

Kristina Roegner

State Senator

27th Senate District



Rob McColley

State Senator

1st Senate District

Sponsor Testimony

Senate Bill 311

Senate Health, Human Services, and Medicaid Committee

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Chair Burke, Vice-Chair Huffman, Ranking Member Antonio, and members of the Senate Health, Human Services and Medicaid Committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 311, which makes necessary modifications to the process for issuing statewide stay-at-home orders or shutting down businesses for purposes of quarantine and isolation.

The legislative history of the Department of Health and its authority in matters of quarantine, isolation and power to issue orders is a fascinating one. The State Board of Health, created in 1886 by SB90 of the 67th General Assembly, noted themselves “the act of creating this Board conferred little or no power: and it is perhaps legitimate to infer that the intention was that its work should be educational.”¹ Three years later in 1889, the 68th General Assembly through SB471 granted the State Board of Health the authority to make quarantine and sanitary rules. Interestingly, this was apparently in response to the village of New Washington issuing a localized quarantine order, even though there were no cases of small-pox within 2 miles of the village. The State Board investigated and found it a “most senseless and useless quarantine” noting further that “The Ohio State Board of Health by an act of the last General Assembly, has been granted full power to enforce and regulate quarantine measures, and hereafter interruptions to commerce shall be the LEAST (*emphasis added*) possible, consistent with necessary precautions to prevent the spread of diseases.”² It was in 1893 that the State Board’s authority in such matters was defined as we would recognize it in today’s code. HB1149 of the 70th General Assembly stated the following: “The State Board of Health shall have supervision of all matters relating to the preservation of the life and health of the people of the state. The board shall have supreme authority in the matters of quarantine, and may

¹ Second Annual Report of the State Board of Health, of the State of Ohio, to the Governor of the State of Ohio, for the year ending October 31, 1887, available at <https://babel.hathitrust.org/cgi/pt?id=osu.32435054353271&view=1up&seq=7>.

² Fourth Annual Report of the State Board of Health, of the State of Ohio, to the Governor of the State of Ohio, for the year ending October 31, 1889, available at <https://babel.hathitrust.org/cgi/pt?id=osu.32435054353081&view=1up&seq=7>.

declare and enforce it when none exists, may modify, relax or abolish it when it has been established.”³ With only a few minor changes, this language is still quite recognizable today in ORC 3701.13. The only substantive changes came in 2004 when HB6 of the 125th General Assembly granted the Department of Health (so renamed in 1921) the “ultimate” authority over matters of “isolation” in addition to quarantine.⁴

ORC 3701.13 has been used recently to shut down Ohio businesses and keep Ohioans at home during the COVID-19 pandemic. One of the first orders citing this section was issued by the Director of Health on March 14, and prohibited mass gatherings in Ohio. Subsequent orders in the following days prohibited dining in at restaurants, shuttered polling locations, and eventually ordered Ohioans to stay at home except when engaged in essential business, which was defined by Department. Each of these orders directly references the authority granted by the General Assembly to the Department in ORC section 3701.13 back in 1893.

The results of such actions have certainly been mixed. Especially at the commencement of the crisis, it was unclear the extent to which COVID-19 threatened the health and safety of our state and what policy prescriptions were appropriate to mitigate such threats. The Governor and Director of Health’s actions to protect Ohio at the onset of the crisis certainly erred on the side of caution and protecting Ohioans and that is to be commended. But we have also seen the dire economic and social costs of these actions as the shutdown of the state has extended for a prolonged period of time. Unemployment claims over the last eight weeks have totaled over 1.17 million, despite unprecedented, drastic financial support by the federal government through the CARES Act to keep workers on payrolls. Jobs are threatened and small businesses are crumbling. Education is suffering as students are away from their classrooms, and as dips in tax revenues lead to cuts in funding.

Recent reports from The Washington Post have revealed that the national disaster distress hotline has seen a 1000% increase in text messages in April 2020, compared to April 2019, signaling a potential mental health crisis. Domestic violence shelters in my district have expressed grave concern about increases in abuse. Some nonprofits are struggling to find funding to serve their communities. We must understand that the actions taken to protect the public from Covid-19 have not occurred in a silo and have significant negative unintended consequences which also need to be considered. Individuals and institutions both public and private have become strained to their limits as a result of this near-complete shutdown of our society. The effects of such uncertainty on the well-being of families across our state are deeply concerning. As elected officials, each of us are hearing from struggling constituents on a daily basis. These effects aren’t going away tomorrow, and they’ll be back the next time a crisis of this magnitude strikes if we don’t take action. As legislators who craft the Ohio Revised Code and empower the executive branch to enact public health restrictions, we are responsible to hear and act on behalf of our constituents.

³ Section 2, H.B. 1149 of the 70th General Assembly.

⁴ R.C. 3701.13, H.B. 6 of the 125th General Assembly.

S.B. 311 improves upon this section of the Ohio Revised Code in three primary ways:

First, like Senate Bill 1 as amended by the House, S.B. 311 provides for common-sense limitations on the use of 3701.13. Specifically, the bill limits the duration of any such order by the Department of Health to 14 days. The Department of Health, however, may apply for an extension of the order by engaging the legislature via the Joint Committee on Agency Rule Review, a bipartisan and bicameral committee. JCARR may decide to approve an extension with the affirmative vote of at least 3 of the 5 members from each chamber. The executive branch retains the power to address special emergency situations on an as-needed basis for a reasonable period of time, at which point it must gain the support of the legislature to continue. This counterbalances a level of needed flexibility with government restraint, ensuring safety can be protected, while freedoms are respected.

Second, the bill requires that any statewide order issued by the Department of Health be signed by the governor. We have heard from a number of constituents and Ohioans who are confused about who is ultimately responsible for making these decisions. The Governor has certainly made it very clear on a number of occasions that the responsibility for each of these decisions lies with him as the elected chief executive of our state. This change simply codifies what is already understood, and eliminates confusion in this regard. It is entirely appropriate that accountability for these statewide life-altering orders lies with an official directly elected by the people of Ohio.

Third, recognizing the potential serious ramifications to extended quarantine, isolation and business closure orders, the bill ensures a robust consideration of costs and benefits of these decisions to extend the restriction of freedoms beyond 14 days. JCARR must consider not only the application of the Department of Health with any supplemental documentation they provide, but also must consider the input of local health boards across the state concerning how such an extension would impact their areas.

Moreover, this process ensures bipartisan deliberation. While the governor's office is held at any given time by ONE individual of ONE political party, JCARR has 10 members, made up of both parties, who represent different regions of the state. Incorporating a more diverse collection of feedback and perspectives into such critical decisions clearly improves the decision making as we determine appropriate policy choices. The governor has a critical and leading role in such a discussion, but legislators of both parties should join him in determining the best course of action, with the feedback of the best experts of the field, in making a determination.

Lastly, the bill prohibits any order from being issued to restrict Ohio school districts from holding in-person graduation ceremonies in 2020. S.B. 311 permits Ohio school districts to determine whether or not in-person graduations should proceed this year. Not all school districts are equal in size, and in some cases, outdoor graduation ceremonies could be safely conducted on a football field without any need for families to come within six feet of each other. In other cases, this may not be possible, but local school boards and districts are

responsible to their parents and families for making responsible decisions and should be trusted to determine whether or not this is possible for their individual districts.

The bill also immediately rescinds any executive order that closes businesses, nonprofits, or other organizations, or otherwise requires Ohioans to stay at home. Thankfully, due to the announcements that have been recently made to reopen businesses and yesterday's relaxation of the stay-at-home order, much of this section of the bill is less urgent today. While we feel the process to reopen the state has been unnecessarily delayed, we do appreciate the steps that have been taken in recent days to free up Ohio businesses and residents to engage in commerce and provide for their families.

The amendment we submitted to this committee clarifies that the legislative intent to limit future orders, issued by the Department of Health, to 14 days, applies to those issued under R.C. 3701.13, R.C. 3701.14 as well as all statewide orders.

It is important that we, the legislative branch, are engaged when it comes to making decisions that so powerfully affect the health safety, welfare and freedom, of our constituents.

Thank you again for the opportunity to provide sponsor testimony. We would be happy to answer questions at this time.