



Ohio Environmental Council

[Action Fund]

The Ohio Environmental Council Action Fund Opponent Testimony on Senate Bill 293 Before the Senate Transportation, Commerce, and Workforce Committee

Chairman LaRose, Vice Chair Kunze, Ranking Member Schiavoni, and Members of the Committee, thank you for the opportunity to testify before you today. I'm Trent Dougherty, General Counsel for the Ohio Environmental Council Action Fund (OECAF).

The OECAF's mission is to ensure that all Ohioans have access to clean water, clean air, and healthy public lands. Sometimes, we can achieve these goals without regulation; thousands of Ohioans have chosen to place solar panels on their homes, decreasing air pollution and fighting climate change in the process. But sometimes, we need regulations to ensure the health of Ohioans is protected, and that valuable natural resources are conserved for future generations. Everyone remembers the fire upon the Cuyahoga River; everyone knows the Clean Water Act and its subsequent regulations formed in part as a response to environmental disasters like that calamity.

The OECAF recognizes and appreciates the intent behind Senate Bill 293. We agree with the proponents that certain "regulatory restrictions" prohibit economic development across Ohio. OAC 4906-4-08 includes one such "regulatory restriction:" "The wind turbine **shall be at least one thousand, one hundred, twenty-five feet in horizontal distance** from the tip of the turbine's nearest blade at ninety degrees to the property line of the nearest adjacent property, including a state or federal highway, at the time of the certification application."

To remove regulations that prohibit economic development, Ohio has implemented laws in the past that approach regulatory review with a scalpel. The Common Sense Initiative and associated Five Year Review give agencies the tools to review, rescind, and amend regulations that unnecessarily burden businesses or create unneeded bureaucratic waste, as long as the elimination of those regulations did not violate the Ohio Revised Code.

Senate Bill 293 shirks this balanced methodology and instead forces state agencies to reduce “regulatory restrictions” with a shovel, scooping away a set number of rules no matter the consequences. Specifically, SB 293 requires every state agency “to reduce the total number of *regulatory restrictions* by thirty per cent.” It defines “regulatory restrictions” as rules that use words such as “shall,” “must,” “require,” “shall not,” “may not,” and “prohibit.” Thus this bill requires agencies to create an inventory not of how many regulations they have promulgated, but analyze every word of those regulations and identify the number of specific “restrictions” within its rules. Once identified, it must reduce the number of restrictions by 30%, not the number of regulations by 30%.

This broad sweep across all state agencies does not promote good governance. The bill provides no guidance to state agencies on how to preference the elimination of certain regulatory restrictions over others. It does not consider what an agency should do if it cannot eliminate the necessary number of regulations because too many of its regulations are required by statute. It does not create an escape clause for agencies to develop regulations to respond to new factual circumstances as they arise within our state.

Senate Bill 293 targets state agencies that have “regulatory restrictions” with the most significant benefits on the lives of everyday Ohioans. The Ohio EPA has written the largest portion of the Ohio Administrative Code, so reducing its restrictions by 30% could eliminate a whole host of important rules that protect our state’s ecological resources, the health of communities, and keeping industries on an even playing field. The Ohio EPA already eliminates regulations when necessary when performing its required Five Year Reviews or engaging with the Common Sense Initiative Program. As the Ohio Society of CPAs noted in its proponent testimony:

“A one-size-fits-all approach may be challenging. During the past several years, Ohio’s Common Sense Initiative program has been working to eliminate renewal of rules that are problematic, and to stop new rules that would fall into the same category....it’s possible that some state agencies already may have been aggressive about limiting the regulatory burden in the area they oversee, making the 30% threshold, or possibly even the “eliminate two rules for every new one” approach difficult to attain.”

By addressing only the question of “how many” and not the question of “why,” the bill does not ensure the cure to the perceived ills of over-regulation. Sponsors and proponents of SB 293 argue that regulations need to be simple, efficient, transparent, and necessary to achieve the regulatory goal. SB 293 focuses, however, on the sheer number of the uses of the word “shall” as the sole, and arguably unreliable, proxy for addressing these concerns. The bill does not require an analysis of the most costly

regulations, nor the most time consuming or most difficult with which to comply, nor whether a regulation is unnecessary or duplicative. Despite the

OECAF agrees that we should eliminate regulatory restrictions that unnecessarily harm Ohio's economy or endanger the environment or human health, however SB 293 does not provide the best way to accomplish this. The bill already fails to eliminate actual regulatory restrictions that reduce economic growth in this state. For example, ORC 4906.20 mandates the regulations mentioned earlier for wind setbacks. Senate Bill 293 would not allow the Power Siting Board to eliminate that overly burdensome regulation restricting the expansion of clean energy across Ohio. Instead of a shovel, the General Assembly should pass laws that fine-tune the already existing scalpel that our state agencies use when revising the Ohio Administrative Code.

Again, Chairman LaRose and members of the Committee, thank you for allowing me to testify in opposition to this legislation. I'd be happy to answer any questions you may have.