



*Forging a partnership between farmers and consumers.
•Working together for Ohio's farmers•*

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SB 109

Good afternoon Chairman Wagoner and members of the Senate Judiciary Committee. Thank you for the opportunity to testify today as an Interested Party. I would like to take this opportunity to outline a few concerns that we at the Ohio Farm Bureau have with respect to the provisions of SB 109. With more than 214,000 member families, Ohio Farm Bureau is Ohio's largest general farm organization. Our members can be found in each of Ohio's 88 counties. Their farms are all sizes – from the smallest to the largest of farms. They are conventional, niche, and organic farmers. They live in cities, suburbs, and rural areas and produce virtually every kind of food, fiber, or bio-based fuel imaginable. They are advocates, foodies, and small businessmen and women. Agriculture is our number one industry, employing one in seven Ohioans and contributing \$107 billion to our economy. Individuals, partnerships, and family corporations own 98 percent of Ohio's farms.

Ohio Farm Bureau has a long history of protecting private property rights, engaging in issues relating to trespass, and protecting farmland and rural Ohio. Trespass is of significant concern to Ohio Farm Bureau members. Our policy directs our organization to support legislation that increases criminal penalties and establishes mandatory fines and restitution for trespass; that spells out landowners' rights as they relate to trespassers; provides immunity from civil liability in connection with injury, death or loss to trespassers; incentivizes local law enforcement to prosecute trespass; and permits the seizure of implements use in trespass. That our policy on trespass is both expansive and specific speaks to how large of a concern it is to our members.

Although we appreciate Senator Schiavoni's motivation in introducing this piece of legislation, we would like to share with you several concerns that we have with the concept, as currently drafted.

Generally, we think that it is problematic to permit trespass other than in instances of emergency, human health and safety, etc. Beautification of an area is not a sufficient reason to ignore private property rights and responsibilities. We are not unsympathetic to the unique problems that abandoned properties, particularly those in urban areas, pose to a community. However, we do not see this bill, as proposed, as an effective solution to that larger problem. It would be better, in our opinion, to address the obstacles and delays in the foreclosure process (and the tax certificate system), so that delinquent parcels can be sold more quickly and the new owners can clean up the property.

At a minimum, the bill should be modified to require that the individual who is engaging in "beautification" efforts exert some form of due diligence to ensure that the property is truly abandoned before enjoying the statutory protections of the proposed law. Otherwise, a nefarious individual could claim "beautification" efforts in a situation that is obviously an effort at illegal

activity such as breaking and entering or entering onto farmland on an ATV to “clean up” errant garbage. Certainly the common definition of the word “abandoned” is different than the legal definition of the word “abandoned,” which will lead to some confusion. In the case of agricultural land, the confusion could be heightened, much to the concern and detriment of our members. Current Ohio law recognizes the distinction, but we are concerned that the average citizen may not. If the proposal moves forward, requiring an element of due diligence on the part of a beautifying trespasser seems to be a reasonable requirement.

Buildings are abandoned for a variety of reasons that may make this legislation seem desirable. However, this bill would prevent a property owner who knows that a building or plot of land is unsafe (perhaps due to a structural problem, perhaps to an environmental contamination, or perhaps for another reason altogether) from being able to keep the public off of the property. Not only would the current trespass laws no longer apply, but a landowner would be prevented from taking civil action to force a trespasser to leave or prevent the trespasser from re-entering the premises. This is problematic not only when the property has a physical characteristic that could make it dangerous, but also when addressing potential problems such as squatters. It is not clear that the bill’s statutory right to enter into a property for beautification purposes is limited to temporary efforts. The definition of “beautify” is sufficiently broad that a person could spend significant time making repairs (or claiming to make repairs) to the interior of a dilapidated building, potentially posing a health and safety risk for the individual and the community. Just as an individual intent on breaking and entering could evade prosecution by claiming his purpose was beautification, squatters could evade removal by also claiming beautification. This should be rectified before further action on the legislation.

While the bill creates a set of extremely broad new civil and criminal protections for trespassers, the law provides no similar immunities for the owner of an abandoned building or property. At a minimum, this disparity should be addressed by granting civil immunity to the landowner of the property for all injuries, accidents, or deaths that occur on the property, as well as any appropriate protections from criminal statutes that may be applicable. It is not fair to grant a statutory right for the public to trespass on a piece of property but require that the landowner be responsible for the public’s actions, health or safety. Full landowner immunity should be included before further action on this legislation.

It is also not clear if the individual who has trespassed in order to beautify or repair a property has the ability to take any action against a landowner to recoup the costs associated with the beautification or repair. If this legislation moves forward, we recommend that the General Assembly consider clarifying this issue. If a foreclosed property is later sold and the amount of the sale was increased by the actions of the trespasser, is there any potential claim against the profits?

It may also be advisable to clarify that the definition of blight used is the one defined in RC 1.08. While the general definition would apply to the entire revised code, the General Assembly specifically reiterated the connection to 1.08 when drafting SB7 to address eminent domain and blight.

Thank you again for the opportunity share our concerns with SB 109. I would be happy to answer any questions that the committee may have.