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Sen Tim Schaffer
Chair, Senate Agriculture & Natural Resources Committee
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Via e-mail Travis.Brock@ohiosenate.gov

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SUBJECT: SB 111, Opposition Testimony

1. Introduction: Chair Schaffer, Vice-Chair Landis, Ranking Member Hicks-Hudson, and members of the Senate Agriculture and Natural Resources Committee, my name is Charles Huber and I'm employed by the City of Lakewood where I administer Ohio Revised Code (ORC) 3781, Ohio rules including Ohio Building Code (OBC) and the Residential Code of Ohio (RCO) [Ohio Administrative Code (OAC) 4101:1 & 8], and Lakewood Ordinances including Lakewood's zoning ordinances and Lakewood's Architectural Board of Review ordinances. Thank you for the opportunity to provide opposition testimony on Senate Bill (SB) 111. My service of over 30 years administering State of Ohio and local law regulating land use and building construction includes City of Moraine, City of Kent, and Medina County.
2. Summary: Sponsor testimony states "... a lack of consensus across municipalities in Ohio over how to classify temporary greenhouses and hoop houses has led to ... inconsistently enforced laws ... that are difficult for urban farmers to navigate. ..." SB 111's amendment of ORC 3781 isn't the best way to address future inconsistent enforcement. SB 111 might be completely irrelevant to some past difficulties encountered by urban farmers. I'll address:
 - a. OBC and RCO enforcement in townships with zoning compared to everywhere else.
 - b. Statute amendment compared to rule amendment.
 - c. OBC and RCO law compared to zoning law.
3. OBC and RCO Enforcement in Townships with Zoning Compared to Everywhere Else: Although most townships are mostly rural, some have suburban and/or even urban portions. ORC 519 gives townships their zoning powers. ORC 303 gives counties zoning powers if the townships aren't exercising theirs. ORC 519.01 and 303.01 define "agriculture" substantially the same as the ORC 3781 (which is the enabling legislation for OBC and RCO) definition of "agricultural purposes" at ORC 3781.06(C)(1). This is repeated at OBC 202 and RCO 202. ORC 3781.061 states, "Whenever a county zoning inspector under section 303.16 of the Revised Code, or a township zoning inspector under section 519.16 of the Revised Code, issues a zoning certificate that declares a specific

building or structure is to be used in agriculture, such building is not subject to sections 3781.06 to 3781.20, 3781.40, or 3791.04 of the Revised Code.” This means the building’s exempt from the OBC and RCO. Therefore, the Building Official and Residential Building Official needn’t make a decision as to whether a building in a township with zoning is used for agricultural purposes. He or she need only have communication with the township zoning inspector.

4. OBC and RCO Enforcement in Townships Without Zoning and in Municipalities. The Building Official and Residential Building Official must make the agricultural exemption decision. The SB 111 lines 138-142 [proposed ORC 3781.06(C)(12)] definition of “Temporary greenhouse” means a structure ... for growing agriculture products, ...” is unnecessarily redundant of the existing definitions at ORC 519.01, 3781.06(C)(1), OBC 202, and RCO 202.
5. Statutory Amendment Compared to Rule Amendment. If the Committee agrees that the SB 111 ORC 3781 “temporary greenhouse” definition is redundant of the existing and continuing definitions at ORC 519.01, 3781.06(C)(1), OBC 202, and RCO 202 definitions, but that inconsistent enforcement would be reduced with OBC and RCO clarifying amendments, then I suggest the stakeholders submit to the Ohio Board of Building Standards (BBS) code change proposals for OBC and RCO pursuant to ORC 3781.12, OBC 112, and RCO 112. Absent statutory constraints, the administrative rule change process is better equipped than the legislative process to address this concern. Also, BBS has other means to address inconsistent enforcement.
6. OBC and RCO Law Compared to Zoning Law. OBC and RCO address “... conservation of energy and the safety and sanitation of ... buildings.” [ORC 3781.10(A)(1)]. ORC 3781.06(C)(7) & (8) define “safe” and “sanitary”. Also, ORC 3781.111 requires OBC and RCO to address handicap accessibility. Often a municipal Building Official and Residential Building Official enforcing the OBC and RCO also is charged to enforce the city’s zoning ordinances. Zoning is a tool that governments use to accomplish township, county, city, and regional planning. Zoning resolutions and ordinances address land use including building use. Any amendment to ORC 3781, the OBC, and RCO won’t solve urban farming zoning issues.
7. Rule Reduction Requirements Relief. The 133rd and 134th Sessions of the General Assembly and the Governor amended statute requiring State agencies to reduce rules content in OAC. If it’s the intent of the Committee that the definition of “temporary greenhouse” and language excluding them from OBC and RCO be adopted into OAC at those codes (those rules), then an amendment to SB 111 reading, “Notwithstanding any provision of section 121.95 of the Revised Code to the contrary, a rule adopted showing the definition of “temporary greenhouse” and that such buildings are excluded from regulation is not subject to sections 121.95 to 121.953 of the Revised Code.”
8. Conclusion. I offer the SB 111 sponsor and stakeholders assistance in bringing their OBC and RCO enforcement concerns to BBS. This includes, if necessary, drafting proposals to amend OBC and RCO.

REFERENCED SECTIONS OF ORC, OBC, & RCO

ORC 519.01 Township Zoning Definition of "Agriculture."

"As used in sections 519.02 to 519.25 of the Revised Code, "agriculture" includes farming; ranching; algaculture meaning the farming of algae; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; and the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production."

ORC 303.01 County Zoning Definition of "Agriculture."

Identical to ORC 519.01 except instead of "As used in sections 519.02 to 519.25 of the Revised ..." ORC 303.01 reads, "As used in sections 303.02 to 303.25 of the Revised ..."

ORC 3781.06(C)(1) Building Code Enabling Statute Definition of "Agricultural Purposes."

"... include agriculture, farming, dairying, pasturage, apiculture, algaculture meaning the farming of algae, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, and animal and poultry husbandry."

OBC 202 and RCO 202 repeat the ORC 3781.06(C)(1) "agricultural purposes" definition except they omit "... algaculture meaning the farming of algae ..."

OBC 101.2 and RCO 101.2 exempt from the scope of OBC and RCO, :"Buildings or structures which are incident to the use for agricultural purposes of the land on which said buildings or structures are located, provided such buildings or structures are not used in the business of retail trade: for the purposes of this Section, a building or structure is not considered used in the business of retail trade if fifty per cent or more of the gross income received from sales of products in the building or structure by the owner or operator is from sales of products produced or raised in a normal crop year on farms owned or operated by the seller (see Section 3781.06 and 3781.061 of the Revised Code)."

ORC 3781.12 Amending OBC and RCO.

"(A)(1) Any person may petition the board of building standards to adopt, amend, or annul a rule adopted pursuant to section 3781.10 of the Revised Code, or to permit the use of any particular fixture, device, material, system, method of manufacture, product of a manufacturing process, or method or manner of construction or installation that complies with the purposes declared in section 3781.06 of the Revised Code, of the fixtures, devices, materials, systems, or methods or manners of construction,

manufacture or installation described in any section of the Revised Code relating to those purposes, where the use is permitted by law.

(2) Any person may petition the residential construction advisory committee to recommend a rule to update or amend the state residential building code.

(B) Upon petition under division (A) of this section, the board shall cause to be conducted testing and evaluation that the board determines desirable of any fixture, device, material, system, assembly or product of a manufacturing process, or method or manner of construction or installation sought to be used under the rules the board adopts pursuant to section 3781.10 of the Revised Code.

(C) If the board, after hearing, determines it advisable to adopt the rule, amendment, or annulment, or to permit the use of the materials or assemblages petitioned for under division (A) of this section, it shall give at least thirty days notice of the time and place of a public hearing as provided by section 119.03 of the Revised Code. No rule shall be adopted, amended, or annulled or the use of materials or assemblages authorized until after the public hearing. A copy of every rule, amendment, or annulment, and a copy of every approved material or assembly authorization signed by the chairperson of the board of building standards and sealed with the seal of the department of commerce shall, after final adoption or authorization by the board, be filed with the secretary of state and published as the board determines. The issuance of the authorization for the use of the materials or assemblages described in the petition constitutes approval for their use anywhere in this state. Any rule, amendment, or annulment applies does not take effect until a date the board fixes and states. No rule, amendment, or annulment applies to any building for which the plans or drawings, specifications, and data were approved prior to the time the rule, amendment, or annulment becomes effective. All hearings of the board are open to the public. Each member of the board may administer oaths in the performance of the member's duties.

OBC Change Process.

OBC 112.1 "Code change petition process. In accordance with Section 3781.10 of the Revised Code, the board may on its own motion or upon receipt of a petition, adopt, amend, or rescind rules, through the administrative rule process.

112.1.1 Changes, applications for. Any person may apply to the board to adopt, amend, or rescind rules of the board. The application for rule change shall be on forms and in format prescribed by the board. Twelve printed copies of the application shall be filed with the secretary of the board.

112.1.2 Processing applications for changes. When the secretary of the board receives a conforming application for an adoption, amendment, or annulment of a provision of the rules of the board, the secretary shall promptly deliver or mail a copy of the application to each member of the board.

After receiving an application for the adoption, amendment, or annulment of a provision of the rules of the board, the board shall proceed under Sections 3781.101 and 3781.12 of the Revised Code."

RCO Change Process

RCO 112.1 et seq. is the same as OBC 112.1 except the BBS Secretary initially forward petitions to the Residential Construction Advisory Committee for action.

Rule Reduction Requirements

ORC 121.95(F) Beginning on October 17, 2019 and ending on June 30, 2025, a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions. The state agency may not satisfy this section by merging two or more existing regulatory restrictions into a single surviving regulatory restriction.

ORC 121.951(A)(1) Using the criteria listed in division (A) of section 106.03 of the Revised Code, a state agency shall amend or rescind rules identified in its base inventory of regulatory restrictions prepared under section 121.95 of the Revised Code as necessary to reduce the total number of regulatory restrictions by thirty per cent (sic), according to the following schedule:

- (a) A ten per cent (sic) reduction not later than June 30, 2023;
- (b) A twenty per cent (sic) reduction not later than June 30, 2024; and
- (c) The thirty per cent (sic) reduction not later than June 30, 2025,

When a state agency has achieved a reduction of any percentage in regulatory restrictions, whether or not as specified in this section, the state agency may not adopt or maintain regulatory restrictions that would negate the reduction.