



*Jeff Grim*

## ***Bill Analysis***

*Legislative Service Commission*

### **S.B. 149**

127th General Assembly  
(As Introduced)

**Sens. Roberts, Fedor, D. Miller, Cafaro, Morano, Jacobson**

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#### **BILL SUMMARY**

- Prohibits the Director of Agriculture, on and after the bill's effective date, from issuing permits to install to construct new concentrated animal feeding facilities (CAFFs) until the Director adopts and implements rules that establish specified requirements, including requirements for the protection of ground water from manure storage and treatment facilities.
- Requires the Director also to adopt rules governing the sale or other transfer of manure produced at a CAFF to another person, the installation of ground water monitoring wells, and the monitoring of ground water at certain CAFFs.
- Requires additional information concerning designs and plans for certain manure storage structures and the location where manure from a CAFF will be applied to be included in the application for a permit to install to construct or modify a concentrated animal feeding facility.
- Requires the Director to deny an application for a permit to install to construct or modify a CAFF if the proposed CAFF will be located within two miles of a cemetery, church, school, hospital, or nursing home or if the location of the proposed CAFF will violate the existing siting restrictions established in rules.
- Establishes minimum statutory fees for a permit to install to construct or modify a CAFF, a permit to operate a CAFF, a livestock manager certificate, a national pollutant discharge elimination system permit, and a modification of a permit to install or permit to operate; and requires the amount of the fees for the issuance of permits to install and permits to operate, which are established in rules, to be sufficient to meet specified costs incurred by the Department of Agriculture in regulating CAFFs.

- Requires the payment of fees, and establishes statutory minimum amounts of those fees, for the issuance of review compliance certificates and for the transfer of permits to install, permits to operate, and installation permits that were transferred from the Director of Environmental Protection to the Director of Agriculture.
- Eliminates the Concentrated Animal Feeding Facility Advisory Committee.
- Requires the Department of Agriculture to retain on its staff a person who holds at least a master's degree in geologic science, and requires the person to assist in the administration of the laws governing the protection of ground water as those laws apply to CAFFs.
- Requires the Director of Agriculture, in administering the laws governing the protection of ground water as they apply to CAFFs, to consult with the appropriate staffs of the Environmental Protection Agency and the Department of Natural Resources when the Director determines that it is necessary to obtain an accurate analysis of the geology and hydrogeology at a CAFF to prevent the contamination of ground water.

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## CONTENT AND OPERATION

### Background

Under current law, the Director of Agriculture is required to regulate concentrated animal feeding facilities (CAFFs) and concentrated animal feeding operations (CAFOs). In general, a CAFF is an animal feeding facility that has a total design capacity for a specified number of animals.<sup>1</sup> A CAFO is an animal feeding facility that has a total design capacity for a specified number of animals or that may be required to obtain a national pollutant discharge elimination system (NPDES) permit under certain circumstances (see below). In order to regulate CAFFs and CAFOs, the Director must establish a permitting system for the installation and operation of those facilities and operations. There are varying degrees of regulation depending on the size of the CAFF or CAFO. A person that

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<sup>1</sup> Current law defines "animal feeding facility" as a lot, building, or structure where both of the following conditions are met: (1) agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of 45 days or more in any 12-month period, or (2) crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure (sec. 903.01(B), not in the bill).

wants to construct a new CAFF or modify an existing CAFF must be issued a permit to install. In addition, a person that wants to operate a CAFF must obtain a permit to operate or, if the CAFF was issued an installation permit by the Director of Environmental Protection prior to the date on which the Director of Agriculture has finalized the program for the issuance of permits for the construction or modification of CAFFs, a review compliance certificate.

The owner or operator of a CAFO also may need to obtain a NPDES permit for the discharge of manure from point sources into waters of the state, and the owner or operator of any animal feeding facility may need to obtain a NPDES permit for the discharge of storm water resulting from the animal feeding facility. Until the United States Environmental Protection Agency approves the transfer of authority to issue NPDES permits from the Ohio Director of Environmental Protection to the Director of Agriculture, the Ohio Director of Environmental Protection must issue the NPDES permits.

### **New rules governing concentrated animal feeding facilities**

The bill prohibits the Director of Agriculture, on and after the bill's effective date, from issuing permits to install to construct new CAFFs until the Director adopts and implements rules that establish all of the following:

(1) Criteria and requirements for the implementation of controls and the installation of liners at manure storage and treatment facilities to provide effective and long-term protection of ground water.<sup>2</sup> The rules must require that such controls and liners consist of the most effective technology that is available, but not excessively costly, at the time that the rules are adopted.

(2) Criteria and parameters under which a CAFF is required to install a disposal system as defined in the Water Pollution Control Law;

(3) Best management practices for odor control at new and existing CAFFs and for the application of manure from such facilities that do all of the following:

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<sup>2</sup> Existing law defines "manure storage or treatment facility" as any excavated, diked, or walled structure or combination of structures designed for the biological stabilization, holding, or storage of manure (sec. 903.01(P), not in the bill). "Manure" means any of the following wastes used in or resulting from the production of agricultural animals or direct agricultural products such as milk or eggs: animal excreta, discarded products, bedding, process waste water, process generated waste water, waste feed, silage drainage, and compost products resulting from mortality composting or the composting of animal excreta (sec. 903.01(O), not in the bill).

(a) Define such best management practices clearly so that the rules are enforceable;

(b) Require the injection of manure if odors from an area of land application may affect persons within one mile of that area;

(c) Require the application of best available technologies at facilities for odor control; and

(d) Ensure that the operation of facilities does not subject adjacent property owners and property owners in close proximity to the facilities to nuisance conditions or otherwise diminish the property rights of those property owners.

The rules adopted under the bill regarding best management practices for odor control and application of manure must supersede any rules governing odor control and application of manure that were in effect prior to the effective date of the rules adopted under the bill and that conflict with, are less stringent than, or do not address the requirements specified in the bill.

(4) Fees for the issuance of permits to install and permits to operate that will result in enough money for the Department of Agriculture to hire sufficient staff, provide appropriate equipment, and have access to laboratory resources in order to regulate CAFFs in this state. Specifically, the fees must be in an amount that is sufficient to hire staff to do all of the following:

(a) Conduct surface and ground water monitoring for potential water pollution, monitor the dispersal of pathogens and other disease-causing organisms, and monitor odors from facilities to ensure that the facilities do not affect adjacent property owners and property owners in close proximity to the facilities;

(b) Provide for professional geologic and hydrogeologic examination of potential sites for the establishment of CAFFs to ensure that all siting criteria related to ground water protection are applied effectively;

(c) Enforce the Concentrated Animal Feeding Facilities Law and rules adopted under it; and

(d) Provide technical assistance to permittees.

(5) Requirements for the monitoring of ground water at facilities and areas where manure from facilities is applied to land as required under rules adopted by the Director under the bill (see "**Requirements governing monitoring of ground water at concentrated animal feeding facilities,**" below); and

(6) Requirements governing the sale or other transfer of manure produced at a facility as required under rules adopted by the Director under the bill (see "**Requirements governing transfer of manure from concentrated animal feeding facilities**," below).

The rules adopted and implemented under the bill as discussed above cannot conflict with any other Ohio statute. (Sec. 903.021.)

**Requirements governing transfer of manure from concentrated animal feeding facilities**

Existing law requires the Director to adopt rules in accordance with the Administrative Procedure Act that establish various requirements governing concentrated animal feeding facilities. The bill also requires the Director to adopt rules that establish all of the following governing the sale or other transfer of manure produced at a CAFF to another person:

(1) A requirement that the owner or operator of the facility that produced the manure provide notification of the sale or other transfer of the manure to the Director that includes the name of the person to whom the manure was sold or otherwise transferred, the date of sale or transfer, the quantity of manure sold or transferred, and the location where the manure was taken after the sale or transfer;

(2) Requirements governing the testing of nutrient levels at all locations where manure that is sold or otherwise transferred is ultimately disposed of;

(3) Financial assurance requirements for persons to whom manure is sold or otherwise transferred for the purpose of paying any clean-up costs incurred by the state as a result of the disposal of manure by such persons. The rules must require persons to whom manure is sold or otherwise transferred to submit to the Director a surety bond, a letter of credit, or other financial assurance acceptable to the Director in an amount determined by the Director; and

(4) Requirements prohibiting the continued sale or other transfer of manure produced at a facility to a person who has a history of violating any requirement for the handling of manure or the application of manure to land, has a history of causing water pollution or odor nuisances, or is otherwise unreliable or incompetent in the handling of manure or the application of manure to land. (Sec. 903.10(K).)

**Requirements governing monitoring of ground water at concentrated animal feeding facilities**

In addition to the rules governing the transfer of manure from CAFFs discussed above, the bill requires the Director also to adopt rules that establish

requirements for the installation of ground water monitoring wells and the monitoring of ground water at CAFFs that have manure storage and treatment structures and requirements for the monitoring of ditches, streams, and other waters of the state in the vicinity of the facilities and areas where manure from facilities is applied to land. The rules must require such monitoring to include monitoring for chemical contaminants as well as pathogenic contaminants. (Sec. 903.10(J).)

**Permit to install requirements for concentrated animal feeding facility**

Under current law, a person that wants to construct or modify a CAFF must obtain a permit to install from the Director. An applicant for a permit to install must include with the permit application certain information. (Sec. 903.02(C).) The bill adds that the following information also must be included with a permit application:

(1) If the CAFF will have a structure for the storage or treatment of manure that is located within one mile of any residence, designs and plans for the proposed construction of a permanent cover designed to minimize the release of odors from the structure to the greatest level achievable with existing technology; and

(2) Information identifying all properties on which manure from the facility will be applied during the term of the facility's initial permit to install, an accurate statement of the acreage of each parcel of property on which manure may be applied in accordance with location restrictions for manure application established in rules adopted by the Director, and the results of a sampling of the levels of phosphorous, nitrogen, and potassium for each such parcel of property prior to the application of manure (sec. 903.02(C)(6) and (7)).

Existing law requires the Director to deny a permit to install if the permit application contains misleading or false information or if the designs and plans fail to conform to best management practices. The bill also requires the Director to deny a permit to install if the proposed CAFF will be located within two miles of a cemetery, church, school, hospital as defined in the Hospitals Law, or nursing home as defined in the Nursing Homes Law or if the location of the proposed facility will violate the siting restrictions established by the Director in rules. (Sec. 903.02(D).)

**Fees**

Current law requires the Director to charge a fee to a person that applies for a permit to install to construct or modify a CAFF, a permit to operate a CAFF, a livestock manager certificate, or a NPDES permit and to a person that wants to

modify a permit to install or permit to operate. Currently, the fees are established in rules. The bill retains the requirement that the Director charge fees and the requirement that fees be established in rules, but establishes minimum amounts of those fees in statute as follows:

Type of permit, certificate, or action	Fee under current law	Statutory minimum fee under the bill
Issuance of permit to install	No statutory minimum fee-- fee established in rules	\$2,500
Issuance of NPDES permit issued with permit to install for discharge of storm water during construction of CAFF	No statutory minimum fee-- fee established in rules	\$200
Issuance or renewal of permit to operate, including general permit, into which NPDES permit is incorporated	No statutory minimum fee-- fee established in rules	\$2,000
Issuance or renewal of permit to operate, including general permit, into which NPDES permit is not incorporated	No statutory minimum fee-- fee established in rules	\$1,500
Issuance of livestock manager certificate	No statutory minimum fee-- fee established in rules	\$60
Modification of permit to install or permit to operate	No statutory minimum fee-- fee established in rules	\$400

In addition, the amount of the fees for the issuance of permits to install and permits to operate must be sufficient to hire sufficient staff, provide for appropriate equipment, and have access to laboratory resources in order to regulate CAFFs in this state. (Secs. 903.10(A)(2), (E)(1), and (F)(6) and 903.101(A)(2) and (B) to (F).)

The bill also establishes minimum statutory fees for the issuance of review compliance certificates and the transfer of previously issued installation permits, permits to install, and permits to operate. Under existing law, the owner or operator of an existing CAFF that has been issued an installation permit by the Director of Environmental Protection must apply for a review compliance certificate from the Director of Agriculture within a specified time period. The bill retains that requirement, but requires the owner or operator also to submit a



fee to the Director of Agriculture in an amount established by rule. (Sec. 903.04(E)(2).) The bill requires the amount of the fee to be equal to or more than \$400 (secs. 903.10(B)(3) and 903.101(A)(1)).

Current law also requires a person that seeks to acquire a CAFF that has been issued an installation permit that has been transferred from the Director of Environmental Protection to the Director of Agriculture, a permit to install, or a permit to operate to submit to the Director of Agriculture certain information prior to the transfer of the permit. Under the bill, in addition to the information required to be submitted for a transfer of a permit, the person must submit a fee in an amount established by rule. (Sec. 903.05(C).) The bill requires the amount of the fee to be equal to or more than \$400 (secs. 903.10(A)(11) and 903.101(A)(2)).

### **Elimination of Concentrated Animal Feeding Facility Advisory Committee**

Existing law creates the Concentrated Animal Feeding Facility Advisory Committee consisting of the Directors of Agriculture, Development, 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 16 members to be appointed by the Director of Agriculture. Of the appointed members, the designated number of persons must represent the following interests: one, a local government official whose jurisdiction has a CAFF located in it at the time that the official is appointed to the Committee; one, a person licensed to practice veterinary medicine under state law; 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; one, the interests of drinking water utilities; one, the interests of waste water utilities; one, the Ohio Environmental Health Association; two, the interests of statewide environmental advocacy organizations; and four, the interests of the public. Prior to making the appointment of the member who is an elected local government official, the Director must solicit a list of suggested candidates from the appropriate statewide associations that represent the interests of local governments. The Director, prior to making an appointment of a member who represents the interests of poultry, swine, beef cattle, or sheep producers or dairy cattle, must solicit a list of suggested candidates from the appropriate statewide trade association to represent the interests of the species category on the Committee. The members representing the public cannot be owners or operators of CAFFs or associated with CAFFs by contract. Members serve staggered three-year terms. (Sec. 903.20(A).)

Current law establishes generally standard requirements governing the appointment of members, filling of vacancies, reappointment of members, removal of members, and reimbursement of members for actual and necessary expenses incurred in the performance of their official duties. It also establishes

requirements governing officers and meetings. Under existing law, 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. 903.20(A).)

The Committee may adopt 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. 903.20(B)). The Committee must do all the following:

(1) Advise the Director of Agriculture in the administration of the Concentrated Animal Feeding Facilities Law;

(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; and

(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 CAFF in applying for a permit to install or permit to operate. The materials also must include information stating that, in addition to obtaining a permit to operate, it may be necessary to obtain a NPDES permit for the discharge of manure or storm water. The written materials also must include information indicating what constitutes a complete application for all of those permits, information about the public meeting process conducted in connection with the issuance of permits under the Concentrated Animal Feeding Facilities Law, and a summary of the antidegradation policy established in rules adopted by the Director of Environmental Protection under the Water Pollution Control 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.<sup>3</sup> (Sec. 903.20(C).)

Existing law specifies that the law requiring certain boards, commissions, committees, or councils to expire four years after their creation or renewal does not apply to the Committee (sec. 903.20(D)).

The bill eliminates the Concentrated Animal Feeding Facility Advisory Committee (sec. 903.20, repealed).

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<sup>3</sup>Under current law, "discharge" means to add from a point source to waters of the state (sec. 903.01(G), not in the bill).

**Other provisions**

The bill requires the Department of Agriculture to retain on its staff a person who holds at least a master's degree in geologic science. The person must assist in the administration of provisions of state statutes and rules adopted under them that are designed to protect ground water as those provisions and rules apply to CAFFs. Additionally, in administering the provisions of state statutes and rules adopted under them that are designed to protect ground water as those provisions and rules apply to CAFFs, the Director of Agriculture must consult with the appropriate staff of the Environmental Protection Agency and the Department of Natural Resources, as applicable, when the Director determines that it is necessary in order to obtain an accurate analysis of the geology and hydrogeology at a facility to prevent the contamination of ground water. (Sec. 903.102.)

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**HISTORY**

ACTION	DATE
Introduced	04-24-07

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