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Bill Analysis

Version: As Reported by Senate Agriculture & Natural Resources

Primary Sponsors: Sens. Reineke and Hackett

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SUMMARY

- Transfers the authority to administer the Wild, Scenic, and Recreational River Program from the Division of Parks and Watercraft to the Division of Natural Areas and Preserves (DNAP) in ODNR.
- As part of the transfer, narrows the scope of authority granted under the law to DNAP by clarifying that DNAP's authority is restricted to watercourses that are designated as wild, scenic, and recreational rivers rather than wild, scenic, or recreational river *areas* as in current law.
- Clarifies that a watercourse designation does not affect private property rights or authorize the Director of Natural Resources, DNAP Chief, or any governmental agency or political subdivision to restrict the use of *private* land adjacent to a designated river.
- Also, specifies that the law does not give any right to those parties to enter upon private land.
- Notwithstanding the general narrowing of authority, expands the types of watercourses that are subject to designation as a wild, scenic, or recreational river to include headwaters of those rivers.
- Alters what constitutes a wild, scenic, or recreational river to align those provisions of law to the general narrowing of authority granted to DNAP.
- Requires DNAP to perform specified duties regarding publicly owned land along a designated river, including requiring the DNAP Director to do both of the following:

* This analysis was prepared before the report of the Senate Agriculture and Natural Resources Committee the appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Adopt rules governing the use, visitation, and protection of scenic river lands and other specified publicly owned lands that are administered by DNAP and that are within the watersheds of wild, scenic, and recreational rivers; and
- Provide for the establishment of facilities and improvements within the state system of wild, scenic, and recreational rivers, scenic river lands, and other specified publicly owned lands that are necessary for their visitation, use, restoration, and protection and that do not impair their natural character.
- Clarifies that certain public entities must obtain approval from the ODNR Director or the Director's representative if specified construction activities are performed within 1,000 feet of a wild, scenic, or recreational river.
- Modifies the notification requirements when a river is designated a wild, scenic, or recreational river by requiring the Director to post the Director's intention to declare a watercourse a wild, scenic, or recreational river on DNAP's website.
- Clarifies the roles of the Director and the DNAP Chief regarding the establishment and administration of wild, scenic, and recreational rivers by stating the Director establishes the designation and the Chief administers the management of the designated wild, scenic, or recreational river.
- Allows the DNAP Chief to accept, receive, and expend gifts, devises, or bequests of money, land, or other properties for purposes of the wild, scenic, and recreational river program.
- Requires the DNAP Chief to adopt rules establishing fees and charges for the use of facilities in nature preserves, scenic river lands, and on publicly owned lands.

DETAILED ANALYSIS

Wild, scenic, and recreational rivers introduction

The Ohio Department of Natural Resources (ODNR) administers the Wild, Scenic, and Recreational Rivers Program. The program currently encompasses 15 rivers that have been designated by the Director of Natural Resources as either a wild, scenic, or recreational river. The mission of the program is "to work cooperatively with local governments, businesses, landowners, nonprofit organizations, and other state and federal agencies to protect the aquatic resources and terrestrial communities dependent on healthy riparian habitats."¹

The bill transfers the authority to administer the program from the Division of Parks and Watercraft to the Division of Natural Areas and Preserves (DNAP) in ODNR.²

¹ [ODNR Scenic River Program](#).

² R.C. 1517.02 and 1517.14 and multiple conforming cross-reference changes.

Clarification of authority

Designation of wild, scenic, and recreational rivers

As part of the transfer, the bill narrows the scope of authority granted under the law to DNAP. Thus, the bill clarifies that DNAP's authority is restricted to watercourses that are designated as wild, scenic, and recreational rivers. Under current law, the Division of Parks and Watercraft is granted authority over designated rivers *and* the areas surrounding those rivers that are designated as wild, scenic, and recreational river *areas*.³

According to a DNAP representative, there is confusion regarding ODNR's authority to regulate private land along wild, scenic, and recreational rivers. The representative stated that many people believe that ODNR has authority to expand the area beyond a river designated as a wild, scenic, or recreational river to include private land along a designated river. Part of the confusion is because current law allows for the designation of a "wild, scenic, or recreational river *area*" and part on current law pertaining to adjacent lands. The representative stated that the changes made by the bill are an effort to clarify that DNAP's authority relates only to wild, scenic, and recreational rivers and to ODNR-owned land along a designated river.⁴

To reinforce those statements, the bill clarifies that the designation of a watercourse as a wild, scenic, or recreational river does not affect private property rights or authorize the Director, DNAP Chief, or any governmental agency or political subdivision to restrict the use of *private* land adjacent to the river or enter upon private land. Current law states that an area designation does not authorize the Director or any governmental agency or political subdivision to restrict the use of land by the land's owner or any person acting under the landowner's authority or to enter upon land.⁵

As part of a proposal to designate an area as a wild, scenic, or recreational river area by the Director, current law allows the Director to include adjacent land to a watercourse in the designated area. The adjacent land must be in sufficient width to preserve, protect, and develop the natural character of the watercourse, but must not include any lands more than 1,000 feet from the normal waterlines of the watercourse unless an additional width is necessary to preserve water conservation, scenic, fish, wildlife, historic, or outdoor recreation values. The bill removes the Director's authority to include adjacent lands to a watercourse as part of a wild, scenic, or recreational river designation.⁶

Further clarifying DNAP's authority regarding land along a designated river, the bill defines scenic river lands as any area of land or water within a wild, scenic, or recreational river watershed that is *owned by* the Department of Natural Resources and administered by DNAP

³ Multiple references throughout the bill that change "wild, scenic, and recreational river areas" to "wild, scenic, and recreational rivers" and "watercourses."

⁴ Phone conversation with DNAP on September 20, 2023.

⁵ R.C. 1517.14(D)(1).

⁶ R.C. 1517.14(B).

for the purpose of protecting the natural character and water quality of a wild, scenic, or recreational river. Thus, the term “scenic river lands” does not apply to private lands.⁷

Watercourses

Notwithstanding the general narrowing of authority, the bill expands the types of watercourses that are subject to designation as a wild, scenic, or recreational river. Current law defines a watercourse as a substantially natural channel with recognized banks and bottom in which a flow of water occurs, *with an average of at least ten feet mean surface water width* and at least five miles of length. The bill eliminates the average width criteria. According to a DNAP representative, this elimination allows the headwaters of a watercourse (which are less than ten feet in width) to be included in the designation of a wild, scenic, or recreational river.⁸

Wild, scenic, and recreational rivers

The bill alters what constitutes a wild, scenic, or recreational river, as indicated by the following table. The altered definitions reflect the general narrowing of authority included in the bill.

Wild, Scenic, and Recreational Rivers ⁹		
River type	Current law	The bill
Wild River	An <i>area</i> declared a wild river area by the ODNR Director and includes those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted, representing vestiges of primitive America.	Same, except refers to wild river rather than wild river area and states that a wild river is a watercourse (thus clarifying that a wild river does not include surrounding lands) and specifies that the river must be free of impoundments constructed by humans.
Scenic River	An <i>area</i> declared a scenic river area by the Director and includes those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.	Same, except refers to scenic river rather than scenic river area, specifies that a scenic river is a watercourse (thus clarifying that a scenic river does not include surrounding lands), and requires the river to be free of impoundments constructed by

⁷ R.C. 1517.01(E).

⁸ R.C. 1517.01(F) and 1546.01. Phone conversation with DNAP on September 20, 2023.

⁹ R.C. 1517.01 and 1546.01.

Wild, Scenic, and Recreational Rivers ⁹		
River type	Current law	The bill
		humans for at least 75% of the length of the watercourse or section of the watercourse or requires it to be combined with another section of a watercourse that has been designated a wild river.
Recreational River	An <i>area</i> declared a recreational river area by the Director and includes those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.	Same, except refers to recreational river rather than recreational river area and states that a recreational river is a watercourse (thus clarifying that a recreational river does not include surrounding lands).

Additional changes regarding the transfer of authority

The bill requires DNAP to do all of the following regarding land along a designated river:

1. Adopt rules governing the use, visitation, and protection of scenic river lands and other publicly owned lands that are administered by DNAP that are within the watersheds of wild, scenic, and recreational rivers;
2. Provide for the establishment of facilities and improvements within the state system of wild, scenic, and recreational rivers, scenic river lands, and other publicly owned lands that are necessary for their visitation, use, restoration, and protection and that do not impair their natural character;
3. Provide interpretive programs and publish and disseminate information pertaining to scenic river lands, and publicly owned lands that are administered by DNAP and are within watersheds of wild, scenic, and recreational rivers for their visitation and use;
4. Grant permits to qualified persons for scientific research and investigations within wild, scenic, and recreational rivers, scenic river lands, and other publicly owned lands within wild, scenic, and recreational river watersheds;
5. Establish an appropriate system for marking wild, scenic, and recreational rivers, scenic river lands, and other publicly owned lands within wild, scenic, and recreational river watersheds;

6. Conduct protection, restoration, habitat enhancement, and clean-up projects in wild, scenic, and recreational rivers, scenic river lands, and other publicly owned lands within wild, scenic, and recreational river watersheds;
7. In addition to uses for nature preserves, use money in the existing Natural Areas and Preserves Fund for the acquisition of new or expanded scenic river lands, facility development in scenic river lands, special projects that include production of interpretative material related to scenic river lands, and administering a system of wild, scenic, and recreational rivers, scenic river lands, and facilities or improvements associated with such rivers and lands;
8. Accept and administer state and federal assistance for the maintenance and protection of scenic river lands and for the construction of facilities on publicly owned lands within wild, scenic, and recreational river watersheds;
9. Use money in the existing Scenic Rivers Protection Fund for the acquisition of scenic river lands and construction of facilities in scenic river lands and other publicly owned lands within wild, scenic, and recreational river watersheds.¹⁰

Public property along rivers

Current law requires a state department, state agency, or political subdivision to obtain approval from the Director or the Director's representative to do any of the following to a watercourse within a wild, scenic, or recreational river area outside a municipal corporation:

1. Build or enlarge any highway, road, or structure; or
2. Modify or cause the modification of the channel of any watercourse.

The bill clarifies that those public entities must obtain approval only if the above activities are performed within 1,000 feet of a wild, scenic, or recreational river. The bill allows those public entities, with the approval of the Director, to so build, enlarge, or modify beyond 1,000 feet on publicly owned land if necessary to preserve water conservation, scenic, fish, wildlife, historic, or outdoor recreation values.¹¹

The bill further allows the Director to enter into a lease or other agreement with a political subdivision to administer any publicly owned land that is administered by DNAP and that is within the watershed of a wild, scenic, or recreational river, rather than allowing the Director to do so in a wild, scenic, or recreational river area as in current law.¹²

Notification of designation

The bill modifies the notification requirements when a river is designated a wild, scenic, or recreational river by requiring the Director to post the Director's intention to declare a

¹⁰ R.C. 1517.02(D)(6)(b) and (D)(7), (8), (9), (10), and (12); 1517.11; 1517.16(A); and 4501.24.

¹¹ R.C. 1517.15.

¹² R.C. 1517.14(E).

watercourse as a wild, scenic, or recreational river on DNAP's website. The Director must complete the post on the date of the initial newspaper publication of notice required under current law. Any person having an interest in the proposed declaration may file written comments to the proposal within 60 days of the last date of publication or dispatch of written notice. The Director must post on DNAP's website the last date by which written comments may be filed. As a result of the 60-day notice provisions discussed above, the bill changes from 30 to 60 days the number of days that the Director has to enter the Director's designation in the Director's Journal and to terminate a designation by entry in the Director's Journal.¹³

Additional provisions regarding the transfer

As a result of the transfer of the Wild, Scenic, and Recreational River Program to DNAP, the bill makes the following additional changes:

1. States that a wild, scenic, or recreational river that was designated by the Director under the law governing the Division of Parks and Watercraft prior to the bill's effective date retains its designation on and after the bill's effective date;
2. States that an advisory council for a wild, scenic, or recreational river that was created by the Director under the law governing the Division of Parks and Watercraft prior to the bill's effective date continues to be the advisory council for that river on and after the bill's effective date; and
3. Eliminates the Waterways Safety Council's authority to submit advice and recommendations regarding plans and programs for the acquisition, protection, construction, maintenance, and administration of wild, scenic, and recreational river areas.¹⁴

The bill also clarifies the roles of the Director and the Chief of DNAP regarding the establishment and administration of wild, scenic, and recreational rivers. It does so by stating that the Director must establish the designation and the Chief must administer the management of the designated wild, scenic, or recreational river. Under current law, the Director *or the Director's representative* may designate a wild, scenic, or recreational river area and may further administer the management of the area.¹⁵

Fund provisions

Similar to the general provisions in the Parks and Watercraft Law regarding acceptance of gifts, devises, and bequests, the bill allows the DNAP Chief to accept, receive, and expend gifts, devises, or bequests of money, land, or other properties for purposes of the wild, scenic, and recreational river program. The bill also allows the DNAP Chief to accept and spend donations. If the donations, gifts, devises, and bequests are monetary in nature, the money

¹³ R.C. 1517.14(C).

¹⁴ R.C. 1517.14(F), 1517.17, and 1547.73(C).

¹⁵ R.C. 1517.02 and 1517.14.

must be credited to the existing Scenic Rivers Protection Fund. The bill allows money in the fund to be used by DNAP to finance specified costs, including habitat enhancement and clean-up projects within watersheds of wild, scenic, and recreational rivers and the acquisition of scenic river lands.¹⁶

In addition to other sources of revenues, the bill allows the DNAP Chief to spend money from the existing Natural Areas and Preserves and Waterways Safety Funds for purposes of administering the Wild, Scenic, and Recreational Rivers Program. The bill requires any expenditures made by the DNAP Chief for wild, scenic, and recreational rivers to be made only on lands, or portions of those lands, owned by ODNR and administered by DNAP or on other lands when agreed to, in writing, by the owner of the lands within the watershed of the wild, scenic, or recreational river, or a portion of a river.¹⁷

Miscellaneous

The bill also requires existing fees and charges for conducting stream impact reviews of any planned or proposed construction, modification, renovation, or development project that may potentially impact a designated river to be credited to the Natural Areas and Preserves Fund. Current law requires those fees to be credited to the existing State Park Fund.¹⁸

The bill requires the DNAP Chief to publish and submit to the Governor and the General Assembly a biennial report of the status and condition of each wild, scenic, and recreational river and activities conducted within each river corridor.¹⁹

Current law requires the Division of Wildlife to prepare and maintain surveys and inventories of rare and endangered species of plants and animals and other unique natural features for storage in the Ohio Natural Heritage Database. The bill requires the Chief to assist the Division of Wildlife in preparing and maintaining the surveys and inventories.²⁰

The bill changes the reference in the law governing construction and demolition debris facility siting from wild, scenic, or recreational river area to wild, scenic, and recreational river.²¹

The bill eliminates the authority of the DNAP Chief to condition any expenditures, maintenance activities, or construction of facilities on the adoption and enforcement of adequate floodplain zoning or land use rules.²²

¹⁶ R.C. 1517.02(D) and (E) and 4501.24.

¹⁷ R.C. 1517.16(A)(4) and (C) and 1547.75.

¹⁸ R.C. 1517.02(D)(6)(c) and 1546.21, not in the bill.

¹⁹ R.C. 1517.02(D)(13)(b).

²⁰ R.C. 1517.02(D)(5) and 1531.04(E).

²¹ R.C. 3714.03(A)(3) and (C)(5).

²² R.C. 1517.16(A)(4).

HISTORY

Action	Date
Introduced	09-19-23
Reported, S. Agriculture & Natural Resources	--
