

Testimony of Anthony Yankel
President, Ohio Lakefront Group

Given before the
Senate Agriculture and Natural Resources Committee
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Good afternoon, Chairman Schaffer and members of the Senate Agriculture and Natural Resources Committee. My name is Tony Yankel. I am the President of the Ohio Lakefront Group, which is a non-profit organization of over 7,000 members who live on or near Lake Erie and who are all too familiar with the regulatory burdens that the Coastal Management Office of the Ohio Department of Natural Resources (ODNR) has forced upon Lake Erie's shoreline communities and property owners.

The draft of SB 313 under consideration makes improvements to current law but remains fatally flawed. I appear today on behalf of the Ohio Lakefront Group to encourage you to fix those flaws. It should be no surprise that ODNR is the only proponent of this bill, since it is an ODNR bill that does not properly recognize the rights of Lake Erie property owners.

The members of the Ohio Lakefront Group are bound by a common determination that ODNR should recognize our private property rights and stop forcing us to lease property our deeds say we own. To protect our property rights, we took ODNR to court in 2004, and we prevailed before the Ohio Supreme Court in 2011. In that lawsuit, ODNR claimed that Lake Erie, and thus State ownership, extended to an administratively-fixed Ordinary High Water Mark, despite this claim being directly contrary to Ohio Supreme Court decisions dating back to the 1870s. The Ohio Supreme Court agreed with us that the boundary between Lake Erie and upland private property is the natural shoreline, which is the line at which water usually stands when free from disturbing causes. The Ohio Supreme Court also stated that the deeds of lakefront property owners are presumptively valid.

Following this decision, in 2012, the Lake County Court of Common Pleas determined that actions or processes that are sudden in onset, relatively short-term in duration, and perceptible while underway, are “disturbing causes.” This includes causes such as storms, storm surge, flood, wind, waves, and avulsion.

We agree Ohio law should be amended to reflect the Ohio Supreme Court’s decision regarding private property ownership along Lake Erie. We also support the elimination of the submerged lands leasing program for residential properties.

However, the leasing authority that ODNR proposes to retain over commercial and governmental properties in Section 1506.11 of the Revised Code needs to be reined in. Private property is private property, if it’s residential or commercial. ODNR’s current leasing program ignores the deeds of upland owners. Although the Ohio Supreme Court told ODNR to recognize the presumptively valid deeds of the lakefront owners, ODNR has continued to ignore our valid and recorded deeds. ODNR also has ignored that most shoreline recession along Lake Erie is the result of avulsion – where land is stripped away by sudden changes. Avulsion does not move the natural shoreline, and property owners have a right under Ohio law to reclaim land lost to avulsion.

We recommend that the definition of “territory” in Section 1506.11 be amended to recognize our deeds and the loss of land to avulsion. We also recommend that the definition of “disturbing causes” be amended to be consistent with Ohio law. Further, Section 4 of SB 313 should include an easier process that presumes residential leases are terminated and payments returned.

In addition, we are concerned that ODNR's proposal to convert its existing shore structure permitting program in Section 1506.40 of the Revised Code into an expansive coastal permitting program will give ODNR essentially unlimited discretion to issue or deny tier 1, tier 2 and tier 3 permits. As proposed by ODNR, this likely will result in more red-tape and agency overreach, and it could result in increased permit denials for upland owners simply exercising their littoral property rights.

We recommend that the State defer in the first instance to the U.S. Army Corps of Engineers' permitting program, with the extensive and costly processes in Section 1506.40 applying only when the Corps' program is not applicable. We also recommend that the coastal permitting process be streamlined and made less costly for property owners, to the extent reasonable. The coastal permitting process also should recognize that upland property owners have the right to wharf out to navigable waters.

If amended as we recommend, we believe SB 313 would be of benefit to the State of Ohio and to upland property owners, and we stand ready to work with ODNR to improve SB 313. However, as currently written, our more than 7,000 members cannot support SB 313.

Thank you for this opportunity to speak and I would be happy to answer any questions.