

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 80**

**Representative Burkley**

**Cosponsors: Representatives Blessing, Boose, Brenner, Grossman, Hackett, Hall, Hayes, Hill, LaTourette, Koehler, Maag, Retherford, Ruhl, Scherer, Zeltwanger**

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**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

(1) A farm market where fifty per cent or more of the 140  
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 the 223  
site of each 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

(K) "Agritourism" has the same meaning as in section 371  
901.80 of the Revised Code. 372

**Section 2.** That existing sections 303.21, 519.21, and 373  
5713.30 of the Revised Code are hereby repealed. 374