



Ohio Legislative Service Commission

Bill Analysis

Jeff Grim

Sub. H.B. 276*

129th General Assembly

(As Reported by S. Agriculture, Environment and Natural Resources)

Reps. Buchy and Gentile, Hall, Derickson, Peterson, Balderson, Boose, Ruhl, Murray, O'Brien, Huffman, Grossman, Amstutz, Hackett, Maag, Gonzales, R. Adams, Johnson, Yuko, Fende, Anielski, Antonio, Baker, Barnes, Blair, Bubp, Butler, Carey, Carney, Celeste, Combs, Damschroder, DeGeeter, Dovilla, Driehaus, Duffey, Fedor, Foley, Garland, Goodwin, Goyal, C. Hagan, Hayes, Heard, Henne, Hill, Hottinger, Kozlowski, Landis, Letson, Luckie, Lundy, Mallory, McClain, Milkovich, Newbold, Patmon, Pelanda, Phillips, Ramos, Roegner, Schuring, Sears, Slaby, Slesnick, Sprague, Stebelton, Szollosi, Thompson, Wachtmann, Winburn, Young, Batchelder

BILL SUMMARY

- Revises the definition of "land devoted exclusively to agricultural use" for purposes of the statutes that govern current agricultural use valuation of real property for real property tax assessment to include land devoted exclusively to biodiesel production, biomass energy production, electric or heat energy production, or biologically derived methane gas production under certain circumstances.
- Defines "biodiesel," "biomass energy," "electric or heat energy," and "biologically derived methane gas."
- States that county and township zoning laws confer no authority to prohibit the use of any land for biodiesel production, biomass energy production, electric or heat energy production, or biologically derived methane gas production under specified circumstances.
- Authorizes the Director of Agriculture to establish best management practices for such production at a concentrated animal feeding facility.

* This analysis was prepared before the report of the Senate Agriculture, Environment and Natural Resources Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Revises the definitions of "agriculture," "agricultural purposes," "agricultural production," and "land devoted exclusively to agricultural use" to include "algaculture meaning the farming of algae" in state statutes governing agriculture generally as well as in specified state statutes.
- Defines "algacultural product," and includes the term in the definitions of "agricultural product" and "farm product" as used in specified areas of law.
- Establishes the Legislative Task Force to Study Anaerobic Digesters for Agricultural Use and Application in the State, and requires it to submit two reports to the General Assembly, the second by October 1, 2012.

CONTENT AND OPERATION

Production of biodiesel, biomass energy, electric or heat energy, and biologically derived methane gas

Current agricultural use valuation

For purposes of the statutes that govern current agricultural use valuation of real property for real property tax assessment, current law defines "land devoted exclusively to agricultural use" to mean land devoted exclusively to specified activities or devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government. The bill adds biodiesel production, biomass energy production, electric or heat energy production, and biologically derived methane gas production to the specified activities in the definition as long as the land on which the production facility is located is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, provided that at least 50% of the feedstock used in the production was derived from parcels of land under common ownership or leasehold.¹

It then defines all of the following terms:

"Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats or any combination of those reagents and that meets the American Society for Testing and Materials specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels.

¹ R.C. 5713.30(A).

"Biologically derived methane gas" means gas from the anaerobic digestion of organic materials, including animal waste and agricultural crops and residues.

"Biomass energy" means energy that is produced from organic material derived from plants or animals and available on a renewable basis, including, but not limited to, agricultural crops, tree crops, crop by-products, and residues.

"Electric or heat energy" means electric or heat energy generated from manure, cornstalks, soybean waste, or other agricultural feedstocks.²

The bill clarifies that in order for land to qualify as land devoted exclusively to agricultural use, the land can be devoted exclusively to specified activities as discussed above, devoted to and qualified for payments or other compensation under a federal land retirement or conservation program, or a combination of both.³

County and township zoning

The bill states that the County Rural Zoning and Township Zoning Laws confer no power on a board of county commissioners, county rural zoning commission, board of zoning appeals, township zoning commission, or board of township trustees, as applicable, to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses the use of any land for either of the following:

(1) Biodiesel production, biomass energy production, or electric or heat energy production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use for real property tax purposes as discussed above; or

(2) Biologically derived methane gas production if the land on which the production facility is located qualifies as land devoted exclusively to agricultural use for real property tax purposes as discussed above and if the facility that produces the biologically derived methane gas does not produce more than 17,060,710 BTUs, five megawatts, or both.⁴

Concentrated animal feeding facilities

Under current law, the Director of Agriculture is authorized to adopt rules establishing best management practices regarding specified activities that occur at a

² R.C. 5713.30(G) to (J).

³ R.C. 5713.30(A).

⁴ R.C. 303.21(C)(2) and 519.21(C)(2).

concentrated animal feeding facility (CAFF). The bill adds the production of biodiesel, biomass energy, electric or heat energy, and biologically derived methane gas to the list of specified activities for which the Director may establish best management practices at a CAFF.⁵

Algaculture

General inclusion in laws governing agriculture

The bill includes "algaculture meaning the farming of algae" in the definition of "agriculture" that is generally used throughout state statutes.⁶ Applicable areas of law in which the term "agriculture" is used include the laws governing the biobased product program, the bioproducts development program, agricultural financing, agriculture security areas, the farm laborers' association, disparagement of agricultural food products, the Ohio Agricultural Research and Development Center, and the sales tax. Additionally, the bill adds "algaculture meaning the farming of algae" to the definitions of "agriculture" that apply to county and township zoning.⁷

Additional inclusion of "algaculture" in state laws

The bill includes "algaculture meaning the farming of algae" in the definition of "agricultural production" in the statutes that govern agricultural districts; in the definition of "agricultural purposes" in the statutes that govern exemptions from building standards and leases of real property acquired for state highways; and in the definition of "land devoted exclusively to agricultural use" in the statutes that govern current agricultural use valuation as discussed above.⁸

Inclusion of "algacultural products" in specified areas of law

Under the bill, "algacultural product" means algal paste, algal powder, or dried algae that is comprised primarily of algal biomass.⁹ "Algacultural product" is included in the definitions of "agricultural product" in the statutes that govern agricultural terrorism, agricultural product liens, and cooperatives.¹⁰ Additionally, "algacultural

⁵ R.C. 903.10(C).

⁶ R.C. 1.61.

⁷ R.C. 303.01 and 519.01.

⁸ R.C. 929.01(A), 3781.06(C)(1), 5501.50(A), and 5713.30(A)(1) and (2).

⁹ R.C. 901.511(A)(2).

¹⁰ R.C. 901.511(A)(1), 1311.55(A)(1), and 1729.01(B).

product" is included in the definition of "farm products" in the statutes governing secured transactions.¹¹

Legislative Task Force to Study Anaerobic Digesters for Agricultural Use and Application in the State

The bill establishes the Legislative Task Force to Study Anaerobic Digesters for Agricultural Use and Application in the State. It requires the Task Force to study all of the following:

- (1) The use of anaerobic digesters and the impact of anaerobic digesters on the state;
- (2) How the use of anaerobic digesters may impact the environment;
- (3) How the use of anaerobic digesters is regulated in other states;
- (4) The use of anaerobic digesters in a cooperative setting; and
- (5) The overall impact of state laws governing the use of anaerobic digesters on agriculture, residents, and local governments in the state.¹²

The Task Force must prepare and submit the following reports to the General Assembly:

- (1) Not later than August 1, 2012, a report of the findings of the Task Force and recommendations concerning the use of anaerobic digesters and the impact of that use on the state; and
- (2) Not later than October 1, 2012, a report of the findings of the Task Force and recommendations concerning revisions of state law governing anaerobic digesters.

Upon issuance of the October 1 report, the Task Force ceases to exist.¹³

The Task Force must consist of the following members:

- (1) Two members of the House of Representatives appointed by the Speaker of the House of Representatives, one from each party. The Speaker must designate one of the members appointed by the Speaker as co-chairperson of the Task Force.

¹¹ R.C. 1309.102(A)(34)(a)(iii) and 1311.55(A)(1).

¹² Section 3(A) and (C).

¹³ Section 3(D).

(2) Two members of the Senate appointed by the President of the Senate, one from each party. The President must designate one of the members appointed by the President as co-chairperson of the Task Force.

(3) The following members appointed by the Speaker:

(a) One member representing the Ohio Farm Bureau Federation;

(b) One member representing the Ohio Soybean Association;

(c) One member representing the Ohio Environmental Council or another environmental advocacy organization in the state;

(d) One member who is an agronomist and actively working with farmers in a distressed watershed in the state; and

(e) One member who is an attorney who is licensed to practice law in the state and who has knowledge of the topics being studied by the Task Force.

(4) The following members appointed by the President of the Senate:

(a) One member representing the livestock industry in the state;

(b) One member representing the anaerobic digester industry in the state;

(c) One member representing the public; and

(d) Two members representing local governments in the state.

(5) The Director of Agriculture or the Director's designee;

(6) The Director of Natural Resources or the Director's designee;

(7) The Director of Environmental Protection or the Director's designee.¹⁴

Appointments must be made not later than 30 days after the effective date of the provisions that establish the Task Force. A vacancy on the Task Force must be filled in the same manner as the original appointment. Members of the Task Force must serve without compensation.¹⁵

The co-chairpersons of the Task Force must hold meetings at times that they or a majority of the Task Force considers appropriate. The Task Force cannot hold a meeting

¹⁴ Section 3(A).

¹⁵ Section 3(B).

unless it provides at least 24 hours' notice to news media organizations that have requested such notification. Additionally, the Task Force must prepare and maintain minutes of its meetings, which are public records.¹⁶ The Legislative Service Commission must provide professional and technical support to the General Assembly members of the Task Force.¹⁷

Finally, the provisions relating to the Task Force take effect immediately.¹⁸

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 06-21-11 |
| Reported, H. Agriculture & Natural Resources | 12-07-11 |
| Passed House (92-0) | 12-13-11 |
| Reported, S. Agriculture, Environment & Natural Resources | --- |

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¹⁶ Section 3(E) and (F).

¹⁷ Section 3(G).

¹⁸ Section 4.

