Ohio Legislative Service Commission

Terry Steele

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 363 of the 128th G.A. **Date**: December 1, 2009

Status: As Passed by the House **Sponsor**: Rep. Okey and Newcomb

Local Impact Statement Procedure Required: No — No local cost

Contents: Revises the Concentrated Animal Feeding Facilities Lawand recent changes to the Household and Small Flow On-Site Sewage Treatment Systems Law, and declares an emergency

State Fiscal Highlights

STATE FUND	FY 2010 – FUTURE YEARS
Department of Agriculture – Livestock Management Fund (Fund 5L80)	
Revenues	–Potential gain in proceeds from civil penalties
Expenditures	Potential increase in enforcement costs

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The Department of Agriculture's Livestock Environmental Permitting Program is the regulatory authority responsible for permitting and overseeing large livestock farms covered under the Concentrated Animal Feeding Facilities Law. The bill makes a variety of changes to the permitting process required under the law, most of which appear to have little or no new fiscal effect.
- 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 Facilities Law. This could increase enforcement costs, but could also lead to new revenue from civil fines deposited into the Livestock Management Fund (Fund 5L80).
- The Livestock Environmental Permitting Program is supported by GRF line item 700418, Livestock Regulation Program, with appropriations of approximately $1.3 million in each fiscal year of the FY 2010-FY 2011 biennium. The program is also supported by application fees, permit revenue, and civil fines deposited into Fund 5L80. The appropriation for Fund 5L80 appropriation item 700604, Livestock Management Program, is approximately $250,000 in each year of the current biennium.
- The bill extends the termination of the suspension of the operation of certain provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and temporary law from January 1, 2010, to July 1, 2010. It also restores until that date provisions of law related to household sewage disposal systems that

existed prior to that Law's enactment. This provision will maintain current operations until July 1, 2010. Thus, there should be no direct fiscal impact.

Local Fiscal Highlights

- The bill extends the termination of the suspension of the operation of certain provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and temporary law from January 1, 2010, to July 1, 2010. It also restores until that date provisions of law related to household sewage disposal systems that existed prior to that Law's enactment. This provision will maintain current operations until July 1, 2010. Thus, there should be no direct fiscal impact.

Detailed Fiscal Analysis

CAFF background and bill provisions

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 Department of Agriculture's Livestock Environmental Permitting Program is the regulatory authority responsible for oversight of this Law. The bill revises several statutory provisions dealing with the issuance of (1) permits to install, (2) permits to operate, (3) national pollutant discharge elimination system (NPDES) permits, and (4) livestock manager certifications. These changes appear to have little or no new fiscal effect. However, the bill does broaden the Director of Agriculture's enforcement authority over owners or operators of animal feeding facilities. This could lead to an increase in enforcement costs as well as some additional revenues from civil penalties.

The Livestock Environmental Permitting Program is supported by GRF line item 700418, Livestock Regulation Program, with funding of approximately $1.3 million in each fiscal year of the FY 2010-FY 2011 biennium. This appropriation supports 12 employees. The program is also supported by application fees, permit revenue, and civil fines deposited into Fund 5L80. The appropriation for Fund 5L80 appropriation item 700604, Livestock Management Program, is approximately $250,000 in each year of the FY 2010-FY 2011 biennium.

Information required for permits

The bill makes some changes concerning the information required when an operator submits an application for a permit to install (PTI) or permit to operate (PTO). The bill requires that these applications include the name and address of all members of a limited liability company if such an entity is intending to operate a CAFF. PTIs need only be renewed if there is a modification to the ownership of the facility, whereas PTOs must be renewed every five years. The fee for a permit to install is $1,250; the fee for a permit to operate is $750. These proceeds are deposited into the Livestock Management Fund (Fund 5L80).

As of this writing, there are 58 permits to install, 150 permits to operate, and 30 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 CAFFs

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 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. The cost to oversee this provision and new application revenue would depend on what would constitute a major new change. Any resulting expenses would be paid from Fund 5L80, which would also collect any new application revenue.

NPDES permits

NPDES 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 United States Environmental Protection Agency (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 32 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. This additional authority could result in some increased enforcement costs. However, it is unknown as to how many cases would result. Enforcement expenses would be borne by Fund 5L80. This fund

would also receive the proceeds of any fines related to permit violations. Generally, Fund 5L80 collects approximately $100,000 in permit and penalty revenues each fiscal year. However, because PTO renewals are on a five-year cycle, the fund collects larger amounts during periods when PTOs are renewed. The Department of Agriculture estimates that Fund 5L80 will collect approximately $230,000 in each year of the FY 2010-FY 2011 biennium.

Extension of sewer treatment system law

The bill extends the termination date of provisions of Am. Sub. H.B. 119 of the 127th General Assembly, as amended by Am. Sub. H.B. 1 of the 128th General Assembly, that temporarily suspended the operation of certain provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and that enacted temporary provisions regarding that Law. The bill extends the termination of that suspension and temporary law from January 1, 2010, to July 1, 2010. It also restores until that date provisions of law related to household sewage disposal systems that existed prior to that Law's enactment. This provision will maintain current operations until July 1, 2010. Thus, there should be no direct fiscal impact.

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