

House Public Utilities Committee
House Bill 118
Opposition Testimony
March 23, 2021

Chairman Hoops, Vice Chair Ray, and Ranking Member Smith, thank you for the opportunity to submit testimony in opposition to House Bill 118.

My name is Tony Logan and I farm with my brothers on a sixth-generation grain and grass-fed beef farm in Trumbull County. I am also an attorney who has practiced over 30 years in agricultural and natural resource law, both in government service and in private practice. Most recently, I served with USDA as Ohio's State Rural Development Director, 2009-2017. I am a member of both the Ohio Farm Bureau and the Ohio Farmers Union.

In addition to the myriad public policy reasons for opposing this Bill, which have or will be covered by other opponents, I would like to touch on a formidable legal obstacle to what I consider to be an extraordinary governmental power-grab. At its core, this legislation represents a governmental seizure of private property rights, without compensation, in violation of the Ohio and US Constitutions. And let's remember: the basis for that legal principal is our belief and respect for personal liberty.

The Fifth Amendment to the United States Constitution, along with Article I, Section 19 of the Ohio Constitution, states that "... private property shall not be taken for public use without just compensation." While the "township referendum" scheme set forth in the bill is admittedly not a straightforward condemnation action, the effects on the landowner's ability to develop his or her land for its highest and best use as a renewable energy project, is real and permanent.

Under the doctrine of "inverse condemnation" which has been adopted by Ohio courts, the property owners themselves can initiate an eminent domain action against the government authorities for a "taking" of their property rights. And the "public use" alleged can be something much less than an actual roadway or school. For example, Ohio courts have required compensation for state action that periodically flooded farmers' ground (Grand Lake St. Marys cases), or at the federal level, denial of the right to develop residential real estate lots (Lucas vs S. Carolina Coastal Commission, 505 U.S. 1003 (1992)). The government's actions need not lead to a physical injury to the land to trigger compensation. Compensation has been ordered for such actions as impairment of highway access to land and for noise from overflying aircraft.

There is no straight-faced argument that this legislation-- which singles out wind and solar energy but ignores natural gas fracking or coal mining-- somehow falls under the general police powers of townships to zone or regulate land use under their "health, safety and

welfare” powers. This is simply the latest attempt from some Ohio lawmakers to tip the scales in favor of fossil fuel generation and against renewable energy sources in our electric portfolio.

Should this measure be enacted and upheld by the courts, many unintended consequences would surely follow. Once embedded into Ohio law, the “township referendum” model will provide an easy, legal pathway for challenging all manner of agricultural practices which do not meet the aesthetic or cultural whims of township residents. Just as this legislation overrides the Ohio Power Siting Board for energy permitting, new legislation could override Ohio Department of Agriculture’s livestock licensing and CAFO siting powers. It could prevent farms from implementing biodigesters to handle animal waste.

While the legal risks to government authorities of passing this sort of legislation are apparent, it is the measure’s effects on real people and families in Ohio that will be most profound. Local school districts in the affected townships will be deprived of millions of dollars in real estate taxes-- investments which could otherwise make rural schools competitive with their city cousins.

Struggling rural economies will forego hundreds of construction jobs in the short term and the potential for hundreds more in the long term as green energy-related business expand nearby. Solar and wind projects provide an extra revenue source for struggling farm families that is compatible with agricultural use of the land. And for farmers approaching retirement, a government seizure of wind or solar development rights could mean the difference between a comfortable retirement and a forced sale of their land to outside developers.

Also troubling, however, is that Ohioans, especially young Ohioans who are making the choice to stay in Ohio or seek opportunities elsewhere, and who strongly support green energy, wind, and solar, might see this measure as “another H.B. 6.” We cannot continue to support fossil fuels at the expense of sustainable energy.

Thank you for your time, and please, vote “No” on this legislation.