



**Opponent Testimony of Ohio Environmental Council Action Fund
Auxiliary Containers - Senate Bill 222 (As Introduced)
Ohio Senate Local Government, Public Safety, & Veterans Affairs Committee
December 3, 2019**

Chairman Manning, Vice Chair Brenner, Ranking Member Maharath, and Members of the Ohio Senate Local Government, Public Safety, and Veterans Affairs Committee, thank for the opportunity to testify before this committee today on Senate Bill 222 (“SB222”). My name is Trent Dougherty, General Counsel for the Ohio Environmental Council Action Fund (OEC Action Fund).

I will not reiterate the testimony of other witnesses who have provided this Committee with the statistics of plastic use, plastic pollution, and plastic’s health and safety implications on both humans and wildlife. What I will do, however, is state the obvious conclusion: plastic waste, whether it ends up on our streets, in our streams, or in our oceans, is the scourge of modern life. What we do about plastic pollution and its impacts is of paramount concern to Ohio’s local communities today, and the state we leave for future Ohioans.

In 1988, Ohio enacted House Bill 592, creating a comprehensive solid waste regulatory program that required Ohio to minimize its reliance on landfills and increase efforts to reduce, reuse and recycle. Yet, today, Ohio EPA reports that the state has only 35.9 years of available disposal capacity and must focus more of its attention on diverting waste and reduce the amount of non recyclable products used.¹ Over the past 30 years, our waste-related problems and possibilities have evolved, but our state policy has not. I echo our friends with the Greater Cleveland Partnership who testified to urge lawmakers to take the lead in studying how we reduce the environmental harm of non-reusable auxiliary containers. We are past the time to improve Ohio’s solid waste disposal, waste diversion, and recycling policies.

Since ensuring local sustainability, collecting refuse, preventing litter, and the costs of each are borne at the local level, local governments must step up to fill the gap of statewide inaction. Three of those local governments have chosen plastic bag bans or fees as their specific reaction to the plastic pollution problem. The Village of Orange chose to ban plastic

¹ https://epa.ohio.gov/portals/34/document/guidance/gd_1008.pdf

bags at the point of sale due to concern that the increase in the production and use of plastics is adversely impacting the environment of the Village. Cuyahoga County reports hundreds of millions of plastic bags either polluting the lake or sitting in their landfills. The City of Bexley is using auxiliary container regulation to address not only pollution in its community, but to facilitate the desire of its residents who want to do their part to solve a global problem right in their city.

These local governments have the right to make that decision - a right granted to them by the Ohio Constitution's Home Rule Authority. Home Rule gives local governments not only the power of local self-government, but most importantly the power to adopt and enforce local police, sanitary, and other similar regulations that are not in conflict with general laws. Courts have defined police power as "the authority to make regulations for the public health, safety, and morals and general welfare of society."² A fee to curtail the overuse of single-use auxiliary containers or a regulation to outright ban auxiliary containers addresses the public health and safety concerns of plastic pollution and its detrimental impact on the residents today and in the future. These local governments passed these regulations to promote the general welfare of their residents, in furtherance of their police powers.

We understand that Home Rule is not sacrosanct. Home Rule Authority may be preempted by state law, usually, when there is a clear and overriding state interest. State laws passed to protect property rights or maintain statewide health and safety standards may legitimately preempt local regulation. This bill, however, does not look to address a statewide regulation to protect the health, safety, or property of the general public. A bill to address a modernization of the state solid waste law could be passed to preempt the plastic pollution reduction policies at the local level, would do that. However, that is not why we are here, and not why SB222 was introduced. Instead of opening the door to dialogue on how to treat plastic pollution, SB222 slams the door on local government's right to protect their residents from the environmental and fiscal costs of plastic pollution.

In conclusion, as a response to plastic pollution problems in their communities and state inaction, some local governments have taken it into their own hands to make a difference. The Ohio Constitution provides this authority, and we must respect that decision -- whether we feel it is the right decision or the wrong decision, whether we feel it goes too far or not far enough. Thus, the OEC Action Fund urges a NO vote on SB222.

Chairman Manning and Members of the Committee, thank you for considering our perspective and allowing us this opportunity to testify.

² *Miami County v. Dayton* 92 Ohio St. 215 (1915).