

Kristina Roegner

State Senator

27th Senate District



Sponsor Testimony

Senate Bill 311

Ohio House State and Local Government Committee

November 17, 2020

Chair Wiggam, Vice-Chair Stephens, Ranking Member Kelly, and members of the House State and Local Government Committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 311, which simply modifies the law governing public health orders, 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

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>.

prevent the spread of diseases. “² In 1893 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 declare and enforce it when none exists, may modify, relax or abolish it when it has been established.”³ 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. Yet, we have also seen the dire economic and social costs of these actions as the shutdown of the state extended for a prolonged period of time: Unemployment claims spiked, 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.

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>.

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

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

News reports have revealed that the national disaster distress hotline has seen an exponential increase in text messages, signaling a potential mental health crisis.⁵ 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 is 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 act on behalf of our constituents.

S.B. 311 improves upon this section of the Ohio Revised Code by establishing two sensible guardrails on the state's authority to quarantine and isolate Ohioans.

First, the bill appropriately limits the authority to issue quarantine and isolation orders under 3701.13 and 3701.14 to situations where the individual has been either directly exposed to, or has been medically diagnosed with the relevant disease. This is consistent with the definitions of quarantine and isolation on CDC.gov, which defines quarantine as keeping "someone who might have been exposed to the virus away from others" and isolation as keeping "someone who is infected with the virus away from others."⁶ This is consistent with the legislative intent of existing law and the common meaning of the current isolation and quarantine language in the Ohio Revised Code. However, unfortunately, it has become necessary to make this provision even more abundantly clear given the events of the last 8 months.

⁵ <https://publicintegrity.org/health/coronavirus-and-inequality/coronavirus-calls-texts-mental-health-hotlines-are-surgin/>

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html#:~:text=Quarantine%20is%20used%20to%20keep,virus%20without%20feeling%20symptoms>

Second, the bill makes it clear that the General Assembly may rescind orders that are issued with respect to 3701.13 by passing a concurrent resolution to that effect. We feel this is a responsible safeguard to ensure that Ohioans and their elected representatives and senators are fully engaged in approving or denying restrictions that come down from the state during challenging times like these. Granting statutory authority to the General Assembly to act on behalf of the citizenry of the state to protect their rights and liberties is a sensible safeguard against state overreach. 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.

It should be noted that SB311 passed the Senate on September 23rd 2020 by a vote of 20-13, a veto-proof majority.

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