



S.B. 381

127th General Assembly
(As Introduced)

Sen. Stivers

BILL SUMMARY

- Requires additional information concerning water and storm water facilities and adequate roads for firefighting services to be considered when determining the impact on local infrastructure resulting from the establishment or modification of a major concentrated animal feeding facility (CAFF).
- Requires the person who is proposing to establish or modify a major CAFF to sign the statements of the applicable board of county commissioners and board of township trustees specifying the recommended improvements, including waste water and storm water facilities and adequate roads for the provision of firefighting services, that are needed within the county or township, as applicable, and their costs.
- Requires a person who proposes to establish or modify a major CAFF to complete all improvements that have been recommended by the applicable board of county commissioners and board of township trustees before applying for a permit to operate the facility, and requires the Director of Agriculture to deny the permit if the Director has not received an affidavit stating that the improvements have been completed.
- Requires the Director to determine if the proposed establishment or modification of a CAFF will have an adverse environmental impact within a 20-mile radius of the proposed facility or facility and to deny the application for a permit to install if the Director determines that there will be such an adverse environmental impact.
- Requires the Director to deny an application for a permit to install or a permit to operate a CAFF that was submitted by a person that has not

operated a CAFF for at least two of the five years immediately preceding the submission of the application if the applicant or any person associated with the applicant has been denied a permit under the Concentrated Animal Feeding Facilities Law or similar laws of another state.

- Precludes an existing permit for a CAFF from being transferred to a person who is seeking to acquire the CAFF if the transferee or any person associated with the transferee has been denied a permit under that Law or similar laws of another state.
- States that applications for permits to install and permits to operate that are pending on the bill's effective date are subject to all of the applicable new requirements and procedures that are established by the bill.

CONTENT AND OPERATION

Impact of major concentrated animal feeding facilities on local infrastructure

Introduction

The Concentrated Animal Feeding Facilities 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, and (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. "Animal feeding facility" also includes land that is owned or leased by or otherwise is under the control of the owner or operator of the lot, building, or structure and on which manure originating from agricultural animals in the lot, building, or structure or a production area is or may be applied. Two or more animal feeding facilities under common ownership are considered to be a single animal feeding facility if they adjoin each other or if they use a common area or system for the disposal of manure. (R.C. 903.01(B), not in the bill.)

That Law also defines "concentrated animal feeding facility" as an animal feeding facility with a total design capacity equal to or more than the number of animals specified in any of the categories included in the definition of "large concentrated animal feeding operation." Those categories are: (1) 700 mature dairy cattle whether milked or dry, (2) 1,000 veal calves, (3) 1,000 cattle other than mature dairy cattle or veal calves, (4) 2,500 swine that each weigh 55 pounds or more, (5) 10,000 swine that each weigh less than 55 pounds, (6) 500 horses, (7) 10,000 sheep or lambs, (8) 55,000 turkeys, (9) 30,000 laying hens or broilers if the animal feeding facility uses a liquid manure handling system, (10) 125,000

chickens, other than laying hens, if the animal feeding facility uses a manure handling system that is not a liquid manure handling system, (11) 82,000 laying hens if the animal feeding facility uses a manure handling system that is not a liquid manure handling system, (12) 30,000 ducks if the animal feeding facility uses a manure handling system that is not a liquid manure handling system, and (13) 5,000 ducks if the animal feeding facility uses a liquid manure handling system (R.C. 903.01(E) and (M), not in the bill).

Finally, under that Law, "major concentrated animal feeding facility" means a concentrated animal feeding facility with a total design capacity of more than ten times the number of animals specified in any of the above categories of animals (R.C. 903.01(N), not in the bill).

Under current law, a person must provide written notification providing specified information to the board of county commissioners of the county, and the board of township trustees of the township, in which a proposed new or expanded major concentrated animal feeding facility is or is to be located if any of the following criteria apply:

(1) The person proposes to establish a new major concentrated animal feeding facility (CAFF);

(2) The person proposes to increase the design capacity of an existing major CAFF by 10% or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under the Concentrated Animal Feeding Facilities Law or the Water Pollution Control Law; or

(3) The person proposes to increase the design capacity of an existing CAFF by 10% or more in excess of the design capacity set forth in the current permit for construction or modification of the facility or for installation or modification of the disposal system for manure at the facility issued under the Concentrated Animal Feeding Facilities Law or the Water Pollution Control Law, as applicable, and to a design capacity of more than ten times the number of animals specified in any of the categories specified above. (R.C. 307.204(B) and 505.266(B).)

Following receipt of the notification, the board of county commissioners or board of township trustees, as applicable, may request the county engineer to review the notification and advise the board on improvements, defined as the construction, modification, or both of county or township infrastructure, and maintenance of improvements that are reasonably needed to accommodate the facility's anticipated impact on that infrastructure and the projected costs of the

improvements and maintenance. The applicable board then may submit recommendations to the person concerning needed improvements and their cost. The person must agree with the recommendations or submit alternative recommendations or modifications. The board must select final recommendations, and the person then must construct, modify, and maintain or finance the construction, modification, and maintenance of the improvements that are identified in the board's final recommendations. Current law uses the definitions discussed above from the Concentrated Animal Feeding Facilities Law for the purposes of the above provisions regarding county and township infrastructure. (R.C. 307.204 and 505.266.)

An applicant for a permit to install a CAFF under the Concentrated Animal Feeding Facilities Law must submit the application to the Director of Agriculture and must include with the permit application specified information. Included in that information, if the CAFF meets the criteria discussed above, are written statements from the applicable board of county commissioners and board of township trustees certifying that the applicant has notified the boards as discussed above and that final recommendations were selected regarding needed improvements and the costs of those improvements (R.C. 903.02(C)(4)).

The bill

The bill expands the requirements discussed above as follows. First, it adds that the definition of "improvement" includes waste water and storm water facilities and adequate roads for the provision of firefighting services (R.C. 307.204(A)(3) and 505.266(A)(3)).

The bill requires a person who must notify a board of county commissioners and board of township trustees of the proposed construction or expansion of a facility to include with the notification a description by metes and bounds of the property on which the facility is or will be located. Further, the bill requires the notification to include a statement of the quantity of water that the facility will utilize on an average daily and annual basis, a detailed description of the basis for the calculation that was used in determining that quantity, a statement identifying the source of the water, and an estimate of total manure production at the facility quantified by pounds per day, tons per year, cubic yards per day, or gallons per day.¹ The bill retains the requirement that the notification include the anticipated travel routes of motor vehicles to and from the facility and the anticipated number and weights of motor vehicles traveling to and from the facility. (R.C. 307.204(C) and 505.266(C).)

¹ An applicant for a permit to install currently must include an identical statement regarding water use with the permit application (R.C. 903.02(A)(5)).

Under current law, a board must prepare a written, dated statement certifying that the written notification was submitted and that final recommendations were selected regarding needed improvements and their costs. The board must provide the person with the original of the statement for inclusion with the application for a permit to install as discussed above. The bill requires a board, after preparing the statement, to submit it to the person for the person's signature. The person must sign it indicating that the person will comply with the final recommendations and must have it notarized. The person then must return the signed, notarized statement to the board. After verifying that it has been signed and notarized, the board must provide the person with the original of the statement for inclusion with the application for a permit to install. (R.C. 307.204(F) and 505.266(F).)

Existing law requires the person to construct, modify, and maintain, or finance the construction, modification, and maintenance of, the improvements that are specified in a board's final recommendations with the approval and oversight of the county engineer (R.C. 307.204(G) and 505.266(G)). The bill requires the person to complete all of the improvements prior to applying for a permit to operate the facility under the Concentrated Animal Feeding Facilities Law. The person must submit a signed affidavit to each applicable board stating that the improvements have been completed. The board must retain a copy of the affidavit for its records and return the original to the person within ten days after receiving it. If the person is not required to complete improvements, the board must so notify the Director of Agriculture in writing. (R.C. 307.204(I) and 505.266(I).)

Under the bill, a person who is required to submit such an affidavit to a board of county commissioners and board of township trustees must include the affidavit with the application for a permit to operate the facility. The bill requires the Director to deny the permit if the Director has not received the affidavit. (R.C. 903.03(C)(6) and (D)(3).)

Review of environmental impacts of CAFFs

The bill requires the Director, in order to determine if the addition of a proposed CAFF or a proposed modification to an existing CAFF will have an adverse impact on the soil, ground or surface water, or air within a 20-mile radius of the proposed facility or facility, to review both the application for a permit to install for the proposed facility or facility and the operation of any CAFF that is located within 20 miles of the boundaries of the facility that is the subject of the application. The Director must conduct the review not later than 60 days after receiving the permit to install application. If the Director determines that the addition of the proposed CAFF or the modification of an existing CAFF will have an adverse impact on the soil, ground or surface water, or air within the 20-mile radius, the Director must deny the application. The bill requires the Director to

inform the applicant in writing of the denial and include a discussion of the reasons for the denial. (R.C. 903.02(D)(3) and 903.021.)

Denial of permits and transfers under specified circumstances

Under existing law, an application for a permit to install or a permit to operate a CAFF that is submitted by an applicant who has not operated a CAFF in Ohio for at least two of the five years immediately preceding the submission of the application must be accompanied by a listing of all animal feeding facilities operated by the owner or operator of the proposed new or modified CAFF within or outside this state and outside the United States. The application also must be accompanied by a listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined to be liable in damages or was the subject 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 environmental protection laws that was alleged to have occurred or to be occurring at any animal feeding facility that the owner or operator has operated or is operating. (R.C. 903.05(A).)

The Director of Agriculture may deny the application if the Director finds that the applicant and persons associated with the applicant, in the operation of animal feeding facilities, have a history of substantial noncompliance with environmental protection laws that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified CAFF in substantial compliance with the Concentrated Animal Feeding Facilities Law and rules adopted under it. The bill requires the Director to deny an application if the applicant or any person associated with the applicant has been denied a permit for a CAFF under that Law or under similar laws of another state. (R.C. 903.05(B).)

Similarly, under current law, a person who seeks to acquire a CAFF that already has been issued a permit must submit to the Director the information specified above regarding past performance. Current law precludes the permit from being transferred if the Director finds that the person, in the operation of animal feeding facilities, has a history of substantial noncompliance with environmental protection laws that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the CAFF in substantial compliance with the Concentrated Animal Feeding Facilities Law and rules adopted under it. The bill also precludes the permit from being transferred if the transferee or any person associated with the transferee has been denied a permit for a CAFF under that Law or under similar laws of another state. (R.C. 903.05(C).)

Pending applications

The bill states that applications for permits to install and permits to operate that have been submitted to the Director under the Concentrated Animal Feeding Facilities Law and that are pending on the bill's effective date are subject to all of the applicable new requirements and procedures that are established by the bill (Section 3).

HISTORY

ACTION	DATE
Introduced	11-19-08

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