



1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212

(614) 487-7506
www.theOEC.org

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**House Bill 48 (As Introduced)
Interested Party Testimony of Jack Shaner, Deputy Director,
Ohio Environmental Council
Submitted to the House Financial Institutions,
Housing + Urban Development Committee
Columbus, Ohio
February 17, 2011**

Chairman Colley, Vice-Chair Adams, Ranking Minority Member Goyal, and Members of the Committee-

Thank you for this opportunity to testify as an Interested Party on House Bill 48 (As Introduced).

My name is Jack Shaner, and I am Deputy Director for the Ohio Environmental Council. The OEC is a network of more than 100 local and statewide environmental-conservation organizations and several thousand individual citizens. Our mission is to secure healthy air, land, and water for all who call Ohio home.

The OEC has only one concern with this bill, but it is a deeply troubling concern: the proposed new four-year “statute of repose” regarding the liabilities of any corporation that voluntarily dissolves, expires, or is cancelled. (See Sec. 1701.88.)

We believe that this portion of House Bill 48 poses the following three very serious risks:

First, we believe House Bill 48 could limit the ability of a property owner to recover damages to their property caused by a dissolved corporation whose actions—years prior to the landowner becoming aware of the damage—contaminated the property owner’s land or well water. For example, consider an instance in which toxic substances leaked from a storage facility for hazardous materials and slowly found their way to a property owner’s well water. The Bill of Rights of the Ohio Constitution guarantees the right of property owners to the reasonable use of the ground water underlying the property owner's land as well as the water in a lake or watercourse located on or flowing through the owner's riparian land. Under House Bill 48, a property owner who does not become aware of this damage to their land or well water for several years after the corporation dissolves will be legally prevented from recovering any damages against the dissolved corporation or its insurance carrier. As such, the four-year statute of repose may be unconstitutional.

Second, we believe House Bill 48 will leave any worker who may be injured from an unknowing exposure to a workplace environmental hazard, with no prospect for financial recovery, if that worker does not experience the onset of an injury or illness due to their workplace exposure to an environmental hazard until several years after the statute of repose ends. A classic example of such an illness is mesothelioma. Symptoms or signs of

mesothelioma may not appear until 20 years or more after exposure to asbestos. Under current Ohio law, an injured person may still bring a claim for a disease or illness that manifested several years after a corporation dissolved. Such a claim typically would be referred to a receiver appointed by a court. The receiver then would refer the claim to the corporation's insurance carrier to consider and either contest or pay/settle the claim. Under HB 48, the four year statute of repose would bar Ohio individuals from bringing a tort claim against a dissolved corporation or its insurance carrier.

Third, we believe House Bill 48 could render meaningless a state agency's permitting requirements for a permit holder to maintain financial security for their facility. Under current Ohio law, for certain permits, state agencies may require a demonstration of financial security as a replacement for a full bond. The financial security may be required to cover costs associated with any eventual cleanup or reclamation or to demonstrate the ability of the permit holder to cover other damages that may arise. This surety would become meaningless if a corporation is allowed to dissolve and its financial security safety nets (that is, its insurance or bonds) are not accessible to pay any claims for liability that may be brought. In this instance, the taxpayers of Ohio would be stuck with the costs of cleanup or other liability costs.

Conclusion

In conclusion, we have no position or interest in the vast majority of House Bill 48. We strongly oppose, however, the proposed new four-year statute of repose. We believe it poses very grave limitations on the ability of property owners, injured persons, and taxpayers to achieve compensation for property damage, human health, or natural resource impacts caused by a corporation that has dissolved.

We respectfully ask the Committee to remove this section of the bill. Thank you for your considering our perspective.

Jack Shaner
Deputy Director and Senior Director of Legislative and Public Affairs
Ohio Environmental Council
Jack@theOEC.org
Desk: 614-487-5822
Cell: 614-446-1693
www.theOEC.org