

Proponent Testimony before the Ohio Legislature
HB 193 – October 31, 2023
By Randall J. Heldt, Esq.
Ohio Bar No. 0101988

Chairman Creech and members of the Committee, my name is Randall Heldt. I am an attorney, fully licensed in Ohio and Texas. I am retired now, but I spent over 30 years working for Shell Oil Company. My work involved many issues, including environmental law.

I listened carefully to the hearing for sponsors testimony on June 13, 2023. The core purpose of HB 193 is as described by Ms. Fulton. The bill

- eliminates loopholes in zoning laws;
- require covers over lagoons; and
- affords local officials a seat at the table when these projects are proposed.

I brought with me a diagram of the amendments. This hopefully makes the changes easier to sort out. I'll leave it with the committee.

With my remarks, I hope to

- get down into the weeds a bit to support the purposes of the bill with the text of the bill; and
- alleviate some concerns expressed in the prior hearing; and
- provide additional useful details on questions raised by the committee.

Chairman Creech said in the prior hearing that he looked forward to learning more about biodigesters and waste lagoons.

So let's get started!

Some members of the committee expressed reluctance to have zoning in their county

Good news!

Great pains were taken in the drafting of the amendments to assure participation is completely voluntary

In the amendments, rights of the community are expressed permissively with the word “may”.

- “The operator of the proposed facility **shall** provide notice of a public meeting to commissioners and trustees” (line 813)
- “Not later than 90 days after the meeting commissioners **may** adopt a resolution approving or disapproving” (line 829)
- “If the commissioners fail to adopt a resolution, the director (OEPA) **may** proceed.” (line 852)

Over and over in the bill ‘safe harbors’ were left.

This is for facilities operated for a farmers’ own animal and crop waste.

It was noted by a few members of the committee that there are references to the zoning

It is correct, there are zoning loopholes that are closed by this bill.

This is important because it could otherwise create a conflict.

However, the authority to apply zoning to these facilities is permissive.

“a zoning resolution **may** provide for the regulation of these facilities.”

- (line 569 – townships)
- (line 282 – counties)

Thus, local officials may do one of several things

- Enforce the zoning regulations it already has; or
- Enact a set of zoning regulations; or
- Leave things as they are with no zoning.

I’d advise, however, that you give HB 193 to local officials to have in their hip pocket.

A ‘veto’ is a powerful tool that does not require much administration.

Several members wanted to know more about odors and operations.

There are several bioproducts of biodigestion and open storage.

They are:

- Methane, which is in fact, odorless. However, it is flammable and can explode. It has.
- Ammonia stinks. It comes from the decay of organic matter.
- Hydrogen sulfide smells like rotten eggs and if undispersed, it can kill.

Ammonia both irritates and smells like something died.

Devices measure concentration of ammonia.

Models show where it goes and what are expected reactions.

It was mentioned in the prior hearing that after extracting methane the digestate was 'free of pathogens'.

The effluent, however, a Class B biosolid or is food waste.

Biosolids may contain

- viruses,
- bacteria like salmonella
- parasites like giardia

Only Class A biosolids can be distributed to the public

Class B biosolids can be land applied but only with a host of restrictions

Biodigestion does not eliminate PFAS 'forever chemicals' or heavy metals.

One study showed 80% of food waste samples were contaminated.

During the prior hearing, demand for digestate for land application was discussed.

In Greene County, however, fields are being pulled out of the program.

This is due to harms and inequities.

- Farmers are experiencing overbalancing of soil chemistry, particularly phosphorus.
- In the fine print, contracts allow biosolids to be dumped on fields over objections of farmers. The operators need only deem it is a 'necessity'.

Considering restrictions on what the fields can be used for, it becomes a strait jacket.

During the prior hearing, the question was raised as to what other locales are doing.

As an example, in 2016, greater metro Louisville placed a moratorium on biodigesters.

The Kentucky Resources Council recommended only feedstocks generated by the farming operations should be exempt.

Otherwise, the facility is a commercial facility that is subject to regulation.

This is exactly what is proposed in HB 193.

During the hearing, several questions were raised about the feasibility of covers.

In the oil industry large tanks are common.

- Domes are a fixed roof option. Ammonia goes to the top and through a scrubber
- Floating tank covers with gaskets and collection systems are also common.

Scrubbers can be 99% effective.
Covers don't work in earthen pits
Neither, it would seem, do floating styrofoam tile retrofits.
That is what is proposed by operators.

The proponents would say, giving local officials a seat at the tables is a good thing.
It evens things out.

In the prior hearing, it was offered that:

- everyone likes french fries, but
- no one wants to host a facility like this.

Instead, I'd offer that the average price of a small order of fries at McDonalds is \$2.05.

Disposing of grease on the cheap like this saves money

But, the real cost of the fries is \$2.05 plus the externalized costs to nearby communities.

These include:

- Tax bases in rural communities that are undermined;
- Diminished property values that take wealth away from homeowners;
- Revitalization of communities that is stymied;
- Quality of life suffers.

The true cost of fries that includes proper disposal is what? \$2.10?

Foisting this on rural communities to save a nickel is not right.

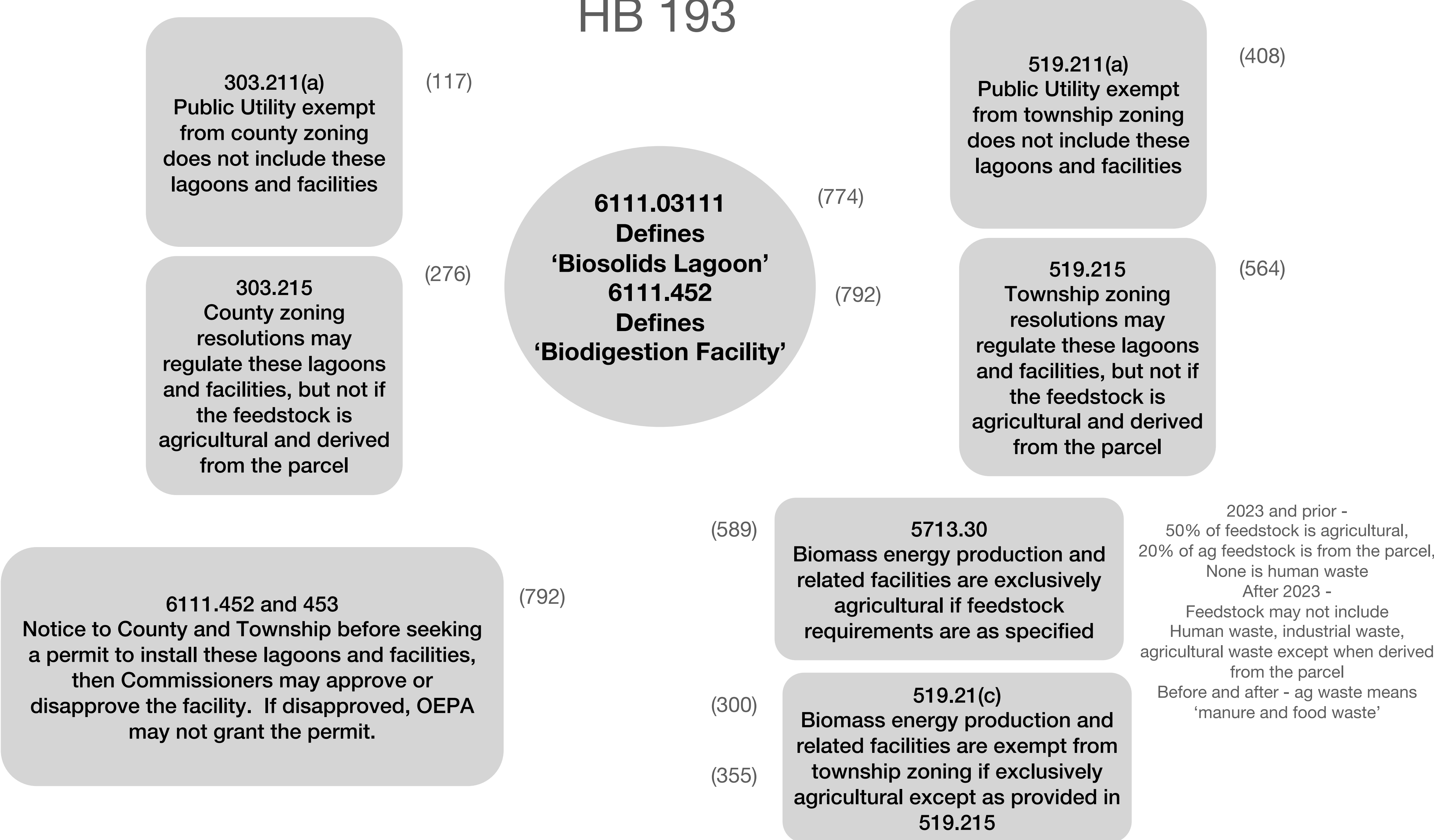
HB 193 is an opportunity to make it right.

HB 193

Summary of provisions

Heldt – June 2, 2023

HB 193



HB 734 and CAUV
February 9, 2024

As you know, HB 734 restores a zoning authority for townships and counties in Ohio when faced with operators seeking to locate biosolids and commercial food waste biodigesters and associated waste lagoons in their locales. Questions have been presented about the impact this has on farmers' property taxes, particularly the popular Ohio Current Agricultural Use Value (CAUV) program. In short, it does not.

Through the CAUV program, for property tax purposes, farmland devoted exclusively to commercial agriculture may be valued according to its current use rather than at its 'highest and best' potential use. Also, under a provision in ORC 519.21(c), land which is exclusively agricultural is exempt from any townships' zoning authority.

The simplest way to qualify for the CAUV is to have ten or more acres devoted exclusively to commercial agricultural use for at least three years prior to application. ORC 5713.30 provides a list of activities that are 'exclusively agricultural'. The overwhelming majority of those activities have nothing to do with operation of a biosolids and commercial food waste biodigester and associated waste lagoons, and therefore is unimpacted by HB 734. For example, traditional farming such as animal husbandry and field crops is included as well as timber, sod or flowers. This is all unchanged by HB 734.

ORC 5713.30, however, contains a part (B), that includes land devoted 'biodiesel production, biomass energy production, electric or heat energy production, or biologically derived methane gas production' if feedstock requirements are met. Most relevant is the requirement that 50% of the feedstock be 'agricultural'. Somewhat perversely, however, this provision was amended in that last several years to define agricultural waste as including 'food waste' which is not agricultural at all, but is trucked in from commercial facilities and industrial food processing plants. Millions of gallons of such waste is being trucked into rural counties and is being dumped in giant lagoons for 'tipping fees' similar to garbage dumps. Nothing could be further from a common-sense definition of 'agricultural'.

For facilities with current CAUV status, HB 734 makes no change, except that the exemption from zoning under ORC 519.21(c) will be eliminated, and only for the subset of 'biosolids lagoons' and 'biodigestion facilities'. Even then, such facilities are exempt from zoning if the facility is for agricultural waste derived from the farm where the facility is located. For facilities to be installed in the future, CAUV will be closer to its original purpose. A facility will be 'exclusively agricultural' only if the feedstock has no human waste, no industrial waste and no agricultural waste except that derived from the farm where the facility is located.

In summary, CAUV status will remain intact for current facilities that qualify, but zoning authority will apply to the previously mentioned subset. Future facilities will still be able to

obtain CAUV status but only for facilities on the farm intended to produce energy from a farmer's own animal waste and silage.

To independently verify this, use the following roadmap. In HB 735, the definitions of 'exclusively agricultural' under ORC 5713.30 begin at line 589. The exemption from zoning for such uses is found in ORC 519.21(c) beginning at line 300. The restoration of zoning authority begins at line 355, which refers to the subset of facilities that will be subject to township zoning under 519.215 beginning at line 564. The definitions of biosolids lagoons and biodigestion facilities are found at ORC 6111.03111 beginning at line 774 and ORC 6111.452 beginning at line 792.

Just to complete the picture of the rest of HB 735, other provisions should be noted. Biosolids lagoons and biodigestion facilities are no longer considered 'public utilities' exempt from zoning (ORC 303.211(a) beginning at line 117; and ORC 519.211(a) beginning at line 408). Zoning authority over such facilities is acknowledged except for those which use agricultural feedstock derived from the farm where the facility is located. (ORC 303.215 beginning at line 276; and ORC 519.215 beginning at line 564). A provision is added to require new biosolids lagoons and biodigestion facilities to give notice of application for a permit to install, with a process that can lead to approval/disapproval by county commissioners, which Ohio EPA must abide by. (ORC 6111.452 – 453 beginning at line 792). The Ohio EPA is required to direct that facilities are equipped with covers that adequately minimize nuisance odors. (ORC 6111.311 beginning at line 785).

This bill is important to the quality of life of citizens all over Ohio. Local elected officials need a 'seat at the table' for these decisions. We are counting on your support. If we can answer any further questions, please let us know.