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## Bill Analysis

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**Primary Sponsors:** Sens. Gavarone and Manning

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### SUMMARY

#### Coastal management program

##### Coastal management program document

- Revises notice requirements regarding the coastal management program document, which functions as a comprehensive statement of the objectives, policies, standards, and criteria of the Ohio Coastal Management Program.

##### Lake Erie coastal erosion areas

- Revises notice, hearing, objection, and modification procedures regarding the identification of Lake Erie coastal erosion areas.

##### Submerged land leases

- Eliminates the requirement that a person seeking to develop or improve submerged land under Lake Erie for noncommercial and nongovernmental use (for example, for residential purposes) obtain a lease from the ODNR Director.
- Retains the lease requirement for development or improvements for commercial or governmental purposes.
- Revises the law governing the conditions and procedures under which a lease may be entered into with the Director.
- Requires the Director to suspend the review of a lease application if the Director discovers that there is a dispute concerning the application.
- Establishes requirements and procedures concerning modification or termination of existing leases for noncommercial and nongovernmental purposes that predate the bill.

## Permits

- Alters the appeal requirements concerning notice of approval and denial of a permit for a permanent structure in a Lake Erie coastal erosion area.
- Revises the law governing permits to build coastal structures by doing all of the following:
  - Clarifying the types of structures that require a permit;
  - Changing the name of the permit from a “shore structure” permit to a “coastal” permit, revising associated coastal permit application requirements and procedures, and applying the associated existing criminal penalty for failure to obtain the permit;
  - Requiring a coastal permit to build a new coastal structure or perform coastal restoration (including when the builder or restorer is a government entity);
  - Creating three different tiers of coastal permits and associated application procedures; and
  - Requiring new information to be submitted with an application.
- Allows owners of coastal structures and coastal restorations built prior to the bill’s effective date without a permit to obtain either a coastal permit or register with the ODNR Director.
- Provides that shore structure permits issued prior to the bill’s effective date remain in effect.
- Specifies that a coastal permit is valid for the life of the coastal structure or coastal restoration.
- Generally authorizes a holder of a coastal permit to conduct rehabilitation of a coastal structure or coastal restoration without obtaining a new coastal permit.
- Requires the Director to suspend the review of a coastal permit application or registration if the Director discovers that there is a dispute concerning the application or registration.
- Authorizes the Director to order certain corrective and remedial actions and allows these orders to be appealed.
- Authorizes the Director to immediately remove dangerous coastal structures when there is not time to issue an order, and authorizes the Director to recover costs of that removal from the owner or responsible person.
- Authorizes the Director or the Director’s duly authorized representative to enter at reasonable times on any property to inspect a coastal structure or coastal restoration.
- Allows the Director or Director’s representative to obtain a warrant if entry is refused.

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## TABLE OF CONTENTS

Coastal management program .....	3
Coastal management program document .....	4
Lake Erie coastal erosion areas .....	5
Identification of coastal erosion areas .....	5
Submerged land leases.....	8
Leases entered prior to the bill’s effective date .....	12
Permits .....	13
Permits for structures in a coastal erosion area .....	13
Coastal permits.....	14
Coastal structure .....	14
Coastal restoration .....	15
Coastal permit tiers .....	16
Information submitted with coastal permit application .....	16
Notice and hearing requirements and procedures .....	17
Registration of preexisting coastal structures.....	18
Validity.....	18
Rehabilitation .....	18
Disputes .....	19
Corrective and remedial action .....	19
Right of entry.....	19
Taxes and assessments.....	20
Erosion control structure.....	20

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## DETAILED ANALYSIS

### Coastal management program

ODNR administers the Ohio Coastal Management Program (OCMP) regarding Lake Erie to “preserve, protect, develop, restore, enhance and balance the use of the state’s valuable and sometimes vulnerable coastal resources.”<sup>1</sup> Under the OCMP, the ODNR Director adopts a coastal management program governing document, issues leases for developments or improvements in Lake Erie, designates Lake Erie coastal erosion areas, and issues permits for permanent structures constructed in coastal erosion areas and for shore structures constructed along or near the Lake Erie shoreline.

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<sup>1</sup> See Ohio Department of Natural Resources, [Ohio Coastal Management Program Document](#).

## Coastal management program document

As indicated above, for the OCMP, the ODNR Director must adopt and publish a coastal management program document that functions as a comprehensive statement of the objectives, policies, standards, and criteria of the OCMP. The document also guides public and private uses of coastal lands and waters, describes the relevant coastal management policies and programs, and cites the statutes and rules under which the policies and programs are adopted.<sup>2</sup>

Current law establishes procedures for the adoption and amendment of the document. The bill revises the amendment procedures as follows and other procedural elements of the OCMP:<sup>3</sup>

Topic	Current law	The bill
Notice regarding amendments to the document	<p>Before making changes to the document, requires the Director to notify (by mail) persons who submitted comments and recommendations concerning the original document and appropriate agencies of the state and its political subdivisions.</p> <p><i>(R.C. 1506.02(A)(1).)</i></p>	<p>Instead requires the Director to notify those persons and organizations on the interested party list that is maintained by the Director.</p> <p>Allows the Director to send the notice by any means.</p> <p><i>(R.C. 1506.02(A)(1) and (3)(a).)</i></p>
List of interested parties	<p>Requires the Director to keep a list of interested public and private organizations and mail notice to those organizations regarding any proposed OCMP rule changes at least 30 days before any public hearing on the proposal.</p> <p><i>(R.C. 1506.02(A)(3)(a).)</i></p>	<p>Instead requires the Director to keep a list of interested persons and organizations and allows the Director to send the notice by any means.</p> <p><i>(R.C. 1506.02(A)(3)(a).)</i></p>
Copies of proposed rules and rule changes	<p>Requires the Director to mail a copy of each proposed rule, amendment, or rescission to any person who requests a copy within five days of the request.</p> <p><i>(R.C. 1506.02(A)(3)(b).)</i></p>	<p>Same, but allows the Director to send the copy by any means.</p> <p><i>(R.C. 1506.02(A)(3)(b).)</i></p>

<sup>2</sup> R.C. 1506.01(C) and 1506.02(A)(1).

<sup>3</sup> R.C. 1506.02(A)(1) and (3).

## Lake Erie coastal erosion areas

### Identification of coastal erosion areas

The bill revises the laws governing the identification of Lake Erie coastal erosion areas. Under current law, the ODNR Director is tasked with identifying these areas pursuant to specified procedures by first making a preliminary identification and then a final identification. Current law also establishes a process for the review and revision of the identified areas, which is the same process that applies to the initial identification.

The bill alters the procedures for identifying the areas as follows:

Topic	Current law	The bill
Preliminary identification: consultation	Requires the Director to consult with the appropriate authority of each municipal corporation, county, and township having territory within an area that the Director proposes to identify as a Lake Erie coastal erosion area.  <i>(R.C. 1506.06(A).)</i>	Instead authorizes, but does not require, the Director to undertake the consultation.  <i>(R.C. 1506.06(A).)</i>
Preliminary identification: notice	Requires the Director to provide notice of the preliminary identification as follows: <ol style="list-style-type: none"> <li>1. By certified mail to affected local governments;</li> <li>2. By certified mail to each landowner of record in the proposed area; and</li> <li>3. By publication in a newspaper of general circulation in each affected locality.</li> </ol> <i>(R.C. 1506.06(A).)</i>	Retains (1) changes, (2) to require notice to <i>affected</i> landowners, eliminates (3).  <i>(R.C. 1506.06(A).)</i>
Preliminary identification: public hearings/meetings	Within 60 days of making required notifications, requires the Director to hold public hearings in each of the shoreline counties on the preliminary identification of the coastal erosion areas.  <i>(R.C. 1506.06(A).)</i>	Instead requires the Director to hold public <i>meetings</i> within 30 days of making the notifications, which are not subject to specific administrative procedures.  <i>(R.C. 1506.06(A).)</i>

Topic	Current law	The bill
Preliminary identification: written objections	<p>Authorizes any affected municipal corporation, county, township, or private landowner to file a written objection to the preliminary identification at any of the public hearings, or at any other time within 120 days from the date indicated in the initial certified mail notice (the indicated date must be one week following the date of the notice).</p> <p><i>(R.C. 1506.06(A).)</i></p>	<p>Authorizes the local authorities and landowners to file written objections at the public meetings, or at any other time within 90 days from the date of the initial certified mail notice.</p> <p><i>(R.C. 1506.06(A).)</i></p>
Preliminary identification: Director's review of objections and modifications to the preliminary identification	<p>Requires the Director to review all filed objections and does all of the following:</p> <ul style="list-style-type: none"> <li>▪ Authorizes the Director to then modify the preliminary identification;</li> <li>▪ Requires the Director to notify each objector of the Director's decision regarding the objection within the next 90 days; and</li> <li>▪ Requires the Director to notify any other owner for whom the Director's decision results in a modification to that owner's property within the 90-day period.</li> </ul> <p><i>(R.C. 1506.06(B).)</i></p>	<p>Requires the Director to review all filed objections to the preliminary identification, but eliminates the intermediate notification and objection procedures (see below).</p> <p><i>(R.C. 1506.06(B) .)</i></p>
Preliminary identification: intermediate procedures for modification to preliminary identification resulting from an objection	<p>Whenever the preliminary identification is modified as a result of an objection, requires the Director to notify the affected municipal corporation, county, or township and publish a notice of the modification in a newspaper of general circulation in the affected locality.</p> <p><i>(R.C. 1506.06(C).)</i></p>	<p>No provision.</p>

Topic	Current law	The bill
Preliminary identification: intermediate procedures for objections to modifications	<p>Authorizes objections to modifications to be filed within 60 days of the newspaper notice, or within 60 days of the property owner’s notice (whichever is later) and in the same manner as objections to the original preliminary identification.</p> <p><i>(R.C. 1506.06(C).)</i></p>	No provision.
<p>Preliminary identification: intermediate procedures regarding Director’s review of objections to modifications</p> <p>Final identification</p>	<p>Requires the Director to rule on each objection to a modification within 60 days after receiving it.</p> <p><i>(R.C. 1506.06(C).)</i></p> <p>Requires the Director to make the final identification after ruling on each filed objection and to notify the appropriate authority of each affected municipal corporation, county, or township of the final identification by certified mail.</p> <p><i>(R.C. 1506.06(D).)</i></p>	<p>No provision.</p> <p>Requires the Director, within 90 days of receiving the last objection, to make the final identification, incorporate any modifications resulting from the Director’s review of the objections, and notify each affected municipal corporation, county, township, and private landowner of the final identification by certified mail.</p> <p><i>(R.C. 1506.06(B).)</i></p>
Local governments: leases and permits	<p>Prohibits a state agency, county, township, municipal corporation, or any other political subdivision or special district from using the fact that a property has been identified as a Lake Erie coastal erosion area as a basis for failing to enter into or renew a lease or permit for the development or improvement of lakefront or submerged property.</p> <p><i>(R.C. 1506.06(G).)</i></p>	<p>Similar, but also applies the provision to the failure to obtain a coastal permit (see “<b>Coastal permits</b>,” below).</p> <p><i>(R.C. 1506.06(E)(1).)</i></p>

## Submerged land leases

Under current law, the land currently and formerly underlying the waters of Lake Erie, and the waters of the Lake itself, belong to the state of Ohio as proprietor in public trust for its citizens.<sup>4</sup> Thus, any person who wants to develop or improve those lands must enter into a lease with the ODNR Director. Any political subdivision or special district also must obtain a lease when developing or improving these lands.<sup>5</sup>

The bill eliminates the requirement that a person seeking to develop or improve public trust land for noncommercial and nongovernmental use (for example, for residential purposes) obtain a lease from the ODNR Director. It retains the requirement that anyone, including a political subdivision, developing or improving submerged lands *for commercial or governmental use* obtain a lease from the Director.<sup>6</sup> It also retains the existing criminal penalty – a fine between \$100 and \$500 – for a violation of this requirement.<sup>7</sup> Though not required, the bill authorizes a person developing public trust land for noncommercial/nongovernmental use to obtain a lease from the Director.<sup>8</sup>

For these provisions, a commercial use includes any use that is profit-seeking or revenue-earning, or that involves the buying or selling of any good, service, or other product. A governmental use is a use by any agency of the state or any political subdivision of the state, including a county or municipal corporation.<sup>9</sup> When referring to public trust land for submerged land lease purposes, current law and the bill refer to it as the “territory.”<sup>10</sup>

In addition to the changes referenced above, the bill also revises the conditions and procedures under which a submerged land lease may be entered into with the Director, as illustrated in the table below.

Topic	Current law	The bill
Territory subject to a lease	Defines the territory to include the waters and the lands presently underlying the waters of Lake Erie and the lands formerly underlying	Same, but adds both of the following: <ul style="list-style-type: none"> <li>▪ The natural shoreline is the line at which the water usually stands when free</li> </ul>

<sup>4</sup> R.C. 1506.10, not in the bill. Ohio’s “public trust doctrine” was originally established in 1803 under Section 14, Article III, of the Northwest Ordinance, which gave Ohio authority to regulate activities occurring in navigable waters within state boundaries. Ohio may not abdicate its control of public trust land. *Illinois Central Railroad Company v. Illinois*, 146 U.S. 387 (1892).

<sup>5</sup> R.C. 1506.11(B) and 1506.01(D).

<sup>6</sup> R.C. 1506.11(B)(1).

<sup>7</sup> R.C. 1506.99(A), not in the bill and 1506.09(A).

<sup>8</sup> R.C. 1506.11(B)(2).

<sup>9</sup> R.C. 1506.01(P) and (Q).

<sup>10</sup> R.C. 1506.11(A)(1).



Topic	Current law	The bill
	<p>the waters of Lake Erie and now artificially filled, between the natural shoreline and the international boundary line with Canada.</p> <p><i>(R.C. 1506.11(A).)</i></p>	<p>from disturbing causes;</p> <ul style="list-style-type: none"> <li>▪ Disturbing causes are sudden, extraordinary, dramatic or relatively short-term actions or processes that are perceptible when occurring, such as storms, storm surge, wind, waves, seiche, artificial changes, avulsion, floods, droughts, or periods of high or low water levels.</li> </ul> <p><i>(R.C. 1506.11(A)(1) and 1506.01(R) and (S).)</i></p>
<p>Director's determination regarding the lease</p>	<p>Requires the Director to determine that the territory can be developed or improved as specified in the lease application without:</p> <ul style="list-style-type: none"> <li>▪ Impairing the public right of navigation, water commerce, and fishery; and</li> <li>▪ Prejudicing the littoral rights of any owner of land fronting on Lake Erie, provided that a local authority has enacted an ordinance or resolution (see below).</li> </ul> <p><i>(R.C. 1506.11(B).)</i></p>	<p>Instead requires the Director to do all of the following:</p> <ul style="list-style-type: none"> <li>▪ Determine that the territory can be developed and improved or the waters used as specified in the application and in compliance with the laws governing coastal management;</li> <li>▪ Suspend review of an application for a lease if the Director finds a dispute concerning the lease regarding the rights of the state, the littoral rights of any owner of land fronting on Lake Erie, or the ownership of any development or improvement;</li> <li>▪ Refrain from granting the lease until the dispute is resolved by an agreement of the parties or a court.</li> </ul> <p><i>(R.C. 1506.11(C)(1) and (D).)</i></p>

Topic	Current law	The bill
Conditions of the lease – resolution or ordinance	<p>Specifies that the lease can only be granted by the Director if the local authority has enacted an ordinance or resolution finding and determining both of the following:</p> <ul style="list-style-type: none"> <li>▪ The part of the territory, described by metes and bounds or by an alternate description referenced to the applicant’s upland property description that is considered adequate by the Director, is not necessary or required for the construction, maintenance, or operation by the local authority of breakwaters, piers, docks, wharves, bulkheads, connecting ways, water terminal facilities, and improvements and marginal highways in aid of navigation and water commerce; and</li> <li>▪ The land uses specified in the application complies with regulation of permissible land use under a waterfront plan of the local authority.</li> </ul> <p><i>(R.C. 1506.11(B).)</i></p>	<p>Same, but specifies that the territory should be described in the ordinance or resolution by plat of survey only.</p> <p><i>(R.C. 1506.11(C)(2)(a).)</i></p>
Local authority for purposes of resolution or ordinance	<p>Specifies that the local authority is the legislative authority of a municipal corporation within the territory (if the municipal corporation is not within the jurisdiction of a port authority), or the county commissioners of the county within the territory (excluding any territory within a municipal corporation or under the jurisdiction of a port authority), or the board of directors of a port</p>	<p>Clarifies that the local authority is:</p> <ul style="list-style-type: none"> <li>▪ A board of county commissioners with jurisdiction over territory sought to be leased, unless a municipal corporation or port authority has jurisdiction;</li> <li>▪ The legislative authority of a municipal corporation with jurisdiction over territory sought to be</li> </ul>

Topic	Current law	The bill
	<p>authority with respect to such part of the territory included in the port authority's jurisdiction.</p> <p><i>(R.C. 1506.11(B).)</i></p>	<p>leased, unless a port authority has jurisdiction;</p> <ul style="list-style-type: none"> <li>▪ A board of directors of a port authority with jurisdiction over territory sought to be leased</li> </ul> <p><i>(R.C. 1506.11(A)(2).)</i></p>
<p>Hearing and notice requirements concerning the lease application</p>	<p>Specifies all of the following:</p> <ul style="list-style-type: none"> <li>▪ The Director may hold a public hearing on the lease application and provide written notice of it to any local authority;</li> <li>▪ The Director must provide public notice of the application in a newspaper of general circulation in the locality of the proposed project;</li> <li>▪ The Director may combine the notice of the application with notice of the hearing (if one is to be held) and must make that notice one week for four consecutive weeks before the date of the hearing;</li> <li>▪ The hearings must be open to the public and recorded;</li> <li>▪ Parties to the hearing may be represented by counsel;</li> <li>▪ Findings and orders of the Director must be issued in writing;</li> <li>▪ All costs of the hearing must be paid by the lease applicant; and</li> <li>▪ The Director also may hold public meetings on the application.</li> </ul> <p><i>(R.C. 1506.11(C).)</i></p>	<p>No provision, but see "<b>Coastal permits</b>" below.</p>

Topic	Current law	The bill
Changes in structures, facilities, buildings, improvements, or changes or expansions in the use of the lease	Prohibits a person from making expansions or changes in the use of the lease if those expansions or changes require approval of ODNR 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 the territory.  <i>(R.C. 1506.11(G).)</i>	Same, but only requires the Director to first determine that the proposed action will not adversely affect the territory and the state's reversionary interest in the territory.  <i>(R.C. 1506.11(K).)</i>
"Adversely affect" for purposes of changes and improvements	Specifies that a proposed change or improvement adversely affects the public right of recreation if the changes or improvements cause or will cause any significant demonstrable negative impact on any present or prospective recreational use of the territory by the public during the term of the lease and of any public recreational use of the leased premises in which the state has a reversionary interest.  <i>(R.C. 1506.11(G).)</i>	No provision, but see " <b>Coastal permits</b> " below

### Leases entered prior to the bill's effective date

The bill requires the Director to provide notice by certified mail to each existing lessee if all or part of the leased territory was above the natural shoreline of Lake Erie or was for a noncommercial or nongovernmental use. The Director must provide the notice within 120 days of the bill's effective date. The lessee may request the state to modify or terminate the lease not later than 120 days after receipt of the notice. The lessee must provide the Director documentation demonstrating the lease was for territory above the natural shoreline of Lake Erie or that the lease was for a noncommercial or nongovernmental use.

If the Director determines the lease was for territory above the natural shoreline, the lease must be terminated *or modified* as of May 21, 2015. The Director must return to the lessee any rentals collected by the Director from May 21, 2015, up to the bill's effective date and prorate the rentals accordingly. Any modified lease continues in full force and effect.

If the Director determines that the lease is for a noncommercial or nongovernmental use, the lease also must be terminated as of May 21, 2015. The Director must return any rentals collected from May 21, 2015, up to the bill's effective date and prorate the rentals accordingly.

However, if a lessee does not make a request to terminate or modify a lease within 120 days after receipt of the notification from the Director, the lease is valid and continues in full force and effect.<sup>11</sup>

## Permits

Under current law, there are two main permits issued under the coastal management program. The first permit is required for any permanent structure constructed in a Lake Erie coastal erosion area. The second permit is required any time a shore structure (for example, a dock, pier, retaining wall, revetment, or breakwater) is constructed along or near the Lake Erie shoreline. This second permit is currently called a shore structure permit. The bill alters the procedural requirements governing both permits and makes other changes to the law governing the permits as discussed below.

### Permits for structures in a coastal erosion area

As indicated above, under current law, a permit is required to erect, construct, or redevelop any permanent structure in a Lake Erie coastal erosion area. Procedures and requirements concerning those permits are established by the Director in rule. The bill alters the requirements concerning notice of approval and denial of a permit application and the associated appeal process as shown in the table below:

Topic	Current law	The bill
Approval or denial of a permit to erect, construct, or redevelop a permanent structure in a Lake Erie coastal erosion area	<p>Requires that, no later than 30 days after receiving a complete permit application, the Director must notify the applicant of whether the application is approved or denied and, if denied, either:</p> <ul style="list-style-type: none"> <li>▪ The reason for denial; or</li> <li>▪ A notification of any modification necessary to qualify the application for approval.</li> </ul> <p>(R.C. 1506.07(A).)</p>	<p>Requires that, no later than 90 days after receiving a complete permit application, the Director notify the applicant whether the application is approved, <i>conditionally approved</i>, or denied.</p> <ul style="list-style-type: none"> <li>▪ If it is denied, the Director must include with the notice a reason for the denial; and</li> <li>▪ If it is conditionally approved, the Director must include with the notice any modification necessary to qualify the application for approval.</li> </ul> <p>(R.C. 1506.07(A)(3).)</p>

<sup>11</sup> Section 4.

### ***Coastal permits***

Under current law, a person must obtain a shore structure permit from the Director before building a shore structure, such as a pier or dock, that may affect shore erosion, wave action, or inundation along or near the Lake Erie shoreline.

The bill revises the law governing shore structure permits by:

1. Changing the name of the permit from “shore structure permit” to “coastal permit,” changing the term “shore structure” to “coastal structure,” clarifying what constitutes a coastal structure, and revising associated coastal permit application requirements and procedures;
2. Clarifying that both construction of artificial structures and restoration of natural features require a coastal permit and applying the associated existing criminal penalty for failure to obtain the permit;
3. Specifying that a coastal permit is required to build a new coastal structure or perform coastal restoration in the waters of Lake Erie (in addition to along or near the shoreline, as in current law); and
4. Allowing existing coastal structures and restoration that were built without a permit to be authorized by either a coastal permit or through a coastal registration process.<sup>12</sup>

### ***Coastal structure***

As indicated above, a coastal permit is required for the construction of a coastal structure in the waters of Lake Erie or along or near the shoreline of Lake Erie. The bill clarifies what constitutes a coastal structure that requires a coastal permit, as illustrated below:

Types of shore structures requiring a shore structure permit under current law	Types of coastal structures requiring a coastal permit under the bill
<p>A shore structure includes:</p> <ul style="list-style-type: none"> <li>▪ Beaches;</li> <li>▪ Groins;</li> <li>▪ Revetments;</li> </ul>	<p>A coastal structure includes all of the structures for which a shore structure permit is required and also includes boathouses.<sup>13</sup></p>

<sup>12</sup> R.C. 1506.40 to 1506.403.

<sup>13</sup> R.C. 1506.01(M). According to the Department of Natural Resources, retaining walls, utilities, and confined disposal facilities, which are added to the definition of coastal structure by the bill, are all considered associated fill for purposes of the shore structure permit under current law. The bill clarifies the term by specifying these structures require a coastal permit and by defining existing fill. Under the bill, existing fill is any artificially filled area that replaced a natural Lake Erie aquatic area with dry land prior to the bill’s effective date, but excludes coastal restoration of lost natural coastal features. R.C. 1506.01(O).

Types of shore structures requiring a shore structure permit under current law	Types of coastal structures requiring a coastal permit under the bill
<ul style="list-style-type: none"> <li>▪ Bulkheads;</li> <li>▪ Seawalls;</li> <li>▪ Breakwaters;</li> <li>▪ Certain dikes designated by the Chief of the Division of Water Resources;</li> <li>▪ Piers;</li> <li>▪ Docks;</li> <li>▪ Jetties;</li> <li>▪ Wharves;</li> <li>▪ Marinas;</li> <li>▪ Boat ramps;</li> <li>▪ Any associated fill or debris used as part of the construction of shore structures that may affect shore erosion, wave action, or inundation;</li> <li>▪ Fill or debris that is placed along or near the shore, including bluffs, banks, or beach ridges, for the purpose of stabilizing slopes.</li> </ul>	

### ***Coastal restoration***

As indicated above, the bill requires a person to obtain a coastal permit from the ODNR Director to perform coastal restoration.<sup>14</sup> Under the bill, coastal restoration includes the restoration or enhancement of lost natural coastal features such as beaches, dunes, wetlands, and associated uplands, or the creation or enhancement of beneficial natural coastal features such as beaches, nature based shorelines,<sup>15</sup> wetlands, and other coastal habitats.<sup>16</sup> A state agency, county, township, municipal corporation, or any other political subdivision or special district in the state also must obtain a coastal permit to perform coastal restoration.<sup>17</sup>

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<sup>14</sup> R.C. 1506.40(A).

<sup>15</sup> Under the bill, a nature based shoreline is the strategic placement of a combination of plants, sand, or other natural structural and organic materials that has minimal adverse impacts on natural coastal processes, but excludes revetments, groins, or breakwaters. R.C. 1506.01(T).

<sup>16</sup> R.C. 1506.01(N).

<sup>17</sup> R.C. 1506.01(D) and 1506.40(A).

The bill retains the existing criminal penalty (for failure to obtain a shore structure permit) and applies it to the failure to obtain a coastal permit, including the failure to obtain a coastal permit for coastal restoration. The penalty includes a fine – between \$100 and \$500 – for each offense. Each day of violation is a separate offense.<sup>18</sup>

### ***Coastal permit tiers***

The bill establishes new coastal permit application procedures, including three different tiers of coastal permits. Before an applicant applies for a coastal permit, the applicant must complete a form describing the proposed coastal structure or coastal restoration and submit it to the Director. The applicant must make sure the description is sufficient for the Director to determine which tier of coastal permit is required. When the Director receives the form, the Director determines which tier is required by applying the following criteria:

1. **Tier 1:** the coastal structure or coastal restoration ***is unlikely*** to endanger life, health, property, or the resources of Lake Erie as proposed, and may include coastal structures and coastal restoration such as retaining walls less than or equal to three feet in height, floating or pile-supported docks for seasonal use, nature-based shorelines, beaches, dunes, wetlands, and associated uplands.
2. **Tier 2:** the coastal structure or coastal restoration ***could*** endanger life, health, property, or the resources of Lake Erie if not properly designed or constructed, and may include coastal structures and coastal restoration such as retaining walls greater than three feet in height, revetments, bulkheads, seawalls, dikes, and certain piers, docks, uplands, and existing fills.
3. **Tier 3:** the coastal structure or coastal restoration ***could significantly endanger*** life, health, property, or the resources of Lake Erie if not properly designed or constructed, and may include coastal structures and coastal restoration such as groins, breakwaters, jetties, wharves, marinas, boat ramps, boat houses, utilities, confined disposal facilities, and certain piers, docks, uplands, and existing fills.

Once the Director has made a determination, the Director must notify the applicant and then the applicant may apply for the appropriate tier of coastal permit.<sup>19</sup>

### ***Information submitted with coastal permit application***

The bill requires new information to be submitted with an application for a coastal permit. The following table illustrates information required to be submitted with the application for a shore structure permit under current law as compared to a coastal permit under the bill.<sup>20</sup>

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<sup>18</sup> R.C. 1506.99, not in the bill.

<sup>19</sup> R.C. 1506.40(B), (C), and (D).

<sup>20</sup> R.C. 1506.40(D)(1) to (7).



Information to be submitted under current law for a shore structure permit	Information to be submitted under the bill for a coastal permit
Detailed plans and specifications prepared by a professional engineer.	Detailed plans and specifications prepared by a professional engineer (unless the application is for a tier 1 coastal permit).
<p>Evidence of compliance with laws governing geological survey and water resources, as determined by the Director.</p> <p>No provision.</p>	<p>Same as current law.</p> <p>Appropriate evidence that the coastal structure or coastal restoration will not:</p> <ul style="list-style-type: none"> <li>▪ Be of improper or inadequate design;</li> <li>▪ Adversely affect any public rights of navigation, water commerce, recreation, or fishing (cause any significant demonstrable negative impact on any present rights of the public);</li> <li>▪ Prejudice the littoral rights of any owner of land fronting Lake Erie; or</li> <li>▪ Endanger life, health, property, or the resources of Lake Erie.</li> </ul>
No provision.	Appropriate evidence of upland interest or littoral rights in the area where the coastal structure or coastal restoration is proposed.
No provision.	For a tier 2 or 3 coastal permit application, a stability analysis for the proposed coastal structure or coastal restoration.
No provision.	For a tier 3 coastal permit application, a sediment impact analysis, a long-term sand monitoring and bypassing plan, performance or surety bond, and any other studies or analyses the Director determines necessary for evaluation of the coastal structure or coastal restoration.
A nonrefundable fee, prescribed by the Director in rules.	Same as current law.

### ***Notice and hearing requirements and procedures***

The bill retains the current notice and hearing requirements and procedures that apply to shore structure permits that authorize the Director (but do not require the Director) to:

- Provide notice of the coastal permit application by advertising in a newspaper of general circulation in the proposed locality; and
- Hold public meetings or a public hearing on the application.

If a public hearing will be held, the Director must provide notice of the hearing once a week for four consecutive weeks before the hearing. There are no notice requirements for public meetings.<sup>21</sup>

### ***Registration of preexisting coastal structures***

The bill allows (but does not require) persons who own coastal structures or restorations built before the bill's effective date to apply for a coastal permit, or to register with the Director.<sup>22</sup> The bill also provides that any permit for a shore structure issued prior to the bill's effective date remains in effect.<sup>23</sup>

### ***Validity***

The bill requires the Director to adopt rules specifying the timeframe in which a coastal structure or restoration must be completed. The Director must also adopt rules establishing reapplication requirements for a coastal permit under which the construction or restoration period expires before the construction or restoration is completed.<sup>24</sup> Once construction is completed, the coastal permit (and a coastal registration) is valid for the life of the coastal structure or coastal restoration. However, the Director must include in a coastal permit or registration a condition requiring the coastal permit holder or registrant to notify the Director in writing of any change in ownership. Upon receipt of the written notice, the Director must transfer the coastal permit or registration to the new owner.<sup>25</sup>

Under current law, the Director, by rule, must limit the period during which a shore structure construction permit is valid and establish reapplication requirements governing a permit that expires before construction is completed.<sup>26</sup> Current law does not specify any requirements concerning transferring ownership of a shore structure.

### ***Rehabilitation***

The bill authorizes holders of coastal permits to conduct rehabilitation of a coastal structure or coastal restoration without obtaining a new coastal permit. The rehabilitation must be for the purpose of restoring the structure or restoration to the condition authorized by the

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<sup>21</sup> R.C. 1506.401.

<sup>22</sup> R.C. 1506.402(E).

<sup>23</sup> Section 4.

<sup>24</sup> R.C. 1506.402(C).

<sup>25</sup> R.C. 1506.402(F).

<sup>26</sup> R.C. 1506.40.

permit. However, a person who only registered a preexisting unpermitted coastal structure or restoration with the Director **must obtain** a coastal permit before performing rehabilitation.<sup>27</sup>

### ***Disputes***

The bill requires the Director to suspend the review of a coastal permit application or registration if the Director finds that a dispute exists concerning the rights of the state, rights of the public, the littoral rights or other property rights of any upland owner, or the ownership of the coastal structure or coastal restoration. The Director is prohibited from issuing the coastal permit or accepting the registration until the dispute is resolved by agreement of the parties or by a court of competent jurisdiction.<sup>28</sup>

### ***Corrective and remedial action***

The bill authorizes the Director to order any of the following:

- The cessation of work on or the removal of any coastal structure or coastal restoration that commenced or was constructed without or in violation of a coastal permit; and
- The immediate correction or removal of any coastal structure, coastal restoration, or unconsolidated rubble or debris along or near the shore of Lake Erie or within the waters of Lake Erie that the Director determines is endangering life, health, or property.

These orders, issued by the Director, can be appealed in accordance with the Administrative Procedure Act.<sup>29</sup>

In addition, the Director may immediately correct or remove a coastal structure, coastal restoration, or unconsolidated rubble or debris if the Director determines those items are so threatening to life, health, or property as to not allow time for the issuance and enforcement of an order. In that circumstance, the Director can recover the costs of the removal or correction from the owner, contractor, or other responsible person by initiating an appropriate action in a court of competent jurisdiction.<sup>30</sup>

### ***Right of entry***

The bill authorizes the Director or the Director's duly authorized representative to enter at reasonable times on any property to inspect any coastal structure or coastal restoration in order to determine if it complies with a coastal permit, registration, or rules. If entry is prevented or hindered, the Director or representative can apply to a court for an inspection warrant.<sup>31</sup>

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<sup>27</sup> R.C. 1506.402(G).

<sup>28</sup> R.C. 1506.402(B).

<sup>29</sup> R.C. 1506.403(A), (B), and (C).

<sup>30</sup> R.C. 1506.403(B).

<sup>31</sup> R.C. 1506.403(C).

### ***Taxes and assessments***

The bill specifies that any taxes or assessments levied or assessed on property that is the subject of a coastal permit are the obligation of the coastal permit holder.<sup>32</sup>

### ***Erosion control structure***

Under current law, boards of county commissioners may use loans from the Ohio Water Development Authority to provide financial assistance to persons who have obtained a shore structure permit to build an erosion control structure.<sup>33</sup> These structures must be designed **solely and specifically** to reduce or control erosion of the shore along or near Lake Erie, including revetments, seawalls, bulkheads, certain breakwaters, and similar structures. The bill instead specifies that an erosion control structure need only be designed to reduce or control this type of erosion (i.e., not solely and specifically).<sup>34</sup>

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## **HISTORY**

Action	Date
Introduced	03-14-22

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ANSB0313IN-134/ts

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<sup>32</sup> R.C. 1506.11(J).

<sup>33</sup> R.C. 1506.44(A).

<sup>34</sup> R.C. 1506.01(L).