

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 75

Senators Jones, Peterson

**Cosponsors: Senators Gardner, Beagle, Balderson, LaRose, Manning, Eklund,
Patton, Cafaro, Gentile**

A BILL

To amend sections 303.21, 519.21, and 5713.30 and 1
to enact section 901.80 of the Revised Code to 2
limit the authority of a board of county 3
commissioners or board of township trustees to 4
prohibit agritourism through zoning, to apply 5
current agricultural use valuation to land used 6
for agritourism for property tax purposes, and 7
to establish immunity in a civil action for 8
agritourism providers. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 303.21, 519.21, and 5713.30 be 10
amended and section 901.80 of the Revised Code be enacted to 11
read as follows: 12

Sec. 303.21. (A) Except as otherwise provided in division 13
(B) of this section, sections 303.01 to 303.25 of the Revised 14
Code do not confer any power on any county rural zoning 15
commission, board of county commissioners, or board of zoning 16
appeals to prohibit the use of any land for agricultural 17
purposes or the construction or use of buildings or structures 18

incident to the use for agricultural purposes of the land on 19
which such buildings or structures are located, and no zoning 20
certificate shall be required for any such building or 21
structure. 22

(B) A county zoning resolution, or an amendment to such 23
resolution, may in any platted subdivision approved under 24
section 711.05, 711.09, or 711.10 of the Revised Code, or in any 25
area consisting of fifteen or more lots approved under section 26
711.131 of the Revised Code that are contiguous to one another, 27
or some of which are contiguous to one another and adjacent to 28
one side of a dedicated public road, and the balance of which 29
are contiguous to one another and adjacent to the opposite side 30
of the same dedicated public road regulate: 31

(1) Agriculture on lots of one acre or less; 32

(2) Buildings or structures incident to the use of land 33
for agricultural purposes on lots greater than one acre but not 34
greater than five acres by: set back building lines; height; and 35
size; 36

(3) Dairying and animal and poultry husbandry on lots 37
greater than one acre but not greater than five acres when at 38
least thirty-five per cent of the lots in the subdivision are 39
developed with at least one building, structure, or improvement 40
that is subject to real property taxation or that is subject to 41
the tax on manufactured and mobile homes under section 4503.06 42
of the Revised Code. After thirty-five per cent of the lots are 43
so developed, dairying and animal and poultry husbandry shall be 44
considered nonconforming use of land and buildings or structures 45
pursuant to section 303.19 of the Revised Code. 46

Division (B) of this section confers no power on any 47

county rural zoning commission, board of county commissioners, 48
or board of zoning appeals to regulate agriculture, buildings or 49
structures, and dairying and animal and poultry husbandry on 50
lots greater than five acres. 51

(C) Such sections confer no power on any board of county 52
commissioners, county rural zoning commission, or board of 53
zoning appeals to prohibit in a district zoned for agricultural, 54
industrial, residential, or commercial uses, the use of any land 55
for: 56

(1) A farm market where fifty per cent or more of the 57
gross income received from the market is derived from produce 58
raised on farms owned or operated by the market operator in a 59
normal crop year. However, a board of county commissioners, as 60
provided in section 303.02 of the Revised Code, may regulate 61
such factors pertaining to farm markets as size of the 62
structure, size of parking areas that may be required, set back 63
building lines, and egress or ingress, where such regulation is 64
necessary to protect the public health and safety. 65

(2) Biodiesel production, biomass energy production, or 66
electric or heat energy production if the land on which the 67
production facility is located qualifies as land devoted 68
exclusively to agricultural use under sections 5713.30 to 69
5713.37 of the Revised Code for real property tax purposes. As 70
used in division (C) (2) of this section, "biodiesel," "biomass 71
energy," and "electric or heat energy" have the same meanings as 72
in section 5713.30 of the Revised Code. 73

(3) Biologically derived methane gas production if the 74
land on which the production facility is located qualifies as 75
land devoted exclusively to agricultural use under sections 76
5713.30 to 5713.37 of the Revised Code for real property tax 77

purposes and if the facility that produces the biologically 78
derived methane gas does not produce more than seventeen million 79
sixty thousand seven hundred ten British thermal units, five 80
megawatts, or both. 81

(4) Agritourism. However, a board of county commissioners, 82
as provided in section 303.02 of the Revised Code, may regulate 83
such factors pertaining to agritourism as size of a structure, 84
size of parking areas that may be required, setback building 85
lines, and egress or ingress where such regulation is necessary 86
to protect public health and safety. 87

(D) (1) As used in division (C) (3) of this section, 88
"biologically derived methane gas" has the same meaning as in 89
section 5713.30 of the Revised Code. 90

(2) As used in division (C) (4) of this section, 91
"agritourism" has the same meaning as in section 901.80 of the 92
Revised Code. 93

Sec. 519.21. (A) Except as otherwise provided in division 94
(B) of this section, sections 519.02 to 519.25 of the Revised 95
Code confer no power on any township zoning commission, board of 96
township trustees, or board of zoning appeals to prohibit the 97
use of any land for agricultural purposes or the construction or 98
use of buildings or structures incident to the use for 99
agricultural purposes of the land on which such buildings or 100
structures are located, including buildings or structures that 101
are used primarily for vinting and selling wine and that are 102
located on land any part of which is used for viticulture, and 103
no zoning certificate shall be required for any such building or 104
structure. 105

(B) A township zoning resolution, or an amendment to such 106

resolution, may in any platted subdivision approved under 107
section 711.05, 711.09, or 711.10 of the Revised Code, or in any 108
area consisting of fifteen or more lots approved under section 109
711.131 of the Revised Code that are contiguous to one another, 110
or some of which are contiguous to one another and adjacent to 111
one side of a dedicated public road, and the balance of which 112
are contiguous to one another and adjacent to the opposite side 113
of the same dedicated public road regulate: 114

(1) Agriculture on lots of one acre or less; 115

(2) Buildings or structures incident to the use of land 116
for agricultural purposes on lots greater than one acre but not 117
greater than five acres by: set back building lines; height; and 118
size; 119

(3) Dairying and animal and poultry husbandry on lots 120
greater than one acre but not greater than five acres when at 121
least thirty-five per cent of the lots in the subdivision are 122
developed with at least one building, structure, or improvement 123
that is subject to real property taxation or that is subject to 124
the tax on manufactured and mobile homes under section 4503.06 125
of the Revised Code. After thirty-five per cent of the lots are 126
so developed, dairying and animal and poultry husbandry shall be 127
considered nonconforming use of land and buildings or structures 128
pursuant to section 519.19 of the Revised Code. 129

Division (B) of this section confers no power on any 130
township zoning commission, board of township trustees, or board 131
of zoning appeals to regulate agriculture, buildings or 132
structures, and dairying and animal and poultry husbandry on 133
lots greater than five acres. 134

(C) Such sections confer no power on any township zoning 135

commission, board of township trustees, or board of zoning 136
appeals to prohibit in a district zoned for agricultural, 137
industrial, residential, or commercial uses, the use of any land 138
for: 139

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gross income received from the market is derived from produce 141
raised on farms owned or operated by the market operator in a 142
normal crop year. However, a board of township trustees, as 143
provided in section 519.02 of the Revised Code, may regulate 144
such factors pertaining to farm markets as size of the 145
structure, size of parking areas that may be required, set back 146
building lines, and egress or ingress, where such regulation is 147
necessary to protect the public health and safety. 148

(2) Biodiesel production, biomass energy production, or 149
electric or heat energy production if the land on which the 150
production facility is located qualifies as land devoted 151
exclusively to agricultural use under sections 5713.30 to 152
5713.37 of the Revised Code for real property tax purposes. As 153
used in division (C) (2) of this section, "biodiesel," "biomass 154
energy," and "electric or heat energy" have the same meanings as 155
in section 5713.30 of the Revised Code. 156

(3) Biologically derived methane gas production if the 157
land on which the production facility is located qualifies as 158
land devoted exclusively to agricultural use under sections 159
5713.30 to 5713.37 of the Revised Code for real property tax 160
purposes and if the facility that produces the biologically 161
derived methane gas does not produce more than seventeen million 162
sixty thousand seven hundred ten British thermal units, five 163
megawatts, or both. 164

(4) Agritourism. However, a board of township trustees, as 165

provided in section 519.02 of the Revised Code, may regulate 166
such factors pertaining to agritourism as size of a structure, 167
size of parking areas that may be required, setback building 168
lines, and egress or ingress where such regulation is necessary 169
to protect public health and safety. 170

(D) (1) As used in division (C) (3) of this section, 171
"biologically derived methane gas" has the same meaning as in 172
section 5713.30 of the Revised Code. 173

(2) As used in division (C) (4) of this section, 174
"agritourism" has the same meaning as in section 901.80 of the 175
Revised Code. 176

Sec. 901.80. (A) As used in this section: 177

(1) "Agritourism" means an agriculturally related 178
educational, entertainment, historical, cultural, or 179
recreational activity, including you-pick operations or farm 180
markets, conducted on a farm that allows or invites members of 181
the general public to observe, participate in, or enjoy that 182
activity. 183

(2) "Agritourism provider" means a person who owns, 184
operates, provides, or sponsors an agritourism activity or an 185
employee of such a person who engages in or provides agritourism 186
activities whether or not for a fee. 187

(3) "Participant" means an individual, other than an 188
agritourism provider, who observes or participates in an 189
agritourism activity. 190

(4) "Risk inherent in an agritourism activity" means a 191
danger or condition that is an integral part of an agritourism 192
activity, including all of the following: 193

<u>(a) The surface and subsurface conditions of land;</u>	194
<u>(b) The behavior or actions of wild animals not kept by or under the control of an agritourism provider;</u>	195 196
<u>(c) The behavior or actions of domestic animals;</u>	197
<u>(d) The ordinary dangers associated with structures or equipment ordinarily used in farming or ranching operations;</u>	198 199
<u>(e) The possibility of contracting illness resulting from physical contact with animals, animal feed, animal waste, or surfaces contaminated by animal waste;</u>	200 201 202
<u>(f) The possibility that a participant may act in a negligent manner, including by failing to follow instructions given by the agritourism provider or by failing to exercise reasonable caution while engaging in the agritourism activity that may contribute to injury to that participant or another participant.</u>	203 204 205 206 207 208
<u>(B) In a civil action, an agritourism provider is immune from liability for any harm a participant sustains during an agritourism activity if the participant is harmed as a result of a risk inherent in an agritourism activity.</u>	209 210 211 212
<u>(C) An agritourism provider is not immune from civil liability for harm sustained by a participant if either of the following applies:</u>	213 214 215
<u>(1) The agritourism provider acts with a willful or wanton disregard for the safety of the participant and proximately causes harm to the participant.</u>	216 217 218
<u>(2) The agritourism provider purposefully causes harm to the participant.</u>	219 220

(D) An agritourism provider shall post and maintain signs 221
that contain the warning notice specified in this division. The 222
provider shall place a sign in a clearly visible location at 223
each site of an agritourism activity. The warning notice shall 224
consist of a sign in black letters with each letter to be a 225
minimum of one inch in height. The signs shall contain the 226
following notice of warning: "WARNING: Under Ohio law, there is 227
no liability for an injury to or death of a participant in an 228
agritourism activity conducted at this agritourism location if 229
that injury or death results from the inherent risks of that 230
agritourism activity. Inherent risks of agritourism activities 231
include, but are not limited to, the risk of injury inherent to 232
land, equipment, and animals as well as the potential for you as 233
a participant to act in a negligent manner that may contribute 234
to your injury or death. You are assuming the risk of 235
participating in this agritourism activity." 236

Sec. 5713.30. As used in sections 5713.31 to 5713.37 and 237
5715.01 of the Revised Code: 238

(A) "Land devoted exclusively to agricultural use" means: 239

(1) Tracts, lots, or parcels of land totaling not less 240
than ten acres to which, during the three calendar years prior 241
to the year in which application is filed under section 5713.31 242
of the Revised Code, and through the last day of May of such 243
year, one or more of the following apply: 244

(a) The tracts, lots, or parcels of land were devoted 245
exclusively to commercial animal or poultry husbandry, 246
aquaculture, algaculture meaning the farming of algae, 247
apiculture, the production for a commercial purpose of timber, 248
field crops, tobacco, fruits, vegetables, nursery stock, 249
ornamental trees, sod, or flowers, or the growth of timber for a 250

noncommercial purpose, if the land on which the timber is grown 251
is contiguous to or part of a parcel of land under common 252
ownership that is otherwise devoted exclusively to agricultural 253
use. 254

(b) The tracts, lots, or parcels of land were devoted 255
exclusively to biodiesel production, biomass energy production, 256
electric or heat energy production, or biologically derived 257
methane gas production if the land on which the production 258
facility is located is contiguous to or part of a parcel of land 259
under common ownership that is otherwise devoted exclusively to 260
agricultural use, provided that at least fifty per cent of the 261
feedstock used in the production was derived from parcels of 262
land under common ownership or leasehold. 263

(c) The tracts, lots, or parcels of land were devoted to 264
and qualified for payments or other compensation under a land 265
retirement or conservation program under an agreement with an 266
agency of the federal government. 267

(d) The tracts, lots, or parcels of land were devoted 268
exclusively to agritourism if the land on which the agritourism 269
is located is contiguous to or part of a parcel of land under 270
common ownership that is otherwise devoted exclusively to 271
agricultural use. 272

(2) Tracts, lots, or parcels of land totaling less than 273
ten acres that, during the three calendar years prior to the 274
year in which application is filed under section 5713.31 of the 275
Revised Code and through the last day of May of such year, were 276
devoted exclusively to commercial animal or poultry husbandry, 277
aquaculture, algaculture meaning the farming of algae, 278
apiculture, the production for a commercial purpose of field 279
crops, tobacco, fruits, vegetables, timber, nursery stock, 280

ornamental trees, sod, or flowers where such activities produced 281
an average yearly gross income of at least twenty-five hundred 282
dollars during such three-year period or where there is evidence 283
of an anticipated gross income of such amount from such 284
activities during the tax year in which application is made, or 285
were devoted to and qualified for payments or other compensation 286
under a land retirement or conservation program under an 287
agreement with an agency of the federal government; 288

(3) A tract, lot, or parcel of land taxed under sections 289
5713.22 to 5713.26 of the Revised Code is not land devoted 290
exclusively to agricultural use~~r~~. 291

(4) Tracts, lots, or parcels of land, or portions thereof 292
that, during the previous three consecutive calendar years have 293
been designated as land devoted exclusively to agricultural use, 294
but such land has been lying idle or fallow for up to one year 295
and no action has occurred to such land that is either 296
inconsistent with the return of it to agricultural production or 297
converts the land devoted exclusively to agricultural use as 298
defined in this section. Such land shall remain designated as 299
land devoted exclusively to agricultural use provided that 300
beyond one year, but less than three years, the landowner proves 301
good cause as determined by the board of revision. 302

"Land devoted exclusively to agricultural use" includes 303
tracts, lots, or parcels of land or portions thereof that are 304
used for conservation practices, provided that the tracts, lots, 305
or parcels of land or portions thereof comprise twenty-five per 306
cent or less of the total of the tracts, lots, or parcels of 307
land that satisfy the criteria established in division (A) (1), 308
(2), or (4) of this section together with the tracts, lots, or 309
parcels of land or portions thereof that are used for 310

conservation practices.	311
(B) "Conversion of land devoted exclusively to agricultural use" means any of the following:	312 313
(1) The failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a renewal application under section 5713.31 of the Revised Code without good cause as determined by the board of revision;	314 315 316 317
(2) The failure of the new owner of such land to file an initial application under that section without good cause as determined by the board of revision;	318 319 320
(3) The failure of such land or portion thereof to qualify as land devoted exclusively to agricultural use for the current calendar year as requested by an application filed under such section;	321 322 323 324
(4) The failure of the owner of the land described in division (A) (4) of this section to act on such land in a manner that is consistent with the return of the land to agricultural production after three years.	325 326 327 328
The construction or installation of an energy facility, as defined in section 5727.01 of the Revised Code, on a portion of a tract, lot, or parcel of land devoted exclusively to agricultural use shall not cause the remaining portion of the tract, lot, or parcel to be regarded as a conversion of land devoted exclusively to agricultural use if the remaining portion of the tract, lot, or parcel continues to be devoted exclusively to agricultural use.	329 330 331 332 333 334 335 336
(C) "Tax savings" means the difference between the dollar amount of real property taxes levied in any year on land valued and assessed in accordance with its current agricultural use	337 338 339

value and the dollar amount of real property taxes that would 340
have been levied upon such land if it had been valued and 341
assessed for such year in accordance with Section 2 of Article 342
XII, Ohio Constitution. 343

(D) "Owner" includes, but is not limited to, any person 344
owning a fee simple, fee tail, or life estate or a buyer on a 345
land installment contract. 346

(E) "Conservation practices" are practices used to abate 347
soil erosion as required in the management of the farming 348
operation, and include, but are not limited to, the 349
installation, construction, development, planting, or use of 350
grass waterways, terraces, diversions, filter strips, field 351
borders, windbreaks, riparian buffers, wetlands, ponds, and 352
cover crops for that purpose. 353

(F) "Wetlands" has the same meaning as in section 6111.02 354
of the Revised Code. 355

(G) "Biodiesel" means a mono-alkyl ester combustible 356
liquid fuel that is derived from vegetable oils or animal fats 357
or any combination of those reagents and that meets the American 358
society for testing and materials specification D6751-03a for 359
biodiesel fuel (B100) blendstock distillate fuels. 360

(H) "Biologically derived methane gas" means gas from the 361
anaerobic digestion of organic materials, including animal waste 362
and agricultural crops and residues. 363

(I) "Biomass energy" means energy that is produced from 364
organic material derived from plants or animals and available on 365
a renewable basis, including, but not limited to, agricultural 366
crops, tree crops, crop by-products, and residues. 367

(J) "Electric or heat energy" means electric or heat 368

energy generated from manure, cornstalks, soybean waste, or	369
other agricultural feedstocks.	370
<u>(K) "Agritourism" has the same meaning as in section</u>	371
<u>901.80 of the Revised Code.</u>	372
Section 2. That existing sections 303.21, 519.21, and	373
5713.30 of the Revised Code are hereby repealed.	374