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Bill Analysis

Legislative Service Commission

S.B. 141*

123rd General Assembly
(As Introduced)

Sen. Mumper

BILL SUMMARY

- Transfers from the Director of Environmental Protection to the Director of Agriculture the authority to issue permits to construct or modify concentrated animal feeding operations (CAFOs).
- Requires a person applying to the Director of Agriculture for an initial permit to construct a CAFO to submit specified information, provides that information to be included in an application for a permit to modify a CAFO must be established in rules, and establishes causes and procedures for denial of permits.
- Requires a person applying for a permit who has not operated a CAFO in Ohio for at least two of the past five years to submit specified background information, and authorizes the Director to deny a permit if he finds that the applicant has a history of noncompliance with the Federal Water Pollution Control Act.
- Authorizes the Director of Agriculture to issue, modify, and revoke orders and assess civil penalties to ensure that owners and operators of CAFOs are in compliance with the terms of their permits and establishes criminal penalties for failure to obtain a permit from the Director for the modification of an existing or the construction of a new CAFO.
- Requires persons responsible for manure management at a major concentrated animal feeding operation and persons who transport, buy,

* *This analysis was prepared before the introduction of the bill appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

or sell a certain quantity of manure annually to obtain a livestock manager certification issued by the Director of Agriculture.

- Requires an owner or operator of a concentrated animal feeding operation to prepare and submit to the Director an insect and rodent control plan and requires the Director to enforce the plan.
- Authorizes the Director to conduct an adjudication and assess a civil penalty against a person who violates the bill's requirements governing certifications or plans.
- Requires the owner or operator of a proposed CAFO with a ground water withdrawal capacity greater than 100,000 gallons per day who has applied for a permit from the Director of Agriculture to submit both a work plan for completing a hydrogeologic report and a hydrogeologic report to the Chief of the Division of Water in the Department of Natural Resources, and specifies information that must be included in the work plan and in the hydrogeologic report.
- Requires the owner or operator of a proposed CAFO to make a good faith effort to measure the static ground water levels of certain wells, in accordance with the work plan, prior to submitting the hydrogeologic report.
- Requires any person proposing to establish a new major concentrated animal feeding operation, to expand by 10% an existing, major CAFO, or to expand a CAFO by 10% and to a design capacity of more than 10,000 animal units to meet with the board of county commissioners of the county and the board of trustees of the township where the operation is or will be located to discuss the operation's potential impact on roads prior to applying for a permit from the Director of Agriculture.
- Authorizes the Director of Agriculture or his representative to enter on property in order to conduct activities that are necessary for the administration and enforcement of the bill, and authorizes the Director to enter into contracts or agreements to carry out the bill's purposes.
- Creates the Livestock Management Fund for the deposit of money collected from application fees paid and from civil penalties assessed

under the bill, and requires money in the fund to be used solely to administer the bill.

- Establishes complaint procedures for nuisances related to a CAFO, and requires the Director of Agriculture to assess a civil penalty if noncompliance is determined and not acted on by the owner or operator of a CAFO.
- Establishes an affirmative defense in a private civil action related to nuisances arising from agricultural activities at a CAFO if the owner or operator is in compliance with best management practices and the activities do not violate federal, state, and local laws governing nuisances.
- Requires the parties to a dispute concerning an alleged nuisance related to agricultural activities conducted at a CAFO to submit the dispute to nonbinding mediation prior to filing a private civil action.
- Creates the Concentrated Animal Feeding Operation Advisory Committee consisting of the Directors of Agriculture, Environmental Protection, and Natural Resources, the Dean of the College of Food, Agricultural, and Environmental Sciences of The Ohio State University, and seven appointed members, requires the committee to advise the Director of Agriculture in carrying out the bill and to conduct other duties, and makes an appropriation for the committee's operation.
- Excepts signs indicating agricultural activities at the premises where the sign is located from a statutory prohibition on the erection of certain advertising devices near highway systems.
- Provides that the bill takes immediate effect.

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CONTENT AND OPERATION

Permits to construct or modify concentrated animal feeding operations

Transfer of permitting authority from Environmental Protection Agency to Department of Agriculture

Current law authorizes the Director of Environmental Protection to issue, revoke, modify, or deny permits for the discharge of sewage, industrial waste, or other wastes into the waters of the state and for the installation or modification of disposal systems or any parts of those systems in compliance with all requirements of the Federal Water Pollution Control Act and regulations adopted under it. The Director may set terms and conditions of those permits. (Sec. 6111.03(J)(1).)

The bill transfers the authority to enforce terms and conditions of installation permits for concentrated animal feeding operations issued prior to the effective date of the bill from the Director of Environmental Protection to the Director of Agriculture. Further, the bill grants the Director of Agriculture the authority to issue all new installation permits for concentrated animal feeding

operations (under the bill, permits to construct or modify). On and after the effective date of the bill, the Director of Environmental Protection will have no authority to enforce the terms and conditions of installation permits, except for enforcement that is necessary to ensure compliance with the Federal Water Pollution Control Act. (Sec. 903.14(B).) In addition, on the bill's effective date, the Director of Environmental Protection must provide the Director of Agriculture with copies of all permits for the installation of disposal systems at concentrated animal feeding operations that are operating on that date together with any related information that the Director of Agriculture requests (Section 4).

The bill defines "concentrated animal feeding operation" to mean a site, tract of land, building, or structure to which all of the following apply:

(1) Animals, other than aquatic animals, have been, are, or will be stabled or confined, and fed or maintained, there for a total of 45 days or more during any 12-month period;

(2) Crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season on any portion of the site or tract of land on which are located buildings or structures in which animals are stabled or confined;

(3) Buildings or structures in which animals are stabled or confined on the site or tract of land, together with buildings or structures in which animals are stabled or confined on adjoining sites or tracts of land or on sites or tracts of land with which is shared a common waste disposal system, have a total design capacity of more than 1,000 animal units. (Sec. 903.01(B).)

The bill defines "animal unit" as a unit of measurement calculated by adding the following numbers:

- (1) The number of slaughter and feeder cattle multiplied by one;
- (2) The number of mature dairy cattle whether milked or dry multiplied by 1.4;
- (3) The number of swine each weighing over 55 pounds multiplied by .4;
- (4) The number of horses multiplied by two;
- (5) The number of sheep or lambs multiplied by .1;
- (6) The number of turkeys multiplied by .02;

- (7) The number of laying hens or broilers multiplied by .01; and
- (8) The number of ducks multiplied by .2. (Sec. 903.01(A).)

Although the authority to issue and enforce installation permits for concentrated animal feeding operations is transferred by the bill to the Department of Agriculture, a concentrated animal feeding operation (CAFO) that discharges sewage, industrial waste, or other wastes into the waters of the state is still required to obtain a discharge permit, otherwise known as a National Pollutant Discharge Elimination System (NPDES) permit, from the Director of Environmental Protection under the state Water Pollution Control Law. (Sec. 6111.03(J)(1).)

Existing law prohibits anyone from providing or installing sewerage or treatment works for sewage disposal or making a change in any sewerage or sewage treatment works until the plans have been submitted to and approved by the Director of Environmental Protection. The Director may stipulate modifications, conditions, and rules that the public health and prevention of pollution require. Exempt from obtaining plan approval are animal waste treatment and disposal works and related management and conservation practices that are subject to rules adopted under the Division of Soil and Water Conservation Law and that involve fewer than 1,000 animal units, other than those having a controlled direct discharge to waters of the state. The bill also exempts from the plan approval requirement CAFOs for which a permit is required from the Department of Agriculture. (Sec. 6111.44.)

Current law prohibits anyone from causing pollution or placing or causing to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is a public nuisance unless the Director of Environmental Protection has issued a permit under the Water Pollution Control Law. The prohibition does not apply to animal excrement defecated on land or runoff from it into any waters of the state. However, that exclusion does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, federal environmental regulations. The bill also provides that the exclusion does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, the Water Pollution Control Law. (Sec. 6111.04.)

Issuance of permits by Director of Agriculture

Application requirements and procedures. On and after the bill's effective date, the bill prohibits anyone from modifying an existing or building a new CAFO without obtaining a permit issued by the Director of Agriculture (sec. 903.02(B)).

The Director or the Director's designee may offer assistance to an applicant by providing guidance and technical assistance during the permitting process (sec. 903.02(C)).

The bill requires an applicant for an initial permit to submit an application on a form prescribed and provided by the Director. The applicant also must submit an application fee in an amount established in rules (see "**Rules governing permits**," below). The following information must be included in an application for an initial permit:

(1) The name and address of the applicant, of all partners if the applicant is a partnership or of all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant;

(2) The type of livestock and the number of animal units that the operation would have the design capacity to raise or maintain;

(3) Design and engineering plans for the proposed construction of the operation that include the proposed location of the construction, design and engineering construction plans and specifications, anticipated beginning and ending dates for work performed, and any other information that the Director requires by rule;

(4) A manure management plan for the operation that conforms to best management practices, as established in rules, regarding the handling, storage, transportation, and land application of manure generated at the operation and that contains any other information required by rule. "Manure" means animal excreta, discarded products, bedding, wash waters, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta (sec. 903.01(E)). "Mortality composting" means the controlled decomposition of organic solid material consisting of dead animals that stabilizes the organic fraction of the material (sec. 903.01(G));

(5) An insect and rodent control plan for the operation (see "**Insect and rodent control plans**," below);

(6) Information concerning the applicant's past compliance with the Federal Water Pollution Control Act, if required (see "**Background information requirements for certain applicants**," below);

(7) If the application is for an operation that would have a total design capacity to raise or maintain more than 10,000 animal units, written proof that the

person who would be responsible for the supervision of the management and handling of manure at the operation has been issued a livestock manager certification (see "*Livestock manager certifications*," below);

(8) If an application meets the criteria established under the bill requiring a meeting with county commissioners and township trustees, a written statement from both the applicable commissioners and trustees certifying that the applicant has met and discussed with them the potential impact of the new or expanded operation on county and township roads (see "*Discussions with boards of county commissioners and boards of township trustees*," below); and

(9) Any other information required by rule. (Sec. 903.02(D).)

The bill specifies that information required to be included in an application for a permit modification, along with the applicable fee amount, must be established in rules. (Sec. 903.02(D).)

Within 90 days of receiving a permit application, the Director must issue or deny the permit. If the permit is denied, the Director must notify the applicant in writing of the reason for the denial. The Director must deny a permit if any of the following applies:

(1) The permit application contains incomplete, misleading, or false information;

(2) The design and engineering plans, manure management plan, or insect and rodent control plan fails to conform to best management practices; or

(3) On and after the date that is 18 months after the bill's effective date, the Chief of the Division of Water in the Department of Natural Resources has not approved a hydrogeologic report for the operation (see "*Hydrogeologic reports*," below). (Sec. 903.02(E).)

Additional grounds for the denial of a permit must be those established in the bill and rules adopted under it (sec. 903.02(E)). In addition, the Director may suspend or revoke a permit in accordance with rules (sec. 903.02(F)).

After issuing a permit, the Director of Agriculture must promptly notify the Director of Environmental Protection of the issuance. Upon the latter's request, the Director of Agriculture must forward to him all or part of the information contained in the permit application so that the Director of Environmental Protection may determine if the operation also requires a permit under the Water Pollution Control Law for the discharge of waste into the waters of the state or for the discharge of storm water. (Sec. 903.02(G).)

Under the bill, when ownership of an operation for which a permit has been issued under the bill or an installation permit has been issued under the Water Pollution Control Law is transferred, the permit or installation permit is transferable to the new owner of the operation. The new owner is not required to apply for a permit solely because ownership of the operation has been transferred. (Sec. 903.02(H).)

Background information requirements for certain applicants. The bill requires that each application for a permit issued under the bill that is submitted by an applicant who has not operated a CAFO in Ohio for at least two of the five years immediately preceding the submission of the application must be accompanied by all of the following in addition to the other information required under the bill (see "**Application requirements and procedures**," above):

(1) A listing of all CAFOs that the owner or operator of the proposed new or modified CAFO has operated or is operating in this state;

(2) A listing of the CAFOs that the owner or operator has operated or is operating in other areas of the United States and that are regulated under the Federal Water Pollution Control Act; and

(3) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted, during the five years immediately preceding the submission of the application, in connection with any violation of the Federal Water Pollution Control Act that was alleged to have occurred or to be occurring at any CAFO that the owner or operator has operated or is operating in the United States. (Sec. 903.03(A).)

The lists of CAFOs operated by the owner or operator within or outside Ohio must include, respectively, all such operations operated by the owner or operator during the five-year period immediately preceding the submission of the application. (Sec. 903.03(A).)

If the applicant has been involved in any prior activity involving the operation of a CAFO, the Director of Agriculture may deny the application if he finds from the application, the information submitted in the application under (1) to (3), above, pertinent information submitted to him, and other pertinent information obtained by him at his discretion that the applicant and associates of the applicant, in the operation of CAFOs, have a history of substantial noncompliance with the Federal Water Pollution Control Act that indicates that the

applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified CAFO in substantial compliance with the bill, the Water Pollution Control Law, and rules adopted under them. (Sec. 903.03(B).)

Rules governing permits. The bill requires the Director of Agriculture to adopt rules on specified topics in accordance with the Administrative Procedure Act. First, the rules must establish all of the following concerning permits issued under the bill:

- (1) A description of what constitutes a modification of a CAFO;
- (2) The amount of the fee that must be submitted with an initial permit application and an application for a permit modification;
- (3) Information that must be included in design and engineering plans required to be submitted with the permit application and criteria for approving, disapproving, or requiring modification of the plans;
- (4) Information that must be included in a manure management plan required to be submitted with a permit application;
- (5) Information that must be included in an application for the modification of a permit that initially was issued under the Water Pollution Control Law for the installation of a disposal system at a CAFO and of a permit that initially was issued under the bill;
- (6) Any additional information that must be included with a permit application; and
- (7) Grounds for the denial, suspension, or revocation of a permit in addition to the grounds established under the bill. (Sec. 903.04(C).)

The rules also must establish best management practices governing all of the following activities that occur at a CAFO:

- (1) Manure management, including, without limitation, the storage, handling, transportation, and land application of manure, together with methods for minimizing odors, insects, and rodents associated with manure;
- (2) Disposal of dead livestock;
- (3) Any other activity that the Director considers appropriate.

Best management practices established in the rules must not conflict with best management practices established in rules that have been adopted under existing law and that are in effect on the bill's effective date. (Sec. 903.04(D).)

The bill requires the rules to establish the amount of civil penalties assessed for violation of the terms of a permit (see "*Enforcement of permit requirements*," below) (sec. 903.04(E)). Finally, the bill requires the rules to establish any other provisions necessary to administer and enforce the bill (sec. 903.04(F)).

Enforcement of permit requirements. The bill authorizes the Director of Agriculture, in accordance with an adjudication conducted under the Administrative Procedure Act, to issue, modify, or revoke orders and assess civil penalties in an amount established in rules to ensure that the owner or operator of a CAFO for which a permit has been issued complies with the terms of the permit, including, but not limited to, the manure management plan. The Director may so enforce both permits issued by him under the bill and permits for the installation of disposal systems at CAFOs issued under the Water Pollution Control Law prior to the bill's effective date. (Sec. 903.14(A).)

Under the bill, whoever does not obtain a permit from the Director for the modification of an existing or construction of a new CAFO is guilty of a third degree misdemeanor on a first offense, a second degree misdemeanor on a second offense, and a first degree misdemeanor on a third or subsequent offense. Each ten-day period that the offense continues constitutes a separate offense. (Sec. 903.99.)

Livestock manager certifications

On and after the date that is 18 months after the bill's effective date, the bill requires certain persons to obtain a livestock manager certification. Under the bill, the management and handling of manure at a major concentrated animal feeding operation, including at least the land application of manure or the removal of manure from a manure storage or treatment facility, must be conducted only by or under the supervision of a person holding a valid livestock manager certification. "Major concentrated animal feeding operation" is defined as a CAFO with a total design capacity of more than 10,000 animal units (sec. 903.01(D)). "Manure storage or treatment facility" means any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure (sec. 903.01(F)). A person managing or handling manure who is acting under the instructions and control of a person holding a valid livestock manager certification is considered to be under the supervision of the certificate holder if the certificate holder is responsible for the actions of the person and is available when needed even though the certificate holder is not physically present

at the time of the manure management or handling. (Sec. 903.06(A)(1).) In addition, a person is prohibited from transporting, buying, or selling annually the volume of manure established by rules adopted by the Director of Agriculture unless the person holds a valid livestock manager certification (see "**Rules governing livestock manager certifications**," below) (sec. 903.06(A)(2)). A person who is required to obtain a livestock manager certification and who fails to do so is required to pay a civil penalty (see "**Civil penalties applicable to livestock manager certifications and insect and rodent control plans**," below).

The bill requires the Director to issue a livestock manager certification to a person who has submitted a complete application for certification on a form prescribed and provided by the Director, together with the appropriate application fee, and who successfully has completed the required training and has passed the required examination. The Director may suspend or revoke a livestock manager certification and may reinstate a suspended or revoked certification in accordance with rules. (Sec. 903.06(B).) Information required to be included in an application for a livestock manager certification, the amount of the application fee, and requirements regarding training and the examination must be established by rules adopted by the Director (sec. 903.06(C)).

Rules governing livestock manager certifications

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish all of the following concerning livestock manager certifications:

(1) The information to be included in an application for a certification and the amount of the application fee;

(2) The content of the training required to be completed and of the examination required to be passed by an applicant. The training must include and the examination must test the applicant's knowledge of information on topics that include, without limitation, calculating nutrient values in manure, devising and implementing a plan for the land application of manure, removing manure held in a manure storage or treatment facility, and following best management practices established in rules for disposal of dead animals and manure management, including practices that control odor and protect the environment (see "**Rules governing permits**," above);

(3) Criteria and procedures for the denial, suspension, revocation, or reinstatement of a certification;

(4) The length of time during which certifications will be valid and procedures for their renewal;

(5) The volume of manure that must be transported, bought, or sold annually by a person in order for the person to be required to obtain a livestock manager certification; and

(6) Any other provisions necessary to administer and enforce the bill's provisions concerning livestock manager certifications. (Sec. 903.04(A).)

Insect and rodent control plans

The bill requires an owner or operator of a concentrated animal feeding operation to prepare and submit to the Director of Agriculture in accordance with rules adopted under the bill an insect and rodent control plan designed to minimize the presence and negative effects of insects and rodents at the operation and in surrounding areas, including land on which manure is stored or applied (see "**Rules governing insect and rodent control plans**," below). In addition, the plan must conform to best management practices established in rules. The Director must approve or deny the plan not later than 30 days following its receipt and may require modification of the plan at that time or a later time in accordance with rules. (Sec. 903.08(B).)

On and after the date that is 18 months after the bill's effective date, the bill prohibits a person from owning or operating a concentrated animal feeding operation unless an insect and rodent control plan for the operation has been approved by the Director of Agriculture (sec. 903.08(C)). The bill requires the Director to enforce an insect and rodent control plan in accordance with rules adopted under the bill and authorizes the Director to assess a civil penalty, in accordance with those rules and the bill's provisions, against an owner or operator of a concentrated animal feeding operation who operates it without an insect and rodent control plan approved by the Director or who violates the operation's plan (see "**Civil penalties applicable to livestock manager certifications and insect and rodent control plans**," below) (sec. 903.08(D)).

Rules governing insect and rodent control plans

The bill requires the Director of Agriculture to adopt rules in accordance with the Administrative Procedure Act that establish all of the following concerning insect and rodent control plans:

(1) The information to be included in a plan;

(2) Criteria for approving, disapproving, or requiring modification of a plan;

(3) Criteria for determining compliance with or violation of a plan;

(4) Procedures and standards for monitoring plans;

(5) Procedures and standards for enforcing plans at concentrated animal feeding operations at which insects or rodents constitute a nuisance or adversely affect public health; and

(6) The amount of civil penalties for violation of a plan assessed under the bill's provisions, provided that the rules must not establish a civil penalty of more than \$5,000 for a violation involving a concentrated animal feeding operation with a total design capacity of 10,000 or fewer animal units or more than \$25,000 for a violation involving a major concentrated animal feeding operation. (Sec. 903.04(B).)

Civil penalties applicable to livestock manager certifications and insect and rodent control plans

The bill authorizes the Director of Agriculture or the Director's designee to conduct an adjudication in accordance with the Administrative Procedure Act whenever the Director or the Director's designee has cause to believe that any person has violated or is violating any of the following: (1) the bill's requirement that the management and handling of manure at a major concentrated animal feeding operation be conducted only by or under the supervision of a person holding a valid livestock manager certification, (2) the bill's prohibition against a person transporting, buying, or selling annually the volume of manure established by rules adopted by the Director unless the person holds a valid livestock manager certification, or (3) the bill's prohibition against a person owning or operating a concentrated animal feeding operation unless an insect and rodent control plan for the operation has been approved by the Director.

If the Director or the Director's designee determines that the person has violated or is violating (1), (2), or (3), above, the Director may assess a civil penalty against the person. A person who has violated (1) or (2), above, must pay a civil penalty of not more than \$5,000 for each violation. A person who has violated (3), above, must pay, for each violation, a civil penalty in an amount established in rules adopted by the Director (see "**Rules governing insect and rodent control plans**," above). In the case of a violation of (1) or (2), above, each 30-day period during which the violation continues constitutes a separate violation.

In the case of a violation of (3), above, each seven-day period during which the violation continues constitutes a separate violation. (Sec. 903.13.)

Hydrogeologic reports

Definitions

The bill defines several terms for the purposes of its requirements governing the submission of hydrogeologic reports by the owners or operators of certain concentrated animal feeding operations. "Potentiometric surface" means an imaginary surface representing the total head of ground water within an aquifer and defined by the level to which water will rise in cased wells. "Static ground water level" means the distance from the ground surface to the ground water level within a well that is not being affected by pumping. "Radius of influence" means the area surrounding the proposed ground water withdrawal wells of a proposed new concentrated animal feeding operation within which static ground water levels of existing wells may be affected by the proposed wells' withdrawal of ground water. (Sec. 1521.19(A).) Other terms used in these provisions, including "aquifer," "ground water," and "well," are defined in current law (sec. 1521.01).

Submission of work plans

The bill creates new provisions that become effective 18 months after its effective date and require the owner or operator of a proposed new concentrated animal feeding operation of a specified size (see below) to submit both a work plan for completing a hydrogeologic report, and a hydrogeologic report, to the Chief of the Division of Water in the Department of Natural Resources. The owner or operator of a proposed CAFO that would have a ground water withdrawal capacity greater than 100,000 gallons per day who has applied for a permit for the proposed CAFO from the Director of Agriculture under the bill (see "**Issuance of permits by Director of Agriculture,**" above) is required to submit to the Chief of the Division of Water for approval a work plan for completing a hydrogeologic report. The work plan must include the following information:

(1) The radius of influence within which static ground water levels of existing wells will be measured. In determining the radius of influence, the work plan must take into account the geology of the site, the location and proximity of surrounding wells, known physical properties of the aquifers involved, the pumping rate of the proposed ground water withdrawal wells, and any other factors that the Chief considers important;

(2) A list of the entities that have a capacity to withdraw more than 100,000 gallons per day of ground water within the radius of influence;

(3) The type and scale of the topographic maps to be submitted in the hydrogeologic report;

(4) A description of the general geographic distribution of wells within the radius of influence that should have the static ground water levels measured and the methodology used to determine the distribution; and

(5) Any other information that the Chief considers necessary. (Sec. 1521.19(B).)

The Chief must review the work plan and either approve it or return it to the owner or operator, with a description of its deficiencies, not later than 14 days after its receipt. If the Chief returns the plan, the owner or operator must revise and resubmit it, and obtain the Chief's approval, prior to proceeding with a hydrogeologic report as required under the bill. The Chief or his representative, in the sole discretion of either, and upon request of the owner or operator, may assist the owner or operator with the design and implementation of the work plan. The bill also requires that the owner or operator make a good faith effort to measure the static ground water levels of wells within the radius of influence in accordance with the approved work plan prior to submitting the hydrogeologic report. The bill requires the Chief to determine what constitutes a good faith effort. (Sec. 1521.19(B).)

Submission of hydrogeologic reports

Based on the information contained in an approved work plan, the owner or operator of a proposed CAFO must prepare and submit to the Chief, for review, a hydrogeologic report that includes the following:

(1) Topographic maps showing the location and identification number of the wells within the radius of influence that are physically accessible or in which static ground water levels have been measured;

(2) In the case of wells within the radius of influence in which static ground water levels have been measured, static ground water level data in a tabular form, including, without limitation, the date and time of the static ground water level measurement, the address at which the well is located, the well identification number, and the static ground water level measurement in the well;

(3) A potentiometric surface map of the area within the radius of influence that has been constructed using the static ground water level measurements;

(4) A brief description of the characteristics of aquifers that are likely to be impacted by the proposed CAFO's withdrawal of ground water; and

(5) Any other information that the Chief considers necessary. (Sec. 1521.19(C).)

The Chief must review each hydrogeologic report and either approve it or return it to the owner or operator with a description of its deficiencies not later than 14 days after its receipt. If the Chief returns the report, the owner or operator must revise and resubmit it. Upon approving a hydrogeologic report for a proposed CAFO for which a permit from the Director of Agriculture is required, the Chief must notify the Director, in writing, of the approval (see "**Issuance of permits by Director of Agriculture**," above). A hydrogeologic report is considered a final report upon approval by the Chief. (Sec. 1521.19(C).)

Rules governing hydrogeologic reports

Under the bill, the Chief may adopt, amend, and rescind rules in accordance with the Administrative Procedure Act that are necessary to implement the above provisions (sec. 1521.19(D)).

Discussions with boards of county commissioners and boards of township trustees

The bill requires that any person who proposes to establish a new major concentrated animal feeding operation or to expand certain existing concentrated animal feeding operations first meet with the board of county commissioners of the county and the board of trustees of the township in which a proposed new or expanded operation is or is to be located. This requirement applies to any person who proposes to do any of the following:

(1) Establish a new major CAFO;

(2) Increase the number of animal units of design capacity of an existing major CAFO by 10% or more in excess of the design capacity set forth in the current permit for construction or modification of the operation issued by the Director of Agriculture under the bill or the current permit for the installation or modification of the disposal system for manure at the operation issued by the Director of Environmental Protection under the Water Pollution Control Law, as applicable (see "**Transfer of permitting authority...**" and "**Issuance of permits by Director of Agriculture**," above); or

(3) Increase the number of animal units of design capacity of an existing CAFO to more than 10,000 animal units and by 10% or more in excess of the design capacity set forth in the current permit for the construction or modification of the operation issued by the Director of Agriculture under the bill or the current permit for the installation or modification of the disposal system for manure at the

operation issued by the Director of Environmental Protection under the Water Pollution Control Law, as applicable. (Sec. 307.203(B).)

The meeting must take place prior to the filing of an application for a permit for the construction or modification of the CAFO issued by the Director of Agriculture under the bill. The meeting with the county commissioners may be conducted separately from the meeting with the township trustees. The person proposing to establish or modify the CAFO and the members of the boards are required to discuss the potential impact of the new or expanded operation on county and township roads within the county. The boards then must prepare a written, dated statement in duplicate certifying that the meeting and discussion took place, and may add any comments that the boards find appropriate, and must provide the original of the statement to the person making the proposal so that it can be included with the permit application. The boards must retain a copy in their records. (Sec. 307.203(B).)

Management of CAFO program by Department of Agriculture

Authority to enter upon property

The bill authorizes the Director of Agriculture or his authorized representative to enter upon any public or private property, real or personal, to make investigations and inspections or to otherwise discharge duties necessary for the administration and enforcement of the bill. If refused entry, the Director or his representative may apply for and the court of common pleas having jurisdiction may issue an appropriate warrant. (Sec. 903.05.)

Contracts

The bill authorizes the Director to enter into contracts or agreements to carry out the bill's purposes with any person, governmental agency, or public or private organization, including, without limitation, The Ohio State University Extension Service, the Natural Resources Conservation Service in the United States Department of Agriculture, the Division of Soil and Water Conservation in the Department of Natural Resources, and soil and water conservation districts established under existing law. (Sec. 903.07.)

Livestock Management Fund

The bill creates the Livestock Management Fund in the state treasury into which all money collected by the Director from application fees paid and from civil penalties assessed under the bill must be deposited. Money credited to the fund must be used solely for administering the bill. (Sec. 903.09.)

Nuisances

Complaint procedures

The bill authorizes a person who is aggrieved or adversely affected by an alleged nuisance related to a CAFO to submit a complaint to the Director of Agriculture alleging that the nuisance exists. The complaint must be in writing, signed by the person making it, and dated. (Sec. 903.10(A).) After receiving such a complaint, the Director must cause an investigation to be conducted to determine if the owner or operator of the CAFO is complying with best management practices established in rules adopted under the bill (see "Rules governing permits," above). If information obtained during the investigation reasonably leads the Director or his designee to believe that the situation complained of may involve a violation of the Federal Water Pollution Control Act, the Director must so notify the Director of Environmental Protection. (Sec. 903.10(B).)

If, upon completion of the investigation, the Director of Agriculture determines that the owner or operator is in compliance with best management practices, he must dismiss the complaint and notify the complainant and the owner or operator of the dismissal. However, if the Director determines that the owner or operator is not in compliance, he must issue an order that describes the deficiencies resulting in noncompliance, the actions that the owner or operator must take to correct them, and the time period within which the owner or operator must correct the deficiencies and attain compliance with best management practices. In addition, the bill authorized the Director to conduct an adjudication in accordance with the Administrative Procedure Act regarding the issue of compliance with best management practices. If the adjudication confirms the Director's determination that the owner or operator is not in compliance, the Director may assess a civil penalty against the owner or operator in an amount established in rules. (Sec. 903.10(C).)

If the owner or operator fails to attain compliance within the time period specified in the order, the Director must conduct an adjudication as described above. If the adjudication confirms the Director's determination that the owner or operator is not in compliance, the Director must assess a civil penalty against the owner or operator in an amount established in rules. (Sec. 903.10(D).)

Affirmative defense for CAFO owners and operators meeting specified requirements

The bill stipulates that in a private civil action for an alleged nuisance related to agricultural activities conducted at a CAFO, it is an affirmative defense if the person owning, operating, or otherwise responsible for the CAFO is in

compliance with best management practices established in rules and the agricultural activities do not violate federal, state, and local laws governing nuisances. (Sec. 903.11.)

Mediation

The bill requires that prior to filing a private civil action for an alleged nuisance related to agricultural activities conducted at a CAFO, the parties to the dispute submit the dispute to a mediator for mediation. The parties must pay the mediator a reasonable compensation based on the extent and duration of actual service rendered. The bill requires that the cost of the mediator's services be divided proportionately among the parties. If the decision reached by the mediator is not accepted by all parties to the dispute, the complaining parties may file a civil action, and the claim will proceed as if it had not been submitted to nonbinding mediation. The decision of the mediator is not admissible into evidence at trial. (Sec. 903.12.)

Concentrated Animal Feeding Operation Advisory Committee

The bill creates the Concentrated Animal Feeding Operation Advisory Committee consisting of the Directors of Agriculture, Environmental Protection, and Natural Resources and the Dean of the College of Food, Agricultural, and Environmental Sciences of The Ohio State University, or their designees, as members ex officio, and seven members to be appointed by the Director of Agriculture. Of the appointed members, the designated number of persons must represent the following interests: one, the interests of poultry producers; one, the interests of swine producers; one, the interests of dairy farmers; one, the interests of beef cattle producers; one, the interests of sheep producers; and two, the interests of the public. The bill requires the Director, prior to making an appointment, to solicit a list of suggested candidates from the appropriate statewide trade associations to represent the above named interests, other than the public. The Director must make initial appointments to the committee within 30 days after the bill becomes effective. Initial terms of office are staggered for one-, two-, and three-year terms, with terms of office following initial appointments lasting three years. (Sec. 903.15(A).)

The bill enacts standard language regarding the appointment of members, the filling of vacancies, and a member's duty to continue in office until the expiration of his term. Members may be reappointed. Serving as an appointed member of the committee does not constitute holding a public office or a position of employment and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. The Director of Agriculture, after notice and a public hearing, may remove any appointed member

for misfeasance, nonfeasance, or malfeasance in office. Appointed members must serve without compensation for attending meetings, and all members are to be reimbursed for actual and necessary expenses incurred in the performance of their official duties. (Sec. 903.15(A).)

The committee is required to meet as the chairperson or a majority of the committee considers appropriate, provided that at least seven days' written notice of a committee meeting is provided to all members when a meeting is held on the call of the chairperson. The Director of Agriculture must appoint a chairperson and vice-chairperson for the committee annually. A majority vote of the members is necessary for the committee to take action, but a vacancy on the committee does not impair the right of remaining members to exercise all committee powers. (Sec. 903.15(A).)

The committee may adopt, amend, and rescind rules or procedures governing the conduct of its internal affairs and request from the Director of Agriculture, and the Director must provide, meeting space, staff support, services, and data to enable it to carry out its functions (sec. 903.15(B)). The bill requires the committee to do all the following:

- (1) Advise the Director of Agriculture in the administration of the bill;
- (2) Keep abreast of advances in manure management practices and annually advise the Directors of Agriculture, Environmental Protection, and Natural Resources of those advances and the need for amending what constitutes best management practices;
- (3) In consultation with the Director of Agriculture, prepare, and, upon request, distribute written materials designed to assist persons who propose to establish a new or modify an existing concentrated animal feeding operation in applying for a permit issued by the Director under the bill (see "**Issuance of permits by Director of Agriculture**," above). The materials also must include information indicating that, in addition to obtaining that permit, it may be necessary to obtain a permit under the Water Pollution Control Law to discharge sanitary sewage, livestock product processing wastes, or storm water into the waters of the state as well as a general permit governing storm water. The written materials also must include information indicating what constitutes a "complete application" for each of those permits, information about the public hearing process conducted in connection with the issuance of the permits under the Water Pollution Control Law, and a summary of the antidegradation policy established under that law and an indication of the possibility that the new or modified disposal system for manure or discharges also may be subject to that policy; and

(4) Not later than 12 months after the bill's effective date, conduct an examination of the scientific appropriateness of the definition of "animal unit" established in the bill (see "*Transfer of permitting authority...*," above) and prepare and submit findings and recommendation to the General Assembly, the Governor, and the Directors of Agriculture, Environmental Protection, and Natural Resources concerning any legislative changes in the definition that are necessary or appropriate to reflect on a more scientific basis manure generation rates among livestock species and types of concentrated animal feeding operations. (Sec. 903.15(C).)

The bill specifies that current law requiring certain boards, commissions, committees, or councils to expire four years after their creation or renewal does not apply to the committee (sec. 903.15(D)).

Finally, the bill appropriates \$25,000 from the General Revenue Fund in each of fiscal years 2000 and 2001 for the committee's operation (Section 3).

Signage regarding agricultural activities

Under current law, erecting advertising devices outside of urban areas between 660 feet and 3,000 feet of the right-of-way of the main traveled way of a highway on the interstate or primary system if the device would be visible from the main traveled way is prohibited, with specified exceptions. The bill adds to the list of exceptions signs that advise the public that agricultural activities occur on the property where the sign is located. (Sec. 5516.061.)

Effective date

The bill states that none of its provisions are subject to the referendum and thus go into immediate effect.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	---	---

S0141-I.123/rss