Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	**Sub. H.B. 635**	DATE:	**December 10, 2008**
STATUS:	**As Reported by House Agriculture & Natl. Resources**	SPONSOR:	**Rep. Gibbs**

LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**

CONTENTS: **To revise the Concentrated Animal Feeding Facility Law**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
Department of Agriculture – Livestock Management Fund (Fund 5L80)	
Revenues	-0-
Expenditures	Potential increase in enforcement costs

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- The bill makes several changes to the Concentrated Animal Feeding Facility Law that attempt to facilitate United States Environmental Protection Agency (USEPA) approval of the Ohio Department of Agriculture's plan to complete the transfer of the Concentrated Animal Feeding Facilities regulatory and permitting program from the Ohio EPA to the Department of Agriculture. The program would be funded through permit revenue deposited into the Livestock Management Fund (Fund 5L80).

- The bill expands the enforcement authority of the Director of Agriculture to take corrective actions and assess civil penalties for violations of the Concentrated Animal Feeding Facility Law. The expanded authority granted to the Director could increase enforcement costs.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Background and summary of the bill

Under the Concentrated Animal Feeding Facilities Law, the Director of Agriculture is required to regulate concentrated animal feeding facilities (CAFFs) and concentrated animal feeding operations (CAFOs). The bill revises several provisions in the Concentrated Animal Feeding Facilities Law, including the issuance of (1) permits to install, (2) permits to operate, (3) national pollutant discharge elimination system (NPDES) permits, (4) review compliance certificates, and (5) livestock manager certifications. The bill also describes the corrective actions that the Director of Agriculture may take. It should be noted that S.B. 141 of the 123rd General Assembly transferred the authority to permit and regulate CAFOs from the Ohio Environmental Protection Agency (EPA) to the Ohio Department of Agriculture. Many of the changes presented in this bill attempt to facilitate this transfer, and therefore, would appear to have no fiscal effect.

Permits to install and permits to operate and review compliance certificates

The bill makes some changes with respect to the information required when submitting a permit to install or operate, or a review compliance certificate. The bill requires that the application include the name and address of all members if the applicant is a limited liability company. Additionally, under current law, any application for a permit to install or operate must contain certain background information. Permits to install need only be renewed if there is a modification to the ownership of the facility. Permits to operate must be renewed every five years. Review compliance certificates are needed if a person seeks to own an existing CAFF and does not need renewed. The fee for a permit to install is $1,250; the fee for a permit to operate is $750.

As of this writing, there are 63 permits to install, 117 permits to operate, and 69 review compliance certificates listed on the Department of Agriculture's web site. Presumably, existing permits on file would not need to be altered as a result of the bill, and these changes would only affect new applications being submitted as of the effective date of the bill. Overall, none of the changes in the application process appear to have any fiscal effect.

Major operational changes at concentrated animal feeding facilities

The bill requires that the owner or operator of a CAFF who proposes to make a major operational change to the facility submit an application for approval of the change to the Director of Agriculture. The Director is permitted to adopt rules that define what constitutes a major operational change and the information included in, and procedures for approval or denial of, the application. Because it is not known what will constitute a major operational change, the effect of this provision is unknown.

NPDES permits

Background

The National Pollutant Discharge Elimination System (NPDES) program requires that a permit be obtained for the discharge of sewage, industrial waste, or other wastes into the waters of the state. A permit is issued for each point source of discharge. Currently, the Director of Environmental Protection administers the NPDES program in Ohio. However, the Concentrated Animal Feeding Facilities Law authorizes the Director of Agriculture to participate in the program and requires the Director to prepare and submit to the USEPA a state program for the issuance of NPDES permits under that program. Once that program is approved by the USEPA, that portion of the NPDES program is transferred to the Director of Agriculture. At the time of this writing, the USEPA has not approved Ohio's submitted program.

Permit requirements under the bill

Generally, the bill does not substantively change the permit requirements for the NPDES program as it relates to the Department of Agriculture. Nevertheless, an important change the bill makes is to expand the scope of what is covered under those permits from the discharge, transport, handling of *manure* to the discharge, transport, and handling of *pollutants, including manure*. These changes are made to facilitate the transfer of the NPDES permitting program from the Ohio EPA to the Director of Agriculture. At the time of this writing there are 33 individual CAFO and 12 general CAFO NPDES permits listed on the Ohio EPA's web site. NPDES permits cost $200 and must be renewed every five years.

Enforcement

Corrective actions regarding permits to install and operate

The bill expands the enforcement authority of the Director of Agriculture by allowing the Director to take corrective actions and assess civil penalties against an owner or operator that is not in compliance with the terms and conditions of a permit to operate regarding a livestock manager certification. It also permits the Director to take corrective actions or assess civil penalties for the enforcement of rules governing review compliance certificates. This additional authority could result in some increased enforcement costs for the Department of Agriculture. However, it is unknown as to how many cases would result.

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