



**Senate Agriculture & Natural Resources Committee  
Proponent Testimony – House Bill 168 (Arndt)  
Jason Warner – Manager of Government Affairs, Greater Ohio Policy Center  
Wednesday, September 25, 2019**

Chairman Hoagland, Vice Chair Schaffer, Ranking Member O'Brien, and members of the Agriculture and Natural Resources Committee: Greater Ohio Policy Center appreciates this opportunity to provide proponent testimony regarding House Bill 168 (HB168), a bill to establish an affirmative defense to a release or threatened release of hazardous substances from a facility for certain bona fide prospective purchasers.

My name is Jason Warner, and I am the Manager of Government Affairs at the Greater Ohio Policy Center (GOPC). Greater Ohio is the state's champion for urban revitalization and sustainable growth. Our mission is to improve the communities of Ohio through smart growth strategies and research. Our vision is a revitalized Ohio.

Ohio has the potential to bring in millions of dollars in additional tax revenue, provide jobs, and create new housing options if we seize the opportunity to redevelop the thousands of environmentally contaminated sites – known as brownfields. Found in every county, these former industrial and commercial sites are unusable for new development in their current condition. These blighted properties discourage investment and create barriers to job creation across the state.

Ohio was once a national model for brownfield redevelopment; however, brownfield redevelopment is down in Ohio after the sunset of the Clean Ohio Revitalization Fund (CORF). Brownfields continue to be passed over for less costly development projects that do not include an environmental component. To help reinvigorate brownfield redevelopment as a critical component of urban and rural renewal, public and private-sector stakeholders support regulatory reforms that will encourage more brownfield redevelopment within the private sector. **HB168 is one such regulatory reform that stakeholders agree would place Ohio at a competitive advantage, encouraging brownfield redevelopment in the state** by incorporating the bona fide purchaser defense (BFPD) into Ohio law.

Environmental liability for contamination can deter prospective purchasers from redeveloping brownfields. Congress recognized that liability impeded brownfield redevelopment and, in 2002, passed the Brownfield Amendments to federal law to enhance protections for innocent purchasers (i.e. buyers who did not contaminate the property). One of the protections adopted under federal law for innocent purchasers is called the Bona Fide Prospective Purchaser Defense (also known as: BFPD). While some states followed with their own state law BFPDs that mirrored the federal BFPD, Ohio never adopted the BFPD. This gap in Ohio law acts as a deterrent to brownfield redevelopment in the State.

Under HB168, innocent prospective purchasers of contaminated property can establish a defense to environmental liability after completing certain due diligence steps prior to acquisition. Those steps, referred to in federal law as the "All Appropriate Inquires", include:

- 1.) Reviewing federal and state databases for information about potential contamination on the property;
- 2.) Interviewing those with knowledge about the property; and
- 3.) Inspecting the property by an environmental professional for signs of contamination.

If any of these due diligence steps indicate there is contamination present on the property, the prospective buyer **must take reasonable steps** to stop ongoing releases and prevent exposure. The goal is to make the property safe for reuse and to prevent any ongoing threats to the environment. Furthermore, the BFPD is self-implementing. There is no requirement to obtain governmental approvals prior to qualifying for the defense. Properties that are lightly contaminated are the best candidates for the BFPD; qualified environmental certified professionals would advise heavily contaminated sites to go through Ohio EPA's existing regulatory program—the voluntary action program.

In adding the BFPD into Ohio law, Ohio would be in line with many other states, such as Indiana and Michigan, which have incorporated the federal BFPD or BFPD-like legal protection into state law. HB168 brings Ohio law in line with federal law through enhancement of liability protections for innocent purchasers of contaminated property. While incentives are still needed to offset the increased cost of redeveloping brownfields, HB168 addresses an important gap in Ohio law that puts Ohio at a competitive disadvantage to neighboring states with regard to brownfield redevelopment.

Chairman Hoagland and members of the Agriculture and Natural Resources Committee, I thank you for the opportunity to provide testimony today. I am happy to answer any questions.