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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. K. Miller and Lampton

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### SUMMARY

#### **Biosolid lagoons and biodigestion facilities**

- With certain exceptions, allows townships and counties, through a zoning resolution, to provide for the regulation of biosolid lagoons and biodigestion facilities.
- Establishes procedures whereby a board of county commissioners must approve or disapprove of a biosolid lagoon or biodigestion facility prior to the Ohio Environmental Protection Agency (OEPA) taking any action on a permit for the lagoon or facility.
- As part of the procedures, requires a person who wishes to install, operate, or modify (“operate”) a lagoon or facility to hold a public meeting concerning the OEPA permit application prior to its submission.
- Specifies that after the public meeting, the county has 90 days to disapprove the proposed lagoon or facility or limit the boundaries of the location of the proposed lagoon or facility to a smaller geographic area within the county.
- Specifies that the OEPA Director may only proceed with the application for the permit if both of the following has occurred:
  - The person has held the required public meeting; and
  - The board of county commissioners has not adopted a resolution disapproving of the construction of the lagoon or facility.
- Requires the OEPA Director to adopt rules that require a biosolid lagoon owner to ensure that the lagoon has an adequate cover at all times to effectively protect against nuisance odors and other harms to public health.

## CAUV eligibility of land used for biofuel production

- Modifies the requirements that land used in biofuel production must meet in order to be valued for property tax purposes at its current agricultural use value (“CAUV”).

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## DETAILED ANALYSIS

### Biosolid lagoons and biodigestion facilities

#### County and township zoning

The bill generally allows townships and counties to regulate biosolid lagoons and biodigestion facilities through zoning. Thus, a county or township may adopt a zoning resolution that establishes regulations related to these types of facilities, including regulations governing their size and their location in relation to other structures.<sup>1</sup> A biosolid lagoon is an artificial pool, whether above or below ground, that is used to store biosolid wastes, which include all of the following:

1. Human waste, including any waste that is subject to standards applicable to the treatment, storage, transfer, or disposal of sewage sludge in Ohio;
2. Food or food processing waste;
3. Industrial waste; and
4. Agricultural waste.

A biodigestion facility is a facility that utilizes biochemical decomposition of organic matter in biosolid waste into methane gas and carbon dioxide by microorganisms, and includes a facility engaged in biodiesel production, biomass energy production, or electric or heat energy production.<sup>2</sup>

#### Exception to zoning authorization

The bill prohibits a county or township zoning resolution, or an amendment to a resolution, from providing for the regulation of a biosolid lagoon or a biodigestion facility if both of the following apply:

1. The lagoon or facility stores or processes only agricultural waste; and
2. The agricultural waste stored or processed at the lagoon or facility is exclusively derived from either or both of the following:
  - a. Land that is a part of a parcel of land under common ownership or leasehold with the parcel of land on which the lagoon or facility is located;

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<sup>1</sup> R.C. 303.215 and 519.215. County and township zoning applies only to the unincorporated areas of a county, meaning the area outside the boundaries of any city or village.

<sup>2</sup> R.C. 6111.0311(A) and 6111.452(A)(2).

- b. Land that is contiguous to the parcel of land on which the lagoon or facility is located.<sup>3</sup>

For example, a biodigestion facility located on a farm that only processes agricultural waste generated by the farm or an adjacent farm is not subject to county and township zoning regulations. However, if the facility accepts waste, including agricultural waste, from any other source, the facility can be regulated via zoning by the relevant township or county.

### **Current zoning requirements**

Generally, current law does not allow a county or township to regulate or prohibit, through zoning, biosolid lagoons or biodigestion facilities. The reason for this is that current law exempts from zoning many activities attributable to biosolid lagoons and biodigestion facilities. Specifically, current law exempts:

1. Land used for biodiesel production, biomass energy production, or electric or heat energy production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use under the Ohio Tax Law (“CAUV”).<sup>4</sup>
2. Land used for biologically derived methane gas production if the land on which the production facility is located is CAUV land and if the facility that produces the biologically derived methane gas does not produce more than 17,060,710 British Thermal Units, five megawatts, or both.<sup>5</sup>

Furthermore, the [Ohio Second District Court of Appeals](#)<sup>6</sup> has held that biodigestion facilities are considered public utilities under the law governing county and township zoning. Counties and townships are specifically prohibited under that law from passing a zoning resolution that effects any buildings or structures of a public utility. Thus, according to this court decision, under current law, a biodigestion facility is not subject to zoning regulation. The bill provides that both biosolid lagoons and biodigestion facilities are not public utilities, therefore eliminating the public utility exemption from zoning regulation as it applies to these facilities.<sup>7</sup>

### **Retroactive application**

Although not specifically mentioned in the bill, a zoning resolution adopted pursuant to the bill that governs biosolid lagoons and biodigestion facilities does not retroactively apply to any biosolid lagoon or biodigestion facility in operation prior to the adoption of the resolution.

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<sup>3</sup> R.C. 303.215(C) and 519.215(C).

<sup>4</sup> R.C. 303.21(C)(2) and 519.21(C)(2).

<sup>5</sup> R.C. 303.21(C)(3) and 519.21(C)(3).

<sup>6</sup> *Dovetail Energy, L.L.C. v. Bath Twp. Bd. of Zoning Appeals*, 2022-Ohio-92.

<sup>7</sup> R.C. 303.211(A) and 519.211(A).

The zoning provisions would only apply to a lagoon or facility proposed after the resolution's effective date.<sup>8</sup>

### **County veto of OEPA approval of a lagoon or facility**

Under current law, a person who wishes to install, operate, or modify a biosolid lagoon or biodigestion facility must obtain a permit to do so from the Ohio Environmental Protection Agency (OEPA) under Ohio's Water Pollution Control Law.<sup>9</sup> The bill establishes procedures whereby a county must approve or disapprove of a lagoon or facility prior to OEPA taking any action on the permit. The new procedures apply only to proposed lagoons or facilities located in the unincorporated area of a county.

Under the bill, prior to the submission of plans to the OEPA for the permit, the person or entity ("person") who intends to submit the plans must hold a public meeting in the county in which the lagoon or facility is to be located. The person must hold the meeting between 90 and 300 days before the submission of those plans. The person must do both of the following at least 14 days prior to the public meeting:

1. Provide written notice of the meeting to the board of county commissioners, as well as to the boards of trustees of each township in which the proposed lagoon or facility is to be located;
2. Post the meeting notice in the largest newspaper of general circulation in the county.

At the public meeting, the person must provide a map of the proposed geographic boundaries of the location of the lagoon or facility to the board of county commissioners, as well as any other information that the board may require.<sup>10</sup>

Within 90 days of the public meeting, the board of county commissioners may adopt a resolution that does either of the following:

1. Disapproves the construction of the proposed biosolid lagoon or biodigestion facility; or
2. Limits the boundaries of the location of the proposed biosolid lagoon or biodigestion facility to a smaller geographic area within the county, provided that those limited boundaries are completely within the boundary areas originally proposed by the person seeking plan approval for the lagoon or facility.

The OEPA Director may only proceed to issue or deny a permit for a proposed lagoon or facility if both of the following has occurred:

1. The person has held the required public meeting; and

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<sup>8</sup> See R.C. 303.19, not in the bill and R.C. 519.19, not in the bill.

<sup>9</sup> R.C. Chapter 6111.

<sup>10</sup> R.C. 6111.452.

2. The board of county commissioners has not adopted a resolution disapproving of the construction of the lagoon or facility.

If a board of county commissioners fails to adopt a resolution within the time frame specified above, OEPA may proceed to approve or deny the plans for the biosolid lagoon or biodigestion facility. If the board of county commissioners adopts a resolution to limit the boundaries of the lagoon or facility, OEPA also must so limit the boundaries of the lagoon or facility in its OEPA-issued permits. If a board of county commissioners adopts a resolution that either disapproves of the lagoon or facility or limits the lagoon or facility's boundaries, the person seeking to obtain an OEPA permit for it may submit a new or amended proposal to the board for consideration.<sup>11</sup>

### **Exception to veto authority**

The county veto authority established by the bill does not apply to an application for an OEPA permit for a biosolid lagoon or biodigestion facility to which both of the following apply:

1. The lagoon or facility stores or processes only agricultural waste; and
2. The agricultural waste stored or processed at the lagoon or facility is exclusively derived from either or both of the following:
  - a. Land that is a part of a parcel of land under common ownership or leasehold with the parcel of land on which the lagoon or facility is located;
  - b. Land that is contiguous to the parcel of land on which the lagoon or facility is located.<sup>12</sup>

### **Biosolid lagoon coverings**

The bill requires the OEPA Director to adopt rules that require a biosolid lagoon owner to ensure that the lagoon has an adequate cover at all times to effectively protect against nuisance odors and other harms to public health. The OEPA Director must determine the specifications for the cover in the adopted rules.<sup>13</sup>

### **CAUV eligibility of land used for biofuel production**

The bill modifies the requirements that land used in biofuel production must meet in order to be valued for property tax purposes at its current agricultural use value ("CAUV"). The changes apply only to land that will first qualify for CAUV in 2024 or thereafter. Land that already qualifies for CAUV in tax year 2023 will not be subject to the bill's new requirements.

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<sup>11</sup> R.C. 6111.453.

<sup>12</sup> R.C. 6111.454.

<sup>13</sup> R.C. 6111.0311.

Pursuant to authority granted in the Ohio Constitution, farmland may be valued at its CAUV – its value considering only its use for agriculture – rather than its fair market value.<sup>14</sup> This usually results in a lower tax bill for farm owners because the land is often valued below its actual market value, particularly in areas where farmland is in demand for development purposes.

Under current law, which will continue to apply to pre-2024 CAUV land, property used for biofuel production qualifies for the CAUV program if (1) the production facility is located on, or on property contiguous to, farmland under common ownership or leasehold, (2) at least 50% of the feedstock used in the production is agricultural feedstock, i.e., manure or food waste, (3) at least 20% of the agricultural feedstock used in production comes from land under common ownership or leasehold, and (4) none of the feedstock used in the production includes human waste.

The bill instead requires, for land that first qualifies for CAUV in 2024 and thereafter, that (1) none of the feedstock used in the production include industrial waste, in addition to the continued prohibition on human waste, and (2) if the production facility uses agricultural feedstock, 100% of that feedstock must come from land under common ownership or leasehold as the production facility. Unlike under the current requirements, the facility does not need to use agricultural feedstock and, if it does not, it need not be located on, or adjacent to, farmland.<sup>15</sup>

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## HISTORY

Action	Date
Introduced	05-30-23

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<sup>14</sup> Article II, Section 36, Ohio Constitution.

<sup>15</sup> R.C. 5713.30(A)(1)(b).