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Bill Analysis
Legislative Service Commission

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(As Introduced)

Reps. Niehaus, McGregor, Latta, Reidelbach

BILL SUMMARY

Erosion control construction permits

- Requires the Director of Natural Resources, rather than the Chief of the Division of Water in the Department of Natural Resources, to issue permits for the construction of erosion control structures.
- States that such a permit is not required for the construction of a private residential pier.
- Specifies circumstances under which an application for such a permit is not required to include detailed plans and specifications prepared by a professional engineer.
- Establishes a permit fee of \$500 rather than requiring the amount of the fee to be established by rule.
- 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.
- Clarifies that nothing in the provisions governing permits can be construed as determining the boundary of the state's ownership of its portion of Lake Erie.

Submerged land leases and permits and distribution of moneys from Lake Erie Submerged Lands Fund

- Reallocates how money is distributed from the Lake Erie Submerged Lands Fund so that one-third of the money is used to provide financial assistance to owners of private residential property who have obtained

permits issued for the construction of erosion control structures in coastal erosion areas.

- Authorizes the Director, subject to a limit of \$2,000 per parcel of real property, to reimburse such an owner for not more than 50% of the costs that the owner incurred in complying with specified requirements related to certain permits and leases.
- Prohibits a submerged lands lease or permit from being issued to a commercial or marina operation unless the operation possesses liability insurance.

Penalties

- Decreases the maximum amount of the fine imposed for a violation of the law governing coastal erosion from \$1,000 to \$500 for each offense.
- Specifies that each day of violation of the law governing coastal management constitutes a separate offense.

Director's right of entry on coastal lands

- Authorizes the Director and any employee of the Department of Natural Resources to enter on lands to conduct surveys and inspections for the purposes of the law governing coastal management and coastal erosion.

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 of Natural Resources administer the coastal management program, submerged land 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.

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.

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

Erosion control construction permits 3

Submerged land leases and permits and distribution of money from
Lake Erie Submerged Lands Fund 5

Penalties 7

Director's right of entry on coastal lands 7

Elimination of Division of Real Estate and Land Management's coastal
management authority 7

Transfer of Chief of Division of Water's coastal erosion authority to Director 8

Permit and Lease Fund 9

Advisory councils 10

 Elimination of Submerged Lands Advisory Council 10

 Elimination of Coastal Resources Advisory Council and creation of
 Lake Erie Coastal Advisory Council 10

Technical changes 12

CONTENT AND OPERATION

Erosion control construction permits

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 of Natural Resources. 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. The bill also requires the permit to be obtained from the Director of Natural Resources rather than from the Chief. (Sec. 1506.40(A).)

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 of the Division of Water; 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(A).)

The bill adds that a permit is not required for the construction of a private residential pier (sec. 1506.40(A)). Under the bill, "private residential pier" means a pier serving private residential property that consists of a structure of open construction that extends out into a body of water from the shore and that serves solely as a means of wharfing out in aid of navigation rather than a means of protecting the shore. The bill specifies that "private residential pier" does not include groins, jetties, breakwaters, or other similar structures. (Sec. 1506.01(M).) "Open construction," with respect to a pier, means that substantial gaps, voids, or open spans within the structure allow the free and natural movement of water, waves, and littoral drift through and beneath the structure (sec. 1506.01(N)).

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 solely involves any of the following: (1) the rehabilitation of a structure for which a permit previously was issued, (2) 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 (3) beach nourishment with natural sand. (Sec. 1506.40(A).)

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 establishes a permit fee of \$500. (Sec. 1506.40(A).)

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. The notice must be in writing, state that an application for a permit has been filed, summarize the proposed construction 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(B).)

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 together with the soil beneath and their contents as provided in existing law (sec. 1506.40(F)).

Submerged land leases and permits and distribution of money from Lake Erie Submerged Lands Fund

Current law defines "territory" as 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 (sec. 1506.11(A)). Under current law, upon application of any person who wants to develop or improve part of the territory, whenever the state acting through the Director 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 (sec. 1506.11(B)). The Director determines the consideration to be paid by the applicant under the lease or permit, and the rentals received are paid into the state treasury to the credit of the Lake Erie Submerged Lands Fund (sec. 1506.11(C)).

Current law establishes how moneys are distributed from the Fund. Fifty per cent of each rental must be paid to the Department of Natural Resources for the administration of the submerged lands lease and permit program and of other aspects of the statutes identifying the state's rights to waters of Lake Erie and for the coastal management assistance grant program. The remaining 50% of each rental must be paid to the municipal corporation, county, or port authority having

jurisdiction over the area that is subject to the lease or permit. (Sec. 1506.11(C)(1) and (C)(2).)

The bill reallocates how moneys are distributed from the Fund. Under the bill, one-third of each rental must be paid to the Department for the purposes discussed above, and one-third must be paid to the municipal corporation, county, or port authority having jurisdiction over the area that is subject to the lease or permit. (Sec. 1506.11(C)(1) and (C)(2).) The remaining one-third of each rental must be set aside by the Director each calendar year for the purpose of providing financial assistance to any owner of a parcel of private residential real property that is located in a coastal erosion area who has obtained a permit issued for the construction of an erosion control structure in the coastal erosion area (see above) (sec. 1506.11(C)(3)).¹

Further, the bill specifies that, subject to a limit of \$2,000 per parcel of real property, the Director may reimburse such an owner for not more than 50% of the costs that the owner incurred in complying with any of the following requirements: (1) having a registered professional engineer prepare engineering plans and specifications for the erosion control structure as discussed above, (2) obtaining any site-specific geological or engineering information necessary to obtain a permit issued under current law for the erection, construction, or redevelopment of a permanent structure on land within a coastal erosion area, or (3) having a survey performed in order to determine the metes and bounds of the owner's coastal real property for purposes of an application for a submerged lands lease or permit. (Sec. 1506.11(C)(3).)

Under the bill, any portion of the money set aside for the purpose of providing financial assistance to an owner of private residential real property as described above that is not used within the calendar year for that purpose must be evenly divided between and paid to the Department and the municipal corporation, county, or port authority having jurisdiction over the area that is subject to the submerged lands permit or lease (sec. 1506.11(C)(3)).

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 of the Division of Water, 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(L)).*

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 bill prohibits a submerged lands lease or permit from being issued to a commercial or marina operation unless the operation possesses liability insurance coverage with an insurance company that is authorized to do business in Ohio (sec. 1506.11(C)).

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)). The bill decreases the amount of the maximum fine to \$500. In addition, under current law, the penalty for violating the law governing coastal management is a fine of not less than \$100 nor more than \$500 for each offense. The bill adds that each day of violation constitutes a separate offense. (Sec. 1506.99(A).)

Director's right of entry on coastal lands

The bill authorizes the Director or any employee in the service of the Department of Natural Resources to enter on lands to conduct surveys and inspections for the purposes of the law governing coastal management and coastal erosion. 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.)

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 of Natural Resources 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).

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 governing coastal erosion that establishes requirements concerning erosion control structure permitting 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 in addition to the other specified purposes. (Sec. 1506.41.)

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 the 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 4.)

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 3.)

The newly created Lake Erie Coastal Advisory Council, like the existing Coastal Resources Advisory Council, consists of 19 members. However, the new Council, unlike the existing one, consists of the Director of Natural Resources or his designee, the Director of the Ohio Historical Society or his designee, the Director of the Ohio Sea Grant College program or his designee, the Director of the Ohio Lake Erie Commission 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 and one of whom must be a professional salvor or maritime surveyor.² In addition, the bill eliminates language specifying that the Director of Natural Resources may participate in the deliberations of the Council, but cannot vote. (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,

² *The qualifications of these three individuals are identical to qualifications for several of the members of the Submerged Lands Advisory Council that is abolished by the bill (see above).*

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 existing Coastal Resources Advisory Council are nearly identical to the duties of the new Lake Erie Coastal 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, 1506.01(J) and (K), 1506.30, 1506.34, 1506.35, 1506.44 (renumbered), 1506.45 (renumbered), 1506.48 (renumbered), and 6121.04).



HISTORY

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