



Eric Vendel

## *Resolution Analysis*

*Legislative Service Commission*

### **Sub. S.J.R. 8\***

127th General Assembly

(As Reported by S. Environment and Natural Resources)

**Sens. Grendell, Harris, Wagoner, Niehaus, Spada, Jacobson, Seitz, Faber, Mumper, Padgett, Schuler, Cates, Carey, Schaffer, Amstutz, Austria, Cafaro**

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### **RESOLUTION SUMMARY**

- Proposes a constitutional amendment that does all of the following:
  - States that a property owner has a property interest in the reasonable use of the ground water underlying the property owner's land.
  - States that an owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land.
  - States that the above private property interests must be held inviolate, but subservient to the public welfare as provided in existing constitutional requirements.
  - States that ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land cannot be held in trust by any governmental body, states that the state, and a political subdivision to the extent authorized by state law, may provide for the regulation of such waters, and states that an owner of land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.

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\* This analysis was prepared before the report of the Senate Environment and Natural Resources Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

--States that nothing in the proposed amendment affects the application of the public trust doctrine as it applies to Lake Erie or the navigable waters of the state.

--States that no other provision of the Ohio Constitution impairs or limits the rights established in the proposed amendment.

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## **CONTENT AND OPERATION**

### **Property interests with respect to ground water and other water on or flowing through a property owner's land**

(Section 19b of Article I, Ohio Constitution)

The resolution proposes enactment of Section 19b of Article I of the Ohio Constitution as discussed below:

#### **Recognition and protection of property interests in ground water, lakes, and watercourses**

The proposed constitutional amendment states that the protection of the rights of Ohio's property owners, the protection of Ohio's natural resources, and the maintenance of the stability of Ohio's economy require the recognition and protection of property interests in ground water, lakes, and watercourses.

#### **Reasonable use of ground water**

The proposed constitutional amendment states that a property owner has a property interest in the reasonable use of the ground water underlying the property owner's land. In addition, the proposed constitutional amendment provides that the preservation of those private property interests must be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Ohio Constitution (*see* **COMMENT**).

#### **Reasonable use of the water in a lake or watercourse**

The proposed constitutional amendment states that an owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land. In addition, the proposed constitutional amendment provides that the preservation of those private property interests must be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Ohio Constitution (*see* **COMMENT**).

**Statement that certain ground water and nonnavigable waters cannot be held in trust**

The proposed constitutional amendment states that ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land cannot be held in trust by any governmental body. In addition, the proposed constitutional amendment states that the state, and a political subdivision to the extent authorized by state law, may provide for the regulation of such waters. The proposed constitutional amendment also states that an owner of land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.

**Public trust doctrine**

The proposed constitutional amendment states that nothing in it affects the application of the public trust doctrine as it applies to Lake Erie or the navigable waters of the state.

**Impairment or limitation of rights**

Finally, the proposed constitutional amendment states that no other provision of the Ohio Constitution impairs or limits the rights established in the proposed amendment.

**Election and effective date**

The resolution provides that the proposed constitutional amendment must be submitted to the electors at the general election to be held on November 4, 2008. If approved by a majority of the electors voting on it, the proposed amendment will take effect December 1, 2008.

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**COMMENT**

Article I, Section 19 of the Ohio Constitution states:

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation

therefore shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

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## **HISTORY**

ACTION	DATE
Introduced	05-14-08
Reported, S. Environment and Natural Resources	---

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