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Keynote Proponent Testimony, Senate Bill 313
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Chairman Schaffer, Vice Chair Huffman, Ranking Member Fedor, and Members of the Senate Agriculture and Natural Resources Committee, thank you for having me here today on behalf of the Ohio Department of Natural Resources to testify as a proponent of Senate Bill 313, amending the Ohio Coastal Management Act.

Lake Erie is Ohio's most precious natural resource. We are very grateful to Senators Gavarone and Manning for agreeing to sponsor this bill, which we believe will help better protect and preserve our Great Lake, and to simplify and improve Ohio's regulation of construction along the Lake Erie coastline.

The amendments proposed in this Bill are designed to reduce the burdens on Lake Erie's residential coastal property owners, improve the State's ability to protect Lake Erie for all to enjoy, and maintain federal approval of Ohio's Coastal Management Program.

The current law contains requirements for coastal property owners that are confusing, duplicative, time consuming, and expensive, without necessarily benefiting the Lake.

We believe we can offer a better approach to coastal management in Ohio to the benefit of both Ohio's Lake Erie coastal property owners and all Ohioans for generations to come.

These are the changes ODNR is proposing to Ohio's Coastal Management Act (Chapter 1506 of the Ohio Revised Code) with respect to Leases and Permits for coastal projects and why:

- (1) **LEASES: Leases will no longer be required for "residential" coastal structures, only for "commercial" coastal structures – meaning those that are income or revenue earning – and "governmental" coastal structures.**

Under the current law, the construction of coastal structures in Lake Erie – such as docks, wharfs, piers, seawalls, breakwaters, revetments, marinas, etc. – require both a permit for construction and a lease for the footprint of the structure, regardless of whether the structure is used to generate income or revenue. This means residential property owners must retain the services of a registered surveyor – at significant cost to the property owner – to prepare a legal description and then pay annual rental payments to the State based on the proposed use and area of the lakebed occupied by the structure. For residential and non-income producing properties, this places a significant

financial burden on those property owners simply attempting to access the Lake from their homes or to protect their property from loss and/or damage due to coastal erosion and flooding.

In recent years it has become more challenging and expensive for registered surveyors to prepare these legal descriptions due to the Ohio Supreme Court's decision in the *Merrill* case defining the "natural shoreline" boundary of Lake Erie as "the line at which the water usually stands when free from disturbing causes." There were disagreements between Lake Erie's coastal property owners and the State of Ohio over the location and definition of the "natural shoreline" and it was hoped the Court would clarify the meaning of that term. Instead, the Court chose to refer back to its original language from 1878 without clarification. This definition of the natural shoreline is vague making the location of the natural shoreline very difficult to determine. "The line at which the water usually stands when free from disturbing causes" is a moveable boundary that changes with the movement of sand and fluctuating water levels.

Amidst this quagmire, ODNR's ability to manage Lake Erie has been severely compromised. So, we have worked tirelessly to find a solution and path forward with this legislation to manage Lake Erie more effectively while reducing burdensome regulation.

Ohio must move on, and it is clear that leasing may not be the best mechanism to protect the Lake. Yes, the State of Ohio holds Lake Erie as Trustee for the people of the State and has done so since the creation of the State. However, that does not mean that the best way to manage a dynamic natural resource like a Great Lake is to treat it as a mere piece of property. While it is ODNR's policy that revenue and income producing commercial entities utilizing State property must have an agreement with the State to compensate the public for the use of that property (e.g. private vendors at state parks), such an additional lease requirement for a residential use that does not generate income or revenue is not reasonable and should end.

Coastal management in Ohio needs to shift from a contentious property management system that does not allow proper natural resource management of the Lake, to a universal permitting system that does. One that recognizes protection of the Lake and all those who enjoy it as paramount, and where Leases are only a necessary added requirement for revenue and income producing uses.

(2) PERMITS: Permits will continue to be required for all coastal structures built in the future, but the amount of time, engineering, and cost for a permit application will correspond to the size and complexity of the proposed project, potential risk to public safety, and impact on Lake Erie resources if it is not designed and constructed properly.

Ohio's coastal permitting statute needs to be adjusted as well. Under current Ohio law, a permit is required to construct any structure that may affect erosion, wave action, or flooding along or near the Lake Erie shoreline. Under federal law, the State of Ohio maintains federal approval of its Coastal Management Program by proving it can manage all of Lake Erie, not just its shoreline.

Ohio can no longer do so via Leases, but can continue to do so via Permits, as long as those permits cover all Lake Erie coastal structures within Ohio’s territorial boundaries and not just development along or near the Lake shore. The scope of the permitting statute needs to expand, as the scope of the leasing statute contracts, to maintain federal approval of Ohio’s Coastal Management Program.

While the permits will be a universal requirement for all Lake Erie coastal structures, this Bill allows the process for obtaining them in the future to be streamlined and tiered to recognize that one-size does not fit all projects on Lake Erie.

Under the existing permitting statute, all projects require a registered professional engineer to prepare plans and specifications. This requirement results in a large backlog for private coastal engineering consultants and contractors on the Lake and delays in the permit process. For smaller coastal structures with minimal impacts, it may also be unnecessary. Many coastal structures do not endanger life, property, or the resources of Lake Erie, and do not need registered professional engineers to design them, yet under the current law, an engineered design is a blanket requirement without exception. That does not make any sense for coastal property owners, the public, or the Lake, and this legislation would correct it.

Under this legislation, a coastal permit will be required for the construction of any new coastal structure using the following tiered system based on the likelihood that the project could endanger life, property, or the resources of Lake Erie if it is not properly designed by a professional engineer:

TIER	TYPE OF PROJECT	EXAMPLES	ENGINEERING REQUIREMENTS
Tier 1	Projects that are unlikely to endanger life, health, property, or the resources of Lake Erie	floating docks, nature-based shorelines, beaches, wetlands	will not require plans and specifications prepared by a registered professional engineer
Tier 2	Projects that could endanger life, health, property, or the resources of Lake Erie if not properly designed	revetments, seawalls, certain piers	will require plans and specifications prepared by a registered professional engineer
Tier 3	Projects that could significantly endanger life, health, property, or the resources of Lake Erie if not properly designed	groins, breakwaters, marinas	will require plans and specifications prepared by a registered professional engineer and require additional studies needed to evaluate the coastal structure or restoration

In addition to reducing unneeded and burdensome regulatory requirements, this legislation will authorize and encourage the restoration of Lake Erie’s degraded and lost natural coastal features. The legislation specifically allows – for the first time – a permit to perform “coastal restoration” of wetlands, fish & wildlife habitat, beaches, and other lost natural features that used to be common along Lake Erie’s shoreline, the loss of which has been devastating to the health of Lake Erie.

This legislation also gives ODNR the authority to prevent dangerous dumping along the shore that threatens public health and human safety as well as adversely impacting the Lake. This legislation authorizes the removal of dangerous unstable piles of material (concrete, rebar, construction debris) dumped along the shore that may result in an “imminent threat to public health and safety” in order to protect the Lake and everyone who wishes to safely enjoy it.

Under this Bill, coastal permits are valid for the life of the project and require only a one-time fee (as opposed to an annual rental or fee payment) based on the Tier and size of the project. Should ownership of the coastal structure or restoration transfer over time, the permit transfers to the new owner upon a simple notice to ODNR.

For existing structures that never received a permit in the past, this legislation also includes a grandfathering provision allowing those structures to be lawfully registered now, as long as they do not pose a threat to public health and safety. Only if an existing structure is substantially reconstructed in the future, would it require a permit from ODNR under this new permitting system.

The changes in Senate Bill 313 will simplify coastal regulatory processes and reduce regulatory burdens on Lake Erie coastal property owners, leading to substantial reductions in permit and lease processing times, reduced costs, and more effective management of our invaluable Lake Erie coastal resources.

Mr. Chairman, thank you again for the opportunity to testify on Senate Bill 313 on behalf of the Ohio Department of Natural Resources. I am happy to answer any questions that you or the other Members of the Committee may have.