elimination of Coastal Resources Advisory Council and creation of Lake Erie Coastal Advisory Council

Membership. Current law creates the Coastal Resources Advisory Council, which consists of 19 members, appointed by the Director, who represent a broad range of interests, experience, and knowledge relating to the management, use, conservation, protection, and development of coastal area resources. The Director must solicit names of qualified persons to serve on the Council from the legislative authorities of counties, townships, municipal corporations, and other political

subdivisions and from interest groups located in the coastal area. The Director must appoint to the Council at least one member from each shoreline county who must be selected from the names submitted to the Director as described above and at least one of whom must be a public official of such a county; at least three individuals who own private shoreline property in a shoreline county; at least one public official of a municipal corporation that is located in a shoreline county; at least two individuals who are members of the Ohio Association of Realtors and whose places of business are located in the shoreline area; and at least two individuals with experience in residential and commercial land development in the shoreline area. No more than ten members of the Council can be from the same political party. The Director may participate in the deliberations of the Council, but cannot vote. Terms of office are four years. (Sec. 1506.12.)

The bill abolishes the Coastal Resources Advisory Council and creates the Lake Erie Coastal Advisory Council. It transfers all of the assets, liabilities, equipment, and records of the Coastal Resources Advisory Council to the Lake Erie Coastal Advisory Council and states that former members of the Coastal Resources Advisory Council may be appointed to the Lake Erie Coastal Advisory Council if the Governor so chooses. (Section 4.)

The newly created Lake Erie Coastal Advisory Council consists of 16 members. However, the new Council, unlike the existing one, consists of the Director of Natural Resources or his designee and 15 other members appointed by the Governor rather than by the Director of Natural Resources. The qualifications of the appointed members are identical to the qualifications of members of the existing Council, except that the bill adds that those members must represent a broad range of interests, experience, and knowledge relating to the preservation of coastal area resources in addition to their management, use, conservation, protection, and development. The bill also adds that those members must consist of at least three individuals who have an interest in or are knowledgeable about the preservation of submerged resources, two of whom must be experienced in scuba diving. In addition, the bill requires one of the members be a public official of a municipal corporation that has shoreline property within its geographical boundaries rather than of a municipal corporation that is located in a shoreline county as in current law. The bill requires that not fewer than seven members be individuals who permanently reside in close proximity to shoreline property. Finally, the bill decreases the number of members that can be from the same political party from ten to eight. (Sec. 1506.12.)

The bill eliminates language concerning the initial appointments to the existing Council and instead requires the Governor, on the bill's effective date, to begin the process of appointing members to the new Council. Not later than three months following that date, all of the Governor's appointments must be completed,

and the terms of the initial members of the new Council must commence. Seven of the initial members must be appointed for terms ending on the first day of February of the year that is two years following the year in which the bill takes effect. Eight of the initial members must be appointed for terms ending on the first day of February of the year that is four years following the year in which the bill takes effect. Thereafter, terms of office for all appointed members must be for four years, which is the same length as the terms of the existing Council members. (Sec. 1506.12.)

Under current law, the Director may remove any member of the Coastal Resources Advisory Council at any time for inefficiency, neglect of duty, or malfeasance in office. The bill authorizes the Governor to remove any appointed member of the new Lake Erie Coastal Advisory Council for the same reasons. It also retains standard provisions regarding the filling of vacancies and the organization and operation of the Council; a statement that membership on the Council does not constitute holding a public office or position of employment under state law and is not grounds for removal of public officers or employees from their offices or positions of employment; a requirement that the Department of Natural Resources furnish clerical, technical, legal, and other services to the Council; and a requirement that the members are to receive no compensation, but are to be reimbursed from appropriations to the Department for their actual and necessary expenses incurred in the performance of their official duties. (Sec. 1506.12.)

Duties. The duties of the new Lake Erie Coastal Advisory Council are nearly identical to the duties of the existing Coastal Resources Advisory Council and include all of the following: (1) advising the Director of Natural Resources on carrying out his coastal management and, under the bill, erosion control duties, including, without limitation, implementation of the coastal management program, (2) recommending to the Director such policies and legislation as are necessary to preserve, protect, develop, and restore or enhance the coastal resources of the state, (3) reviewing and making recommendations to the Director on the development of policies, plans, and programs for long-term, comprehensive coastal resource management, and (4) recommending to the Director ways to enhance cooperation among governmental agencies, including state agencies, having an interest in coastal management and to encourage wise use and protection of the state's coastal resources (sec. 1506.12).

Technical changes

The bill renumbers certain sections of the Revised Code and makes other technical changes (secs. 149.56, 317.08, 721.11, 1506.01(J) and (K), 1506.30, 1506.34, 1506.35, 1506.44 (renumbered), 1506.45 (renumbered), 1506.48 (renumbered), and 6121.04).

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	06-10-03	p.	563
Reported, H. Energy & Environment	12-10-03	pp.	1276-1277
Passed House (77-20)	12-10-03	pp.	1301-1306

H0218-PH-125.doc/jc