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Bill Analysis
Legislative Service Commission

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Sen. Grendell

BILL SUMMARY

Public trust 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 state's ownership also is subject to the littoral rights of littoral owners.
- 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, erosion control structures, 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, and specifies by definition that littoral owners have the right to own additional lands created by accretion or reliction and the right to restore lands lost by avulsion or artificially induced erosion.

Submerged lands leases for developments and improvements primarily for purposes other than exercise of littoral rights

- Eliminates the issuance of permits from the submerged lands lease and permits program, and limits the application of the program to developments and improvements primarily for purposes other than the exercise of littoral rights.
- Requires a lease entered into 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 purposes other than the exercise of littoral rights that is the subject of the lease.

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.

Erosion control construction permits

- 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.
- Limits the requirement to obtain a permit to construction lakeward of the ordinary high water mark, and defines "ordinary high water mark" as the ordinary high water mark of Lake Erie that is established from time to time by the United States Army Corp of Engineers for regulatory purposes.
- 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.
- Establishes procedures for the submission and review of applications for erosion control construction permits.

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 during review of a permit application and construction of a structure or project under the permit, provided that notice to the owners is given and other requirements are satisfied.

Coastal management program

- Revises the definition of "coastal management program."
- 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 coastal management program document, to consult with the Council prior to adopting rules governing the coastal management program, and to hold a public hearing on proposed changes to the document.
- Revises two and eliminates 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.

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

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CONTENT AND OPERATION

Public trust 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 also subjects that ownership to the littoral rights of littoral owners. (Sec. 1506.10.)

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, erosion control structures, 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. "Littoral rights" includes the right to own additional lands created by accretion or reliction and the right to restore lands lost by avulsion or artificially induced erosion. (Sec. 1506.01(N).) "Accretion" means the accumulation of land that results from the deposition of soil, sand, or sediment through the operation of natural causes (sec. 1506.01(O)). "Reliction" means the gradual exposure of land by the recession of a body of water (sec. 1506.01(P)). "Avulsion" means a sudden and perceptible loss of land by the action of water or other natural causes (sec. 1506.01(Q)). Finally, the bill defines "southerly shore" as the line at which the water usually stands when free from disturbing causes (sec. 1506.01(J)).¹

Submerged lands leases for developments and improvements primarily for purposes other than exercise of littoral rights

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 for such purposes, but eliminates the permit requirement and limits the application of the lease requirement to developments or improvements primarily for purposes other than the exercise of littoral rights. (Sec. 1506.11(B).) Under existing law, "territory" 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 (sec. 1506.11(A)). The bill defines "natural shoreline" to mean the line at which the water usually stands when free from disturbing causes (sec. 1506.01(J)).

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 of Natural Resources, and not the Chief, is authorized to administer the state's coastal erosion law (sec. 1506.01(M)).

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. (Sec. 1506.11(C).)

Duration of leases

Currently, a lease or permit may be for such periods of time as the Director determines. The bill eliminates the reference to permits and the provision under which a lease may be for such periods of time as the Director determines and states that on and after the bill's effective date, a lease entered into must be for a period of time that is equal to the life of the development or improvement for purposes other than the exercise of littoral rights that is the subject of the lease. (Sec. 1506.11(C).)

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 retains the current distribution of the rentals, but eliminates the collection of rentals from permits. (Sec. 1506.11(C).)

Developments and improvements prior to October 13, 1955

Current law requires the state to grant a lease to upland owners who, prior to October 13, 1955, have erected, developed, or maintained structures, facilities, buildings, or improvements or made use of waters in the part of the territory in front of those uplands upon the presentation of a certification by the chief executive of a municipal corporation, resolution of the board of county commissioners, or resolution of the board of directors of the port authority establishing that the structures, facilities, buildings, improvements, or uses do not constitute an unlawful encroachment on navigation and water commerce. The bill states that the structures, facilities, buildings, or improvements or use of waters must have been primarily for purposes other than the exercise of littoral rights. (Sec. 1506.11(D).)

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, the taxes or assessments are the obligation of the lessee. (Sec. 1506.11(F).)

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

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 eliminates all references to permits. (Sec. 1506.11(G).)

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 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 primarily for the exercise of littoral rights. 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. 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 that date and any associated fees to include only territory that was developed or improved primarily for purposes other than the exercise of littoral rights. 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

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 retains the permit requirement, but limits its application to the area lakeward of the ordinary high water mark. (Sec. 1506.40(C).) "Ordinary high water mark" is defined by the bill to mean the ordinary high water mark of Lake Erie that is established from time to time by the United States Army Corp of Engineers for regulatory purposes (sec. 1506.40(A)). The bill states that the use of the ordinary high water mark must be for the administration of the provisions governing this permit and cannot be construed to determine any type of property boundary (sec. 1506.40(B)).

The bill requires the permit to be obtained from the Director rather than from the Chief. In addition, it eliminates the references to a "shore structure permit" and instead refers merely to a "permit." (Sec. 1506.40(C).) 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(C).)

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) a project or structure that does not require a professional engineer to prepare the plans or specifications as described in the Professional Engineers Law, or (4) beach nourishment with natural sand. (Sec. 1506.40(C).)

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 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(D).)

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(G)).

Application procedures

The bill establishes procedures for the submission and review of applications for erosion control construction permits. Under the bill, not later than 15 days after the Director receives an application for a 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. (Sec. 1506.40(E).)

If the project that is the subject of the application solely involves the exercise of littoral rights, the Director must issue or deny the permit not later than 90 days after receipt of a complete application. If the project is for a purpose other than the exercise of littoral rights, 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. 1506.40(E).)

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 construction permits 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 during the time when the Director is reviewing an application for a permit under the Coastal Management Law and during the construction of a structure or project under such a permit, 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 fifteenth 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 also includes erosion prevention and must give attention to the interests and littoral rights 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 removes the references to permits (see above) and adds that such identification also cannot be a basis for failing to issue or renew a permit for erosion control structures. (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 (see below) 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 in a community that has Lake Erie shoreline property within its geographical boundaries. Finally, the Director must publish notice of the date, time, and location of the hearing in newspapers of general circulation in the counties having Lake Erie shoreline property within their geographical boundaries. (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,

two of which are revised and one of which is eliminated by the bill as indicated below:

(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, revised by the bill to require that the land acquired for that purpose be purchased from a willing seller;

(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, eliminated by the bill. (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 the coastal management program, the Director must consult with and provide coordination among state agencies, political subdivisions, the United States and its agencies, and interstate, regional, and areawide agencies. Such coordination may include the development of consolidated permit processes regarding applicable permits with state agencies, political subdivisions, and the United States and its 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).

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 to 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 are year-round residents who live adjacent to the shoreline. 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. 317.08, 1506.01(K) and (L), 1506.44 (renumbered), 1506.45 (renumbered), 1506.48 (renumbered), and 6121.04).

HISTORY

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