

**John Scott Fabian, President, Board of Trustees of the
Jefferson Belmont Regional Solid Waste Authority
Senate Agriculture and Natural Resources Committee
Senate Bill 119 – Opponent Testimony
June 20, 2023**

Chairman Schaffer, Vice Chair Landis, Ranking Member Hicks-Hudson and members of the Senate Agriculture and Natural Resources Committee, thank you for this opportunity to provide testimony on Amended Substitute Senate Bill 119.

I am the President of the Board of Trustees of the Jefferson Belmont Regional Solid Waste Authority (JBRSWA) which, pursuant to R.C. 343.011, manages the joint solid waste management district comprised of Jefferson County and Belmont County. Substitute SB 119 has changed considerably since it was introduced last month for the purpose of reducing the flow of out-of-state waste disposed in a few Ohio landfills.

The current version of SB 119 has two main features: (1) a 2/4/2 tiered fee on the disposal of construction and demolition debris (C&DD), that solid waste districts may levy and collect from C&DD facilities and solid waste facilities, and must then transfer 100% of the collected fees to the local health district; and (2) allowing a county to unilaterally withdraw from a joint solid waste district under certain conditions. Unfortunately, neither of these measures will do anything to significantly reduce the flow of out-of-state waste into Ohio. The proposed C&DD fees are too small to impact the \$30/ton to \$40/ton cost advantage of shipping waste to Ohio for disposal, instead of disposing it in facilities on the East Coast where the waste is generated. And the proposed withdrawal provision enables a small number of counties that host a large regional landfill to unilaterally withdraw from the joint solid waste district, with the effect that the separating county can retain millions of dollars of waste disposal fees for its own use, but the non-withdrawing sister counties that have no disposal facilities and a small population will not have the financial resources to implement a comprehensive solid waste program on its own. In short, the current version of SB 119 does not fulfill its originally intended purpose of reducing the flow of out-of-state waste, but is likely to produce negative outcomes for some solid waste districts as well as for Ohio's domestic C&DD contractors and facilities. JBRSWA therefore respectfully opposes substitute SB 119 in its current form and submits that further analysis and improvement is needed before it advances through the legislative process.

1. Proposed 2/4/2 Tiered Fee on the Disposal of C&DD

Solid waste districts currently cannot levy fees on C&DD. However, under existing R.C. 3714.07(A), health districts may levy a 60 cent/ton fee on the disposal of C&DD. Proposed R.C. 3714.07(E) would allow a solid waste management district to levy and collect a disposal fee on C&DD disposed at a C&DD facility or a solid waste facility located in the solid waste district, in the following amounts:

- a. Between \$1.00/ton and \$2.00/ton on C&DD generated within the solid waste district;
- b. Between \$2/ton and \$4/ton on C&DD generated outside the district but in Ohio;
- c. An amount on C&DD generated outside Ohio that is equal to or less than the fee on C&DD generated within the solid waste district.

Proposed R.C. 3714.07(E) further specifies the solid waste district “shall forward” all the C&DD fees it collects “to the health district in which the facility is located” to be used for the purposes listed in R.C. 3714.07(A)(4).

Not only are the proposed C&DD fees too small to impact the flow of out-of-state waste to Ohio, but proposed R.C. 3714.07(E) has several negative effects, including:

1. The solid waste district is not compensated for collecting and handling the C&DD disposal fees. Some Ohio landfills are disposing nearly 2 million tons of C&DD, which could result in approximately \$4 million of additional fees that a solid waste district collects, deposits, and ultimately forwards to a health district.
 - a. This requires the solid waste district’s fiscal officer to devote time to reviewing the information on fees being remitted from each affected CD&D facility and solid waste facility, then depositing the funds in the proper account, and then documenting the proper disbursement to the proper health district. The solid waste district pays for the services of its fiscal officer and should be reimbursed for the share of the fiscal officer’s time involved in managing the C&DD disposal fees.
 - b. Because the amount of the C&DD fees involved may be considerable, the solid waste district may need to pay for an increase of the surety bond or insurance coverage against potential losses relating to improper handling or misappropriation of the C&DD fees.
 - c. If a C&DD facility or solid waste facility fails to pay fees that are owed, or misstates the tonnage, or misclassifies waste that should have been classified as C&DD, then the solid waste district must undertake collection efforts, possibly including legal action, to collect C&DD disposal fees. The expense can be considerable.
2. It is questionable policy to create a new C&DD fee to provide health districts with funds for landfill oversight, but then make it the responsibility of the solid waste district to decide whether to levy the fee and the amount of the fee. This creates a potential conflict between the health district and the solid waste district when they should be working together to ensure the safe and sanitary disposal of waste in their communities.
3. Historically, solid waste districts have been excluded from getting involved in the management of C&DD, because C&DD is expressly excluded from the definition of solid waste under R.C. 3734.01. Solid waste districts have little experience working with C&DD contractors and facilities, or knowledge of C&DD industry practices and waste flows. Solid waste districts will need to develop this knowledge just to make sure they are properly

collecting C&DD disposal fees. JBRSWA respectfully submits it does not make sense to impose the responsibility for collecting disposal fees from C&DD facilities on solid waste districts when the districts legally do not have any responsibilities for the oversight of C&DD disposal, reducing the amount of C&DD waste, or providing for C&DD recycling.

4. Although proposed R.C. 3714.07(E) replicates the 2/4/2 tiered disposal fees that solid waste districts may levy on solid waste under R.C. 3734.57(B), proposed R.C. 3714.07(E) does not include the procedures required by R.C. 3734.57(B) to ensure the community supports and has a say in whether the fees are levied. Unlike solid waste fees under R.C. 3745.57(B) which requires the fees be authorized by the solid waste management plan, and be ratified by the county commissioners, the largest municipalities, and a super-majority of the municipalities and townships within the district, R.C. 3714.07(E) does not include any of these protections. Proposed R.C. 3714.07(E) simply allows the policy committee of the solid waste district to levy C&DD disposal fees on its own volition without any opportunity for stakeholder input.

In summary, the C&DD disposal fees under proposed R.C. 3714.07(E) is a major departure from the solid waste districts' historical role which made a clear distinction between solid waste and C&DD, and restricted solid waste districts to dealing only with solid waste and solid waste recycling. The current version of SB 119 has not adequately addressed the implications of making solid waste districts responsible for levying and collecting a disposal fee on C&DD solely for the use of health districts. JBRSWA respectfully submits that additional analysis and policy development is necessary before substitute SB 119 advances.

2. JBRSWA Opposes The Proposed Changes Allowing A County To Unilaterally Withdraw From A Joint Solid Waste District.

On May 30, 2023, JBRSWA provided testimony to this Senate Agriculture and Natural Resources Committee in opposition to the provision in SB 119 that allows a county to unilaterally withdraw from a joint solid waste district under certain conditions. JBRSWA's objections at that time largely focused on the harmful effect the withdrawal provision could have on the Jefferson Belmont solid waste authority based on having to unwind JBRSWA's investment of nearly \$5 million during the past several years to develop recycling infrastructure. The modest procedural changes made to the withdrawal process in the current version of Substitute SB 119 do not address JBRSWA's concerns about dissolving the joint district and unwinding the district's investments.

An equally, if not more serious, problem with the proposed unilateral withdrawal process is that it undercuts one of the basic underpinnings of HB 592 which created solid waste management districts in 1989. HB 592 correctly assumed that waste would be managed in fewer but larger regional landfills located across the State and many counties would not have a solid waste landfill. A single county, with a small population and no in-county landfill, would not have the resources to operate as a stand-alone solid waste district. Therefore, HB 592 required counties with a population less than 120,000 that could not demonstrate at least 10 years of waste disposal capacity, to form a joint district with other counties. There was an understanding that counties that had landfills may have to join with counties that did not have a landfill, or a large population, to

ensure that every county was part of an economically and operationally viable solid waste management district. This aspect of HB 592 has worked very well over a long period of time.

The current version of substitute SB 119 departs from this basic underpinning of HB 592. In JBRSWA, allowing a unilateral separation of the two counties would leave Belmont County, with a population of 65,000 and no solid waste landfill, to support a solid waste management district on its own. Even if a separate Belmont County district levied a higher-than-typical generation fee, it would not be able to provide the same level of service as JBRSWA currently does. HB 592 rejected the idea that a single county with a large regional landfill should be allowed to hoard all the landfill's disposal fees to itself while a neighboring county that does not have a landfill must fend for itself. JBRSWA opposes SB 119's departure from this principle by allowing a county that hosts a large landfill to unilaterally withdraw regardless of the effects on the non-withdrawing counties.

Finally, while the current version of SB 119 requires the withdrawing county and non-withdrawing counties to follow the separation process under R.C. 3734.521, the proposed change under new R.C. 3734.512(I) mandates the process must be completed within 180 days "notwithstanding any provisions of law to the contrary." The separation process under R.C. 3734.521 requires the affected counties to make and obtain approval of a preliminary demonstration of capacity, draft a new solid waste plan, obtain a preliminary review of the draft plan from Ohio EPA, revise and approve the final solid waste plan, obtain local community ratification of the plan, and submit the ratified plan to Ohio EPA for review and approval. This process cannot be completed in 180 days. The local ratification process alone takes 90 days, and Ohio EPA does not have authority to reduce the ratification period. JBRSWA respectfully submits the modified separation process for unilateral withdrawal under substitute SB 119 in its current form is impractical and unworkable. Allowing a county to unilaterally withdraw despite the objections of the non-withdrawing counties, as proposed under new R.C. 3734.012(B)(1) and (D)(1), is a substantial concession to the parties that advocate for unilateral withdrawal. However, the counties involved should have to fully comply with all of the separation procedures under R.C. 3734.521 without the imposition of a mandated separation deadline as proposed under R.C. 3734.521(I).

Thank you for your attention and consideration to our concerns. I am happy to provide any additional information or answer any questions you may have regarding our concerns about SB 119.