



Eric Vendel

Resolution Analysis

Legislative Service Commission

S.J.R. 8

127th General Assembly
(As Introduced)

Sens. Grendell, Harris, Wagoner, Niehaus, Spada, Jacobson, Seitz, Faber, Mumper, Padgett, Schuler, Cates, Carey, Schaffer, Amstutz, Austria, Cafaro

RESOLUTION SUMMARY

- Proposes a constitutional amendment that does all of the following:
 - States that a property owner has a property interest in the reasonable use of the ground water underlying the property owner's land and when that interest is taken for public use, the taking and compensation must be made in accordance with current constitutional requirements.
 - States that an owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land and when that interest is taken for public use, the taking and compensation must be made in accordance with current constitutional requirements.
 - States that the above private property interests must be held inviolate, but subservient to the public welfare as provided in existing constitutional requirements.
 - States that ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land cannot be held in trust by any governmental body, but that the owner of such land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.
 - States that nothing in the proposed amendment affects the application of the public trust doctrine to the waters of Lake Erie and other navigable waters of the state.

--States that no other provision of the Ohio Constitution impairs or limits the rights established in the proposed amendment.

CONTENT AND OPERATION

Property interests with respect to ground water and other water on or flowing through a property owner's land

(Section 19b of Article I, Ohio Constitution)

The resolution proposes enactment of Section 19b of Article I of the Ohio Constitution as discussed below:

Recognition and protection of property interests in ground water, lakes, and watercourses

The proposed constitutional amendment states that the stability of Ohio's economy and the protection of the rights of Ohio's property owners require the recognition and protection of property interests in ground water, lakes, and watercourses.

Reasonable use of ground water

The proposed constitutional amendment states that a property owner has a property interest in the reasonable use of the ground water underlying the property owner's land. When that property interest is taken for public use, the taking and compensation must be made in accordance with Section 19 of Article I of the Ohio Constitution (*see* COMMENT). In addition, the proposed constitutional amendment provides that the preservation of those private property interests must be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Ohio Constitution (*see* COMMENT).

Reasonable use of the water in a lake or watercourse

The proposed constitutional amendment states that an owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land. When that property interest is taken for public use, the taking and compensation must be made in accordance with Section 19 of Article I of the Ohio Constitution (*see* COMMENT). In addition, the proposed constitutional amendment provides that the preservation of those private property interests must be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Ohio Constitution (*see* COMMENT).

Statement that certain ground water and nonnavigable waters cannot be held in trust

The proposed constitutional amendment states that ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land cannot be held in trust by any governmental body. However, the owner of such land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.

Public trust doctrine

The proposed constitutional amendment states that nothing in it affects the application of the public trust doctrine to the waters of Lake Erie and the other navigable waters of the state.

Impairment or limitation of rights

Finally, the proposed constitutional amendment states that no other provision of the Ohio Constitution impairs or limits the rights established in the proposed amendment.

Election and effective date

The resolution provides that the proposed constitutional amendment must be submitted to the electors at the general election to be held on November 4, 2008. If approved by a majority of the electors voting on it, the proposed amendment will take effect January 1, 2009.

COMMENT

Article I, Section 19 of the Ohio Constitution states:

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefore shall first be made in money, or first secured by a deposit of money; and such compensation shall be

assessed by a jury, without deduction for benefits to any property of the owner.

HISTORY

ACTION	DATE
Introduced	05-14-08

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