

May 2, 2019

House Bill 168
Ohio House Civil Justice Committee

Written Proponent Testimony

Dear Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the Civil Justice Committee:

We appreciate the opportunity to provide our perspective and supportive testimony for HB168, which will provide parties evaluating the acquisition of brownfield properties with the ability to establish an affirmative defense to state of Ohio liability associated with releases or threatened releases of hazardous substances consistent with the federal bona fide prospective purchaser defense (BFPD).

LaBella Associates is a nationally recognized design professional corporation with over 750 employees and offices in nine states. Our Ohio office is located in Mayfield Heights. We are a full service engineering, architectural, environmental, and planning professional consulting firm which allows us to address any aspect of the built or natural environment. Through our environmental practice we perform over 1,000 phase 1 environmental site assessment each year, and we frequently represent businesses, developers, lenders, and local governments that use the environmental due diligence process to evaluate risk and to inform decisions making about potential property acquisitions.

Prior to the 2002 federal CERCLA Brownfield amendments, the only liability defense available to those purchasing property was to become an "innocent landowner" which was not available if contamination was identified during due diligence completed before acquisition of the property. Under the 2002 amendments the bona fide prospective purchaser defense, BFPD, created a set of criteria which, if met, would protect the buyer from CERCLA liability if it acquire property with pre-existing contamination.

States that have proactively addressed the primary barriers to the cleanup and redevelopment of brownfields: liability, costs, and timing uncertainty, experience more robust brownfield cleanup and redevelopment activity. These factors can and often do influence the decisions of our clients when making real estate and business investment decisions and discourage the cleanup and reuse of known or suspected brownfield sites. By adopting the BFPD affirmative defense into Ohio law the state will be addressing both liability and timing uncertainty concerns.

An Ohio BFPD will provide buyers of real estate with a straightforward way to establish defenses to both Ohio and federal liability associated with environmental contamination that is present on property prior to purchase. Our clients and their legal advisors will appreciate this clarity which should help encourage the transfer, cleanup and redevelopment of brownfield properties, as well as the overall commercial and industrial real estate market in Ohio.



We believe that adopting the BFPD standard will signal the beginning of a new direction for brownfield cleanup and redevelopment in Ohio. Since the phase out of the Clean Ohio Revitalization Fund we have observed that the pace of brownfield activity has fallen off. As the state considers the next steps to re-activate brownfield redevelopment in Ohio, particularly in economically depressed communities, we suggest to the legislature that establishing meaningful incentives that provide financial, legal, and timing certainty for those that acquire and invest in brownfield properties is a good place to start.

The BFPD is one such incentive. As a tool to encourage brownfield reuse the BFPD does not require governmental resources to implement or administer. Pre-transactional appropriate inquiry and environmental due diligence standards already used in much of the commercial real estate industry will allow purchasers to establish the liability defense. The burden to take reasonable steps to address identified environmental conditions and contaminant releases in order to maintain the liability defense falls on the property owner, not the state. As a consultant that performs due diligence we would be able help our clients establish the Ohio BFPD and then assess and advise our clients as to whether environmental conditions should be further addressed through the Ohio Voluntary Action Program in order to remediate or mitigate contamination and secure stronger state liability protections.

We appreciate the opportunity to testimony and look forward to the further passage of H168 and the increased investment in vacant and underutilized properties in Ohio, especially in communities in need of revitalization.

If you have any questions, please contact us via email/phone at mhammer@labellapc.com, 216-862-5788 or mgregor@labellapc.com, (585) 295-6651.

Sincerely,

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