

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: Am. S.B. 20

DATE: June 16, 1999

STATUS: As Reported by House Energy and Environment

SPONSOR: Sen. Cupp

LOCAL IMPACT STATEMENT REQUIRED: No — However, potential local effects

CONTENTS: Establishes historically channelized watercourses and precludes them from the state antidegradation statute

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund, Ohio EPA			
Revenues	Minimal decrease	Minimal decrease	Minimal decrease
Expenditures	Minimal decrease	Minimal decrease	Minimal decrease

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- Ohio EPA may have a minimal decrease in expenditures out of the Water Quality Planning and Assessment line item because there may be a decrease in the number of antidegradation reviews.
- However, this may be offset by increased expenditures that are necessary to provide environmental data that certifies whether a certain waterway may or may not fit the “historically channelized waterways” definition.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	Minimal decrease	Minimal decrease	Minimal decrease
Expenditures	Minimal decrease	Minimal decrease	Minimal decrease
County Soil and Water Districts			
Revenues	Minimal decrease	Minimal decrease	Minimal decrease
Expenditures	Minimal decrease	Minimal decrease	Minimal decrease

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- County commissioners or engineers, and county soil and water conservation districts, will not be required to undergo the antidegradation review process for improvements made to historically channelized watercourses. This may result in minimal savings because the county will not need to perform an analysis of a project to determine if the social and economic benefits outweigh the environmental harm.
- When counties receive petitions to improve a historically channelized watercourse, the county levies assessments on the petitioners to pay for their improvement. The county will be reducing expenditures to



complete the antidegradation review; therefore, the county will be collecting less money through assessments from the petitioners to reimburse the county for its cost of conducting the improvement.

Detailed Fiscal Analysis

Ohio EPA's Antidegradation Review Process

The Federal Clean Water Act requires each state to classify its waters within the state according to the intended uses of the water. The state must then establish policies to maintain and protect the level of water quality that is necessary to protect those existing uses. However, federal law authorizes a state to allow lower water quality under certain circumstances, provided that existing uses continue to be protected and certain procedural requirements are met. Pursuant to the requirements of the Federal Clean Water Act, the Ohio EPA has established an antidegradation policy that is applicable to surface waters of the state.

Under the antidegradation policy, the Ohio EPA may allow an increase of pollutants into a receiving body of water following a review of the technical, social and economic need to do so. The person who wishes to conduct the activity that will cause the increase in pollutants must provide information for Ohio EPA to review. Public notice of the antidegradation is required. Any increase in pollutants into a body of water that is so approved cannot interfere with the water's existing use. The person must also meet additional requirements of the antidegradation review process. These additional requirements are:

- (1) Applicant must describe and analyze pollution prevention alternatives. Ohio EPA may require the applicant to design and operate one of the less polluting alternatives.
- (2) Timelines are specified for public notification and involvement activities, and people on Ohio EPA's mailing list receive direct mail notification of application and public hearing, if available.
- (3) Ohio EPA must evaluate potential benefits and detrimental effects of the proposed project, and approve the project only if the applicant has demonstrated that it is needed to accommodate important social and economic development. There must be an estimate of the social, economic and environmental benefits to be lost if the water quality is lowered.
- (4) A description of the work, fill or other structures to be placed in or near the streambed.

Historically Channelized Watercourse

More than fifty percent of Ohio's cropland relies on drainage tiles to keep the soil dry enough for agricultural cultivation. This is especially true in northwest Ohio where most of the Black Swamp has been converted into farmland. Drainage tiles drain into ditches, most of which were straightened and dredged more than a century ago. Some ditches, especially those that have been neglected for years, have recovered many of their natural properties. Trees have returned to the banks, fish and aquatic insects thrive and the river eats away at the artificial banks, reverting

to a natural, meandering pattern. If a drainage ditch reaches a point where it meets certain biological standards, based on Ohio EPA's measure of the aquatic life within the stream, current state law requires extensive environmental review of any project that might significantly lower the quality of the watercourse through the antidegradation review process.

This bill establishes and defines a "Historically Channelized Watercourse" to distinguish it from other watercourses that are subject to an Ohio EPA antidegradation review process. A Historically Channelized Watercourse means a portion of a watercourse that was previously approved and has been the subject of an improvement pursuant to Chapter 1515, 6131, or 6133 of the Revised Code. An improvement is defined under Section 6131.01 of the Revised Code, having the same meaning as in the ditch statutes. These include:

- (1) The location, construction, reconstruction, reconditioning, widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse, or floodway;
- (2) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;
- (3) A levee or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow of any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water;
- (4) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run; and
- (5) The vacating of a ditch or drain.

For purposes of Ohio's antidegradation policy, this bill states that a historically channelized watercourse provides technical, social and economic benefits. It then precludes the Ohio EPA from requiring further antidegradation review during the review of an application for and the issue or denial of a permit under the Water Pollution Control Law or a water quality certification under Section 401 of the Federal Water Pollution Control Act (i.e., Clean Water Act) if the Director makes certain findings. These findings under the bill that preclude an antidegradation review include:

- (1) Work is necessary to restore or maintain drainage or another improvement provided by a historically channelized watercourse.
- (2) The work is subject to requirements established under section 1515.08 of the Revised Code or is the subject of a petition under section 6131.04 or 6133.02 of the Revised Code.
- (3) Without the work, flooding threatens public health and safety or may result in significant damage to public or private property.
- (4) The work will not result in the loss of designated or existing beneficial uses as those uses are described in rules adopted under Section 6111.041 of the Revised Code.
- (5) The work will not harm or interfere with the protection of federal or state designated endangered or threatened species.
- (6) The historically channelized watercourse is not designated as coldwater habitat, exceptional warmwater habitat, or a state resource water in rules adopted under section 6111.041 of the Revised Code.

- (7) If information is available concerning resident fishery or macroinvertebrate communities, or both, in the historically channelized watercourse, the historically channelized watercourse does not support a particularly diverse or unique warmwater habitat as that term is defined in rules adopted under Section 6111.041 of the Revised Code.
- (8) Plans for the work have been submitted to the applicable soil and water conservation district organized under Chapter 1515 of the Revised Code.
- (9) A storm water runoff plan has been developed for the watershed during planning and design of the work.

Saving for County Dredging Projects

Property owners can collectively petition their county commissioners to dredge a "historically channelized waterway" that has been blocked and flooding their property. The county commissioners must go through the antidegradation review process at Ohio EPA in order to obtain Section 401 and Section 404 permits that will allow them to proceed with the dredging. As noted previously, the antidegradation process requires economic and social benefit/cost analysis studies that may include what is known as a "H&H Study" (hydraulic and hydrogeologic). According to a spokesperson for the Allen County Commissioners, typical costs for these studies average around \$15,000 to \$25,000 per dredging project, and counties located in Northwest Ohio perform these studies around 5 times a year. After completion of the dredging, the petitioners are assessed for all costs of the project to reimburse the county commissioners for what was spent on the project.

This bill will allow the county commissioners to bypass economic and social benefits/cost analysis portions of the antidegradation process if the waterway meets the criteria of a historically channelized waterway. Although it would result in a saving to the county, ultimately it is the petitioners that will experience the saving by reducing the costs that they reimburse the county commissioners in the process. Thus, there would be an offsetting saving to the property owners.

Downstream Effects

When a dredging project is completed, flooding is prevented in the immediate area of the project. However, there is a potential that flooding may occur downstream as a result of the dredging because more water may be carried downstream at an increased rate of flow and speed. While flood relief is provided for the immediate property owners, downstream property owners may experience increased volumes and velocities of water as a result of the dredging that was completed upstream. It is unclear at this time what impact this may have on state or local government entities.

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