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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 433  
136<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Gavarone

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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

- Clarifies the public trust doctrine, including doing both of the following:
  - Extends the littoral owner's property rights to include the right to wharf out to navigable waters; and
  - Declares that littoral property owners adjacent to Lake Erie retain all private property rights to their deeded lands landward of the natural shoreline.
- Eliminates the requirement that a person seeking to develop or improve submerged land under Lake Erie for nonutility and nongovernmental use (for example, for residential purposes) obtain a lease from the Ohio Department of Natural Resources Director.
- Retains the lease requirement for development or improvements for utility or governmental purposes.
- Revises the law governing the conditions and procedures under which a lease may be entered into with the Director.

- Establishes additional requirements and procedures for leases, including requiring the Director to conduct an adjudication hearing for a lease that is denied or conditionally approved, if requested, and establishes amounts of consideration for utility and governmental leases.
- Establishes requirements and procedures concerning modification or termination of existing leases for nonutility and nongovernmental purposes that predate the bill.

### **Coastal restoration permits**

- Alters the requirements and procedures for the issuance of shore structure permits, including changing the term “shore structure” to “coastal structure” and divides the existing permit into two permits, depending on the type of structure to be constructed.
- Requires a littoral property owner abutting Lake Erie to obtain one type of coastal structure permit to construct, maintain, or repair a coastal structure or perform coastal restoration, for purposes of reducing or controlling erosion or avulsion of the littoral property.
- Requires any other person to obtain a second type of coastal structure permit to construct a coastal structure or perform coastal restoration not addressed by the first permit.
- Establishes requirements and procedures for the issuance of the two coastal structure permits, including application notification requirements, public hearing requirements, and procedures for the approval or denial of a permit application.
- Authorizes the Director to limit the period during which construction may be completed before a permit expires and allows the Director to establish reapplication requirements for an expired permit.
- States that a permit is valid for the life of the coastal structure or coastal restoration.
- Allows an existing shore structure permit holder to maintain or repair a coastal structure or coastal restoration without issuance of a new coastal structure permit, unless there is new construction or expansion of a coastal structure or coastal restoration.
- Authorizes the Director to order certain corrective and remedial actions and allows these orders to be appealed.
- Authorizes the Director or the Director’s designee to enter at reasonable times on any property to inspect a coastal structure or coastal restoration.

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## DETAILED ANALYSIS

### Coastal management program

The Ohio Department of Natural Resources (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.

#### Coastal management program document

As indicated above, for the OCMP, the 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>

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

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

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

## Coastal management program document changes

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>(R.C. 1506.02(A)(1))</p>	<p>Instead requires the Director to do both of the following:</p> <ul style="list-style-type: none"> <li>▪ Notify those persons and organizations on the interested party list that is maintained by the Director; and</li> <li>▪ Cause public notice of any changes to be given by posting on the state's official public notice website and on ODNR's website.</li> </ul> <p>Allows the Director to send the notice by any means.</p> <p>(R.C. 1506.02(A)(1) and (3)(a))</p>
Public hearing	<p>Authorizes the Director to hold at least one public hearing on proposed changes to the document.</p> <p>(R.C. 1506.02(A)(1))</p>	<p>Requires, rather than authorizes, the Director to hold such hearing.</p> <p>(R.C. 1506.02(A)(1))</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>(R.C. 1506.02(A)(3)(a))</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>(R.C. 1506.02(A)(3)(a))</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 after receipt of the request.</p> <p>(R.C. 1506.02(A)(3)(b))</p>	<p>Same, but allows the Director to send the copy by any means.</p> <p>(R.C. 1506.02(A)(3)(b))</p>
Invalidation of Director's proceeding or action	<p>States that, although the Director is expected to discharge the specified duties relating to notification of rules changes, sending copies of those changes, and consulting with others on those changes, failure to do so is not jurisdictional and cannot be construed to invalidate any proceeding or action of the Director.</p> <p>(R.C. 1506.02(A)(3))</p>	<p>No provision.</p>

Topic	Current law	The bill
Coastal management assistance grant program	Requires the Director to establish the Coastal Management Assistance Grant Program and specifies the purposes for which grants may be awarded.  (R.C. 1506.02(C))	Adds a new purpose for which grants may be awarded – providing financial assistance to any owner of littoral property abutting Lake Erie to protect the owner’s private property rights.  (R.C. 1506.02(C)(9))

## 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 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:

#### Coastal erosion areas procedures

Topic	Current law	The bill
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> (R.C. 1506.06(A))	Retains (1), changes (2) to require notice to affected landowners, and eliminates (3).  (R.C. 1506.06(A))
Preliminary identification: public hearings/meetings	Requires the Director to hold public hearings in each of the shoreline counties on the preliminary identification of the coastal erosion	Instead requires the Director to hold public meetings within 30 days of making the notifications.  (R.C. 1506.06(A))

Topic	Current law	The bill
	<p>areas within 60 days of sending the above-described notifications.</p> <p>(R.C. 1506.06(A))</p>	
<p>Preliminary identification: written objections</p>	<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>(R.C. 1506.06(A))</p>	<p>Shortens the time to file written objections to any time within 90 days from the date of the initial certified mail notice.</p> <p>(R.C. 1506.06(A))</p>
<p>Local governments: leases and permits</p>	<p>Prohibits a state or local agency 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>(R.C. 1506.06(G))</p>	<p>Similar, but also applies the provision to the failure to obtain a coastal structure permit (see <b>“Coastal restoration permits,”</b> below).</p> <p>(R.C. 1506.06(G))</p>

## Submerged land leases

### Public trust doctrine

Under existing 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. 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.<sup>4</sup>

The state of Ohio’s proprietorship under the public trust doctrine is subject to the powers of the federal 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 past their lands. The bill extends the littoral owner’s property rights to

<sup>4</sup> *Illinois Central Railroad Company v. Illinois*, 146 U.S. 387 (1892).

include the right to wharf out to navigable waters and to access the waters in front of or flowing past their lands.

Finally, the bill declares that littoral property owners adjacent to Lake Erie retain all private property rights to their deeded lands landward of the [natural shoreline](#), including the right to exclude others and the right to protect their deeded property from [erosion](#) and [avulsion](#). The state of Ohio cannot claim, regulate, or lease any deeded lands lying landward of the natural shoreline under the public trust doctrine.<sup>5</sup>

## **Territory**

When referring to public trust land, current law and the bill refer to it as the “territory.” Continuing law defines “territory” as 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. The bill, however, specifically excludes all of the following from that territory:

1. Deeded lands that become submerged due to avulsion. Any land presently underlying the waters of Lake Erie within the boundary of a valid and recorded deed are presumed to have become submerged by avulsion. The presumption may be overcome by the state only with clear and convincing evidence that such loss of land was the result of erosion or submergence.
2. Land formerly underlying the waters of Lake Erie and now artificially filled if the artificial fill was placed landward of a natural shoreline that existed prior to an avulsive event.
3. Land formed by accretion. The state must not claim ownership of accreted lands unless clear and convincing evidence establishes that such land was created by artificial means under the control of the littoral property owner.<sup>6</sup>

The bill defines “natural shoreline” as the line at which the water usually stands when free from [disturbing causes](#).<sup>7</sup>

## **Leases**

Under current law, because of the public trust doctrine, any person who wants to develop or improve lands currently and formerly underlying the waters of Lake Erie (“territory”) 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>8</sup>

Current law requires a person that wants to develop or improve territory to obtain a lease from the Director. The bill instead requires anyone, including a political subdivision, that is constructing a [facility](#) for [utility](#) or [governmental](#) use on that territory to obtain a lease from the

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<sup>5</sup> R.C. 1506.01(R) and 1506.10.

<sup>6</sup> R.C. 1506.10(A).

<sup>7</sup> R.C. 1506.01(R).

<sup>8</sup> R.C. 1506.11(B) and 1506.01(D).

Director. Thus, it eliminates the requirement that a person seeking to develop or improve territory for nonutility or nongovernmental use (for example, for residential purposes) obtain a lease from the Director.<sup>9</sup>

In describing the territory for purposes of a lease application to construct a facility, the bill requires the applicant to estimate the natural shoreline as accurately as possible using the best practicable measures. However, the estimation of the natural shoreline is solely for the purposes of the administration of the bill's provisions governing land leases and does not constitute a legally binding determination or declaration of the natural shoreline or the respective rights of the public, the state, the applicant, or any owner of upland property.<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.

#### Submerged land lease provisions

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 (see below) 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</li> </ul>	<p>Same, but specifies that the territory should be described in the ordinance or resolution by plat of survey only.</p> <p>(R.C. 1506.11(D)(2)(a))</p>

<sup>9</sup> R.C. 1506.11(B).

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

Topic	Current law	The bill
	<p>navigation and water commerce; and</p> <ul style="list-style-type: none"> <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>(R.C. 1506.11(B))</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 authority with respect to such part of the territory included in the port authority's jurisdiction.</p> <p>(R.C. 1506.11(B))</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 leased, unless a port authority has jurisdiction;</li> <li>▪ A board of directors of a port authority with jurisdiction over territory sought to be leased.</li> </ul> <p>(R.C. 1506.11(A))</p>
Public hearing and notice requirements concerning the lease application	<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</li> </ul>	<p>Same, but modifies both of the following:</p> <ul style="list-style-type: none"> <li>▪ The hearing and notice requirements are only initiated with the filing of a complete application; and</li> <li>▪ The Director must hold a public hearing on the lease application and provide written notice of it to any local authority.</li> </ul> <p>(R.C. 1506.11(E))</p>

Topic	Current law	The bill
	<p>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;</p> <ul style="list-style-type: none"> <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>(R.C. 1506.11(C))</p>	
Approval, denial, or conditional approval of lease	<p>Allows the Director to enter into a lease if the Director determines that it is proper to do so after any public notice and hearings.</p> <p>(R.C. 1506.11(C))</p>	<p>Allows the Director to approve, deny, or conditionally approve an application for a lease.</p> <p>(R.C. 1506.11(F))</p>
Adjudication hearing for denial	<p>No provision.</p>	<p>If the Director denies or conditionally approves a lease application:</p> <ul style="list-style-type: none"> <li>▪ Allows an applicant to request an adjudication hearing in accordance with the Administrative Procedure Act (APA);</li> <li>▪ Requires the Director to conduct the adjudication hearing if the applicant requests one within 30 days of the denial or conditional approval; and</li> </ul>

Topic	Current law	The bill
		<ul style="list-style-type: none"> <li>▪ Requires the Director, after reviewing the record of any hearings, to issue a final order approving, denying, or conditionally approving the lease application.</li> </ul> <p>(R.C. 1506.11(F))</p>
Lease payment	<p>Requires the Director to determine the amount of the lease payment, which must exclude the value of the littoral rights of the landowner fronting on Lake Erie and improvements made or paid for by the landowner or that landowner's predecessors in title.</p> <p>(R.C. 1506.11(C))</p>	<p>Instead specifies the lease payment is as follows:</p> <ul style="list-style-type: none"> <li>▪ For a utility applicant, an amount determined by the Director that excludes the littoral rights of the landowner (the same as in current law);</li> <li>▪ For a governmental applicant, \$1 per calendar year.</li> </ul> <p>(R.C. 1506.11(G)(1) and (2))</p>
Period of time for lease	<p>Allows the Director to determine the time period for a lease.</p> <p>(R.C. 1506.11(C))</p>	<p>Same, but requires the Director to set an initial lease term to be at least 50 years.</p> <p>(R.C. 1506.11(G)(3))</p>
Disbursement of lease payments	<p>Requires the Director to distribute payments from the Lake Erie Submerged Lands Fund as follows:</p> <ul style="list-style-type: none"> <li>▪ 50% to ODNR for the administration of the provisions governing leases and for the Coastal Management Assistance Grant Program (see <b>“Coastal management program document,”</b> above).</li> <li>▪ 50% to the municipal corporation, county, or port authority in which the leased property is located.</li> </ul> <p>(R.C. 1506.11(C))</p>	<p>Retains current law's 50% distribution to the local governments, but requires the Director to distribute ODNR's portion for the general administration of the bill's provisions governing leases and the coastal management program (which includes the grant program).</p> <p>(R.C. 1506.11(G)(3)(a) and (b))</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.  (R.C. 1506.11(G))	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.  (R.C. 1506.11(L))
"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.  (R.C. 1506.11(G))	No provision, but see " <b>Coastal restoration permits</b> " below.
Inspection	No provision.	Allows the Director or the Director's duly authorized representative to do both of the following: <ul style="list-style-type: none"> <li>▪ Enter at reasonable times upon any property to inspect any facility to determine if it complies with the bill, a lease issued under it, or any rule adopted under it; and</li> <li>▪ If entry is prevented or hindered, apply for (and the court of common pleas having appropriate jurisdiction may issue) an</li> </ul>

Topic	Current law	The bill
		<p>appropriate inspection warrant necessary to achieve the bill's purposes and rules adopted under it.</p> <p>(R.C. 1506.11(M))</p>
Rules	No provision.	<p>Requires the Director, within 90 days after the bill's effective date, to adopt rules in accordance with the APA governing the leasing process provided for in the bill and any rules necessary for the administration, implementation, and enforcement of this process.</p> <p>(R.C. 1506.11(N))</p>

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

The bill requires, within 120 days after the bill's effective date, the ODNR Director to examine each existing lease to determine whether all or part of the land leased is still part of the territory, because of the bill's new territory exemptions. The Director then must provide notice, within 180 days of the bill's effective date, by certified mail to all lessees of the following, as applicable:

- That the lessee may request the state to terminate or modify the lessee's lease if all or part of the land leased is not part of the territory (see below);
- That the lessee may be required to apply for a permit under the bill's provisions governing coastal structure permits; and
- That the lessee may take no action and remain under the terms of the lessee's current lease.

The notice must include the Director's opinion regarding whether all or part of the land leased is not part of the territory.

The Director must modify a lease to exclude lands that are not part of the territory if one of the following occurs:

- The Director finds, as stated in the notice, that part of the lands for which the lease was entered into is not part of the territory and the lessee consents to modifying the lease; or
- The lessee provides documentation to the Director demonstrating that part of the lands for which the lease was entered into is not part of the territory.

The Director must terminate a lease if one of the following occurs:

- The Director finds, as stated in the notice, that all of the lands for which the lease was entered into are not part of the territory and the lessee consents to terminating the lease; or
- The lessee provides documentation to the Director demonstrating that all of the lands for which the lease was entered into is not part of the territory.

The bill states that all leases modified or terminated in accordance with the above provisions must be seen as having been modified or terminated as of May 21, 2015. Thus, the Director must return any rentals collected from May 21, 2015, to the bill's effective date to the persons who were the lessees under the lease during that time period and prorate the rentals accordingly.

Any lease modified by the Director is valid and continues in full force and effect. If a lessee does not take action to terminate a lease under the bill and the Director does not terminate the lease, the lease is valid and continues in full force and effect.

The bill's provisions requiring the Director to modify or terminate a lease are intended to apply retroactively to the extent specified in those provisions. Those provisions are remedial in nature in order to remedy the boundary dispute identified in *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 130 Ohio St.3d 30, 2011-Ohio-4612.

The bill states that while the leases are subject to modification and termination, any shore structure permit that was issued prior to the bill's effective date remains in effect.<sup>11</sup>

## **Coastal restoration permits**

### **Current law**

Under current law, a person must obtain a shore structure permit from the ODNR Director before building a shore structure that may affect shore erosion, wave action, or inundation along or near the Lake Erie shoreline. A "shore structure" includes beaches; groins; revetments; bulkheads; seawalls; breakwaters; certain dikes designated by the Chief of the Division of Water Resources; 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 that is placed along or near the shore for the purpose of stabilizing slopes.

The application for a permit must include detailed plans and specifications prepared by a professional engineer. An applicant must provide appropriate evidence of compliance with any applicable provisions of the laws governing coastal management and the Divisions of Geological Survey and Water Resources, as determined by the Director. Each application or reapplication for a permit must be accompanied by a nonrefundable fee as determined by the Director.

If the application is approved, the Director must issue a permit to the applicant authorizing construction of the project. If an application is denied and an applicant requests a hearing within 30 days of the notice of denial, the Director must conduct an adjudication hearing.

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<sup>11</sup> Section 3.

After reviewing the record of the hearing, the Director must issue a final order approving the application, disapproving it, or approving it conditioned on the making of specified revisions in the plans and specifications.

The Director, by rule, must limit the period during which a construction permit is valid and must establish reapplication requirements governing a construction permit that expires before construction is completed. The Director must adopt such rules as are necessary for the administration, implementation, and enforcement of the provisions governing shore structure permits.

The Director may issue a temporary shore structure permit if it is determined necessary to safeguard life, health, or property.<sup>12</sup>

### **The bill**

The bill retains some of the current requirements and procedures for the issuance of these structural permits, but also modifies them by:

1. Changing the term “shore structure” to “coastal structure”;
2. Defining a “coastal structure” as any structure constructed along or near the Ohio shoreline of Lake Erie, or within the waters of Lake Erie, that may affect shore erosion, wave action, or inundation, including retaining walls; groins; revetments; bulkheads; seawalls; breakwaters; piers; docks; jetties; wharves; marinas; boat ramps; and boathouses; and any associated fill used as part of the construction of such structures;
3. Dividing the current single permit into two permits, depending on the type of structure to be constructed, specifically:
  - a. A coastal structure permit (issued to a littoral property owner abutting Lake Erie) for constructing, maintaining, or repairing a coastal structure or performing [coastal restoration](#), for purposes of reducing or controlling erosion or avulsion of the littoral property, exclusively within the boundaries of the property owner’s property, as determined by the property owner’s deed;<sup>13</sup> and
  - b. A second coastal structure permit (issued to any person) for constructing a coastal structure or performing coastal restoration not addressed by the first permit.
4. Requiring a person, beginning on the bill’s effective date, to obtain one of the permits described above prior to constructing a coastal structure or performing coastal restoration along or near the Ohio shoreline of Lake Erie or within the waters of Lake Erie.<sup>14</sup>

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

<sup>13</sup> Within the boundaries of the property owner’s property may include the minimum amount of territory in Lake Erie required to achieve a  $\frac{3}{1}$  slope for revetment stabilization (R.C. 1506.401(A)(2)).

<sup>14</sup> R.C. 1506.01 and 1506.40.

The table below describes the details of the two coastal structure permits created by the bill.

### Types of coastal structure permits

Topic	Coastal structure permit: Type 1	Coastal structure permit: Type 2
Authorized activity	Allows an owner of littoral property abutting Lake Erie to construct, maintain, or repair a coastal structure or perform coastal restoration for reducing or controlling erosion or avulsion of the littoral property, exclusively within the boundaries of the property owner's property, as determined by the property owner's deed.	Allows any person intending to commence construction of a coastal structure or perform coastal restoration not addressed under coastal structure permit Type 1.
Activity prior to submitting application	<p>Requires a littoral property owner to do both of the following prior to obtaining a permit:</p> <ul style="list-style-type: none"> <li>▪ Obtain a boundary survey to confirm that the coastal structure's construction will occur exclusively on their property; and</li> <li>▪ Employ a licensed contractor, a professional engineer, or both, to prepare plans that are consistent with the <a href="#">Ohio Coastal Design Manual</a>.<sup>15</sup></li> </ul> <p>Prohibits both of the following:</p> <ul style="list-style-type: none"> <li>▪ The Director from requiring the littoral property owner to obtain plans prepared by a professional engineer or to obtain a topographical survey; and</li> <li>▪ The Director from requiring submitted plans to include</li> </ul>	No provision.

<sup>15</sup> For revetments, the bill states that the use of two to four ton armor stone is presumed reasonable (R.C. 1506.401(C)(2)).

Topic	Coastal structure permit: Type 1	Coastal structure permit: Type 2
	<p>detailed engineering specifications and calculations.</p> <p>(R.C. 1506.401(C)(1) to (3))</p>	
Application	<p>Requires an applicant to submit a permit application with the following:</p> <ul style="list-style-type: none"> <li>▪ The boundary survey discussed above;</li> <li>▪ The design plans discussed above; and</li> <li>▪ A nonrefundable fee prescribed by the Director, up to \$25.</li> </ul> <p>(R.C. 1506.401(C)(3) and (5))</p>	<p>Requires an applicant for a permit to include all of the following in the application:</p> <ul style="list-style-type: none"> <li>▪ Detailed plans and specifications. The Director may require such plans and specifications to be prepared by a professional engineer. However, the engineer is not needed if the plans and specifications are for specified projects (e.g., floating or pile-supported docks for seasonal use).</li> <li>▪ Appropriate evidence that the proposed project will not present certain risks, including endangering life, health, or property, prejudicing the littoral rights of other property owners, or destroying or impairing public use of the area.</li> <li>▪ Appropriate evidence of upland interest or littoral rights in the area where the coastal structure or coastal restoration is proposed.</li> <li>▪ For a coastal structure that will significantly impact littoral transport of sand and sediment, a sediment impact analysis and a long-term sand monitoring and bypassing plan, as prescribed in rules.</li> <li>▪ A nonrefundable application fee prescribed by the Director, up to \$100.</li> </ul> <p>(R.C. 1506.402(B))</p>

Topic	Coastal structure permit: Type 1	Coastal structure permit: Type 2
Notice of application	Requires an applicant, at the time of application, to provide written notice of the application to any adjacent property owners. (R.C. 1506.401(C)(4))	Authorizes the Director to provide public notice of an application by advertisement in a general circulation newspaper within the locality where the project is proposed to be located. (R.C. 1506.402(C))
Public meeting or hearing	No provision.	<p>Authorizes the Director to hold public meetings or a public hearing on the application if either of the following applies:</p> <ul style="list-style-type: none"> <li>▪ The Director determines that the proposed project will cause one or more of the harms described in the application, such as endangering life, health, or property;</li> <li>▪ An owner of littoral property adjacent to the applicant's property submits a written objection to the Director asserting that the proposed project will cause one or more such harms.</li> </ul> <p>Requires the Director, if a public hearing is to be held, to provide public notice of the hearing once a week for four consecutive weeks prior to the hearing date in a manner determined by the Director.</p> <p>Requires the Director to make a record of the hearing and pay the costs of the hearing.</p> <p>States that parties to the hearing are entitled to be heard and represented by counsel.</p> <p>(R.C. 1506.402(E) to (G))</p>

Topic	Coastal structure permit: Type 1	Coastal structure permit: Type 2
Approval or denial of application	<p>Requires the Director to approve, approve with modifications, or deny a permit within 30 days of submission (if no action is taken within that time, an application is deemed approved).</p> <p>Requires the Director to approve a permit without modification if the proposed construction is consistent with the Ohio Coastal Design Manual.</p> <p>(R.C. 1506.401(D) and (F))</p>	<p>Requires the Director to do one of the following:</p> <ul style="list-style-type: none"> <li>▪ If public meetings or hearings are held, issue findings and issue an order approving, approving with conditions, or denying an application within 14 days of the last meeting or hearing; or</li> <li>▪ If public meetings or hearings are not held, issue findings and issue an order approving, approving with conditions, or denying an application within 60 days of receiving a complete application.</li> </ul> <p>Requires the Director, if an application for a permit is approved, to issue a permit.</p> <p>(R.C. 1506.402(H) to (J))</p>
Reasons for denial	<p>Authorizes the Director to deny an application if the proposed coastal structure or coastal restoration will do either of the following:</p> <ul style="list-style-type: none"> <li>▪ Endanger life, health, or property; or</li> <li>▪ Prejudice the littoral rights of any owner of land fronting on Lake Erie without permission of that owner.</li> </ul> <p>(R.C. 1506.401(E))</p>	No provision.
Adjudication hearing for denial or modification	<p>Requires the Director to do both of the following:</p> <ul style="list-style-type: none"> <li>▪ If an applicant's permit application is denied or conditionally approved, conduct an adjudication hearing under the APA's procedures within 30 days of</li> </ul>	<p>Same as the Type 1 permit.</p> <p>(R.C. 1506.402(L))</p>

Topic	Coastal structure permit: Type 1	Coastal structure permit: Type 2
	<p>the applicant’s written request; and</p> <ul style="list-style-type: none"> <li>▪ After reviewing the record of the hearing, issue a final order approving the application, denying it, or approving it conditioned on the making of specified revisions in the plans and specifications, as applicable.</li> </ul> <p>(R.C. 1506.401(H))</p>	
Temporary emergency permit	<p>Authorizes the Director to issue a temporary emergency permit if the Director determines it is necessary to safeguard life, health, or property.</p> <p>Requires the Director, following completion of the approved project, to issue a permit to the property owner if the Director determines that the completed project does not cause one of the harms specified in the reasons for a denial of a permit (see above).</p> <p>(R.C. 1506.401(I))</p>	Same as the Type 1 permit.  (R.C. 1506.402(M))
“As built” drawing	<p>If the Director requires an “as built” drawing following completion of a coastal structure or coastal restoration, states that a drawing prepared by the licensed contractor who constructed the coastal structure or performed the coastal restoration fully satisfies that requirement.</p> <p>Prohibits the Director from requiring any additional work on, or revisions to, the coastal structure or coastal restoration if the structure or restoration, as shown by the “as built” drawing, is consistent with the Ohio Coastal Design Manual and the above provision.</p> <p>States that any additional work on, or revisions to, the coastal structure or</p>	No provision.

Topic	Coastal structure permit: Type 1	Coastal structure permit: Type 2
	<p>coastal restoration required by the Director for substantial noncompliance must be the least-cost remedy available to the littoral property owner.</p> <p>(R.C. 1506.401(G))</p>	
Amendments or revisions of a project	No provision.	<p>Following approval of a permit application and the commencement of construction of a coastal structure or performance of a coastal restoration, prohibits the Director from requiring amendments or revisions to, or reconstruction or removal of, a project unless the Director shows either of the following:</p> <ul style="list-style-type: none"> <li>▪ That such action is essential to prevent one or more of the harms previously described; or</li> <li>▪ The “as built” project substantially deviates from the proposed design in a manner that is likely to endanger life, health, or property.</li> </ul> <p>States that any remedial action must be the least-cost remedy available to the littoral property owner.</p> <p>(R.C. 1506.402(K))</p>
Rules	<p>Requires the Director, within 90 days of the bill’s effective date, to adopt rules in accordance with the APA governing the permit applications and processes.</p> <p>Authorizes the Director to amend such rules when necessary for the administration, implementation, and enforcement of the provisions governing the permit process.</p> <p>(R.C. 1506.401(J))</p>	<p>Same as the Type 1 permit.</p> <p>(R.C. 1506.402(N))</p>

## Additional procedures and requirements

The bill states that for either of the above coastal structure permits (hereafter, references will be to “permit,” unless the context describes otherwise), the Director, by rule, may limit the period during which construction may be completed before the permit expires. In addition, the Director may establish reapplication requirements governing a permit that expires before construction is completed.

Once construction under a permit is completed, the permit is valid for the life of the coastal structure or coastal restoration. If there is a change in ownership of the coastal structure or coastal restoration, the permit automatically transfers to the new owner.<sup>16</sup>

A person, other than a utility or government, that owns a coastal structure or coastal restoration that was constructed under a submerged lands lease entered into prior to the bill’s effective date may do either of the following:

- Maintain the person’s submerged lands lease and, if applicable, shore structure permit; or
- Apply for a coastal structure permit and, upon issuance of the permit, surrender the submerged lands lease and, if applicable, shore structure permit.<sup>17</sup>

A permit holder may maintain or repair a coastal structure or coastal restoration without issuance of a new permit. However, a permit holder must obtain a new or amended permit prior to commencing any new construction or expansion of a coastal structure or coastal restoration. A littoral property owner that constructed a coastal structure or coastal restoration prior to the bill’s effective date may apply to the Director for issuance of a coastal structure permit.<sup>18</sup>

The Director may order work to cease on any coastal structure or coastal restoration that is commenced after the bill’s effective date without or in violation of a permit. The Director may order the removal or correction of any coastal structure or coastal restoration that was constructed after the bill’s effective date without or in violation of a permit. The property owner affected by such an order may appeal the order in accordance with the APA. If the property owner applies for, and is issued, a coastal structure permit, then the order is withdrawn.<sup>19</sup>

The Director may order 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 (threat). Such an order is subject to appeal in accordance with the APA. If the Director determines that the coastal structure, coastal restoration, or unconsolidated rubble or debris is an immediate

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<sup>16</sup> R.C. 1506.403(A).

<sup>17</sup> R.C. 1506.403(B).

<sup>18</sup> R.C. 1506.403(C).

<sup>19</sup> R.C. 1506.403(D).

threat and there is no time to issue and enforce an order, the Director may immediately correct or remove the threatening structure, restoration, or rubble or debris.<sup>20</sup>

The Director or the Director's duly authorized representative may, upon the notice prescribed in the bill (see below), enter at reasonable times during daylight hours upon any property to inspect any coastal structure or coastal restoration to determine if it complies with a permit and the rules adopted by the Director for a permit. If entry is prevented or hindered, the Director or the Director's authorized representative may apply for, and the court of common pleas having appropriate jurisdiction may issue, an appropriate inspection warrant necessary to achieve the bill's purposes relating to coastal structure permits.

The Director or the Director's designee must give notice of the date and time of any proposed entry to the owner or the person in possession of the property by such means as are reasonably available, between 48 hours and five days prior to the date of such entry. The Director must make restitution or reimbursement for any actual damage caused by the Director or the Director's designee. If the parties are unable to agree upon restitution or other settlement, damages are recoverable by civil action.<sup>21</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>22</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. An "erosion control structure" is a structure that is designed solely and specifically to reduce or control erosion of the shore along or near Lake Erie, including, without limitation, 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). It also adds avulsion to the shore activity that the measures are designed to control.<sup>23</sup>

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<sup>20</sup> R.C. 1506.403(E).

<sup>21</sup> R.C. 1506.403(F).

<sup>22</sup> R.C. 1506.44(A).

<sup>23</sup> R.C. 1506.01(L).

## Appendix

### Definitions

#### Definitions applicable to coastal management

Defined term	Current law	The bill
Erosion control structure (modified to “erosion control measure” under the bill)	A structure that is 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.  (R.C. 1506.01(L))	A coastal structure or coastal restoration that is designed primarily to reduce or control avulsion or erosion of the shore along or near Lake Erie, including beaches, revetments, seawalls, bulkheads, certain breakwaters, and similar measures.  (R.C. 1506.01(L))
Shore structure (modified to “coastal structure” under the bill)	Includes beaches, groins, revetments, bulkheads, seawalls, breakwaters, certain dikes designated by the Chief of the Division of Water Resources, 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 that is placed along or near the shore, including bluffs, banks, or beach ridges, for the purpose of stabilizing slopes.  (R.C. 1506.01(M))	Any structure constructed along or near the Ohio shoreline of Lake Erie, or within the waters of Lake Erie, that may affect shore erosion, wave action, or inundation including retaining walls; groins; revetments; bulkheads; seawalls; breakwaters; piers; docks; jetties; wharves; marinas; boat ramps; and boathouses; and any associated fill used as part of the construction of such structures.  (R.C. 1506.01(M))
Coastal restoration	No provision.	Restoration or enhancement of lost natural coastal features along the shoreline of Lake Erie such as beaches, dunes, wetlands, and associated uplands, or creation or enhancement of beneficial natural coastal features such as beaches, nature-based shorelines, wetlands, and other coastal habitats.  (R.C. 1506.01(N))

Defined term	Current law	The bill
Accretion	No provision.	The gradual and imperceptible enlargement of the shore or other upland through the natural deposit of sediment, sand, or other materials along the shore. (R.C. 1506.01(O))
Avulsion	No provision.	The sudden and perceptible loss of the shore or other upland due to natural forces such as floods, storms, or wave action. (R.C. 1506.01(P))
Governmental	No provision.	Any agency of the state or any political subdivision of the state, including a county or municipal corporation. (R.C. 1506.01(Q))
Natural shoreline	No provision.	The line, which moves over time under the natural processes of accretion, <a href="#">reliction</a> , erosion, and <a href="#">submergence</a> , at which the water usually stands when free from disturbing causes. (R.C. 1506.01(R))
Disturbing causes	No provision.	Sudden, extraordinary, dramatic or relatively short-term actions or processes that are perceptible when occurring, such as storms, storm surge, wind, waves, seiche, harbor resonance, avulsion, or flooding. "Disturbing causes" does not include the gradual and imperceptible processes of accretion, reliction, erosion, or submergence. (R.C. 1506.01(S))

Defined term	Current law	The bill
Erosion	No provision.	The process by which the action of water gradually and imperceptibly causes the shore or other upland to be worn, lost, or carried away from natural causes. (R.C. 1506.01(T))
Facility	No provision.	Any development or improvement constructed in Lake Erie, including existing fills, that is owned or operated by a utility or governmental entity. (R.C. 1506.01(U))
Utility	No provision.	Any utility company regulated by, within the jurisdiction of, registered with, or licensed to do business in the state of Ohio by the Public Utilities Commission. (R.C. 1506.01(V))
Reliction	No provision.	The gradual and imperceptible retreat or recession of the water from natural causes. (R.C. 1506.01(W))
Submergence	No provision.	The gradual and imperceptible inundation of land by adjoining waters. (R.C. 1506.01(X))
Ohio Coastal Design Manual	No provision.	Chapter 4 of the Ohio Coastal Design Manual, first edition, 2011, published by ODNR's Office of Coastal Management. (R.C. 1506.401(A)(1))

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## HISTORY

Action	Date
Introduced	04-29-26

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