

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 478

Short Title: Amend Swine Farm Laws.

(Public)

Sponsors: Senators Kinnaird, Ballantine; Ballance, Gulley, Horton, Jordan, Lucas, Miller, and Odom.

Referred to: Agriculture/Environment/Natural Resources.

March 25, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS LAWS IMPACTING SWINE PRODUCTION IN
3 NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 67 of Chapter 106 of the General Statutes reads as rewritten:

6 "ARTICLE 67.

7 "SWINE FARMS.

8 "§ 106-800. Title.

9 This Article shall be known as the 'Swine Farm Siting Act'.

10 "§ 106-801. Purpose.

11 The General Assembly finds that certain limitations on the siting of swine houses and
12 lagoons for swine farms can assist in the development of pork production, which
13 contributes to the economic development of the State, by lessening the interference with
14 the use and enjoyment of adjoining property.

15 "§ 106-802. Definitions.

16 As used in this Article, unless the context clearly requires otherwise:

17 (1a) 'Intensive swine operation' means a swine farm with a design capacity
18 of more than 400,000 pounds steady state live weight.

- 1 (1) 'Lagoon' means a confined body of water to hold animal byproducts
2 including bodily waste from animals or a mixture of waste with feed,
3 bedding, litter or other agricultural materials.
- 4 (2) Repealed by Session Laws 1997 (Regular Session, 1996), c. 626, s. 7.
- 5 (3) 'Occupied residence' means a dwelling actually inhabited by a person on
6 a continuous basis as exemplified by a person living in his or her home.
- 7 (4) 'Site evaluation' means an investigation to determine if a site meets all
8 federal and State standards as evidenced by the Waste Management
9 Facility Site Evaluation Report on file with the Soil and Water
10 Conservation District office or a comparable report certified by a
11 professional engineer or a comparable report certified by a technical
12 specialist approved by the North Carolina Soil and Water Conservation
13 Commission.

14 ~~Department of Environment, Health and Natural Resources~~

- 15 (5) 'Swine farm' means a tract of land devoted to raising 250 or more
16 animals of the porcine species.
- 17 (6) 'Swine house' means a building that shelters porcine animals on a
18 continuous basis.

19 **"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto**
20 **which waste is applied at swine farms.**

21 (a) A swine house or a lagoon that is a component of a swine farm shall be ~~located~~
22 located:

- 23 (1) ~~at~~ At least 1,500 feet from any occupied residence;
- 24 (2) ~~at~~ At least 2,500 feet from any school, hospital, day care facility,
25 nursing home, restaurant, national or State park or forest, wildlife
26 refuge, historic area, area or facility used for outdoor recreation, or
27 church;
- 28 (3) At least 1,320 feet from any surface waters of the State;
- 29 (4) At least 1,000 feet from any property boundary for any new or enlarged
30 swine farm with a design capacity of at least 500,000 pounds steady
31 state live weight;
- 32 (5) At least 1,500 feet from any property boundary for any new or enlarged
33 swine farm with a design capacity of more than 1,000,000 pounds
34 steady state live weight;
- 35 (6) ~~at~~ At least 500 feet from any property ~~boundary~~ boundary or public or
36 private drinking water supply.

37 The outer perimeter of the land area onto which waste is applied from a lagoon that is
38 a component of a swine farm shall be at least ~~50~~ 250 feet from any boundary of property
39 on which an occupied residence is located from any perennial stream or river, other than
40 an irrigation ditch or canal.

41 (b) A swine house or a lagoon that is a component of a swine farm may be located
42 closer to a ~~residence, school, hospital, church, or a property boundary~~ residence than is

1 allowed under subsection (a) of this section if written permission is given by the owner of
2 the property and recorded with the Register of Deeds.

3 **"§ 106-804. Enforcement.**

4 (a) Any person ~~owning~~ who owns property directly affected by the siting
5 requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil
6 action against a swine farmer who has violated G.S. 106-803 and may seek any one or
7 more of the following:

8 (1) Injunctive relief.

9 (2) An order enforcing the siting requirements under G.S. 106-803.

10 (3) Damages caused by the violation.

11 (b) A person is directly affected by the siting requirements of G.S. 106-803 only if
12 the person ~~owns~~ owns a facility or property located less than the siting requirements
13 specified under G.S. 106-803.

14 (1) ~~An occupied residence located less than 1,500 feet from a swine house~~
15 ~~or lagoon in violation of G.S. 106-803.~~

16 (2) ~~A school, hospital, or church located less than 2,500 feet from a swine~~
17 ~~house or lagoon in violation of G.S. 106-803.~~

18 (3) ~~Property whose boundary is located less than 500 feet from a swine~~
19 ~~house or lagoon in violation of G.S. 106-803.~~

20 (4) ~~Property on which an occupied residence is located and whose boundary~~
21 ~~is less than 50 feet from the outer perimeter of the land area onto which~~
22 ~~waste is applied from a lagoon that is a component of a swine farm in~~
23 ~~violation of G.S. 106-803.~~

24 (5) ~~Property that abuts a perennial stream or river, or on which a perennial~~
25 ~~stream or river is located, and that property and that perennial stream or~~
26 ~~river are less than 50 feet from the outer perimeter of the land area onto~~
27 ~~which waste is applied from a lagoon that is a component of a swine~~
28 ~~farm in violation of G.S. 106-803.~~

29 (c) If the court determines it is appropriate, the court may award court costs,
30 including reasonable attorneys' fees and expert witnesses' fees, to any party. ~~If a temporary~~
31 ~~restraining order or preliminary injunction is sought, the court may require the filing of a bond or~~
32 ~~equivalent security. The court shall determine the amount of the bond or security.~~

33 (d) Nothing in this section shall restrict any other right that any person may have
34 under any statute or common law to seek injunctive or other relief.

35 **"§ 106-805. Written notice of swine farms.**

36 Any person who intends to construct a swine farm whose animal waste management
37 system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General
38 Statutes shall, after completing a site evaluation and before the farm site is modified,
39 ~~attempt to notify all adjoining property owners and owners,~~ all property owners who own
40 property located across a public road, street, or highway from the swine ~~farm~~ farm, the
41 county or counties in which the farm site is located, the local health departments of that
42 person's intent to construct the swine farm. This notice shall be by certified mail sent to

1 the address on record at the property tax office in the county in which the land is located.

2 The written notice shall include all of the following:

- 3 (1) The name and address of the person intending to construct a swine farm.
- 4 (2) The type of swine farm and the design capacity of the animal waste
5 management system.
- 6 (3) The name and address of the technical specialist preparing the waste
7 management plan.
- 8 (4) The address of the local Soil and Water Conservation District office.
- 9 (5) Information informing the ~~adjoining property owners and the property~~
10 ~~owners who own property located across a public road, street, or~~
11 ~~highway from the swine farm recipients of the notice~~ that they may
12 submit written comments to the Division of Water Quality, Department
13 of Environment, Health, and Natural Resources.

14 Also this person shall cause a copy of the written notice to be published at least one time
15 in a newspaper having general circulation in the county or counties in which the proposed
16 farm site is located.

17 Prior to issuing a permit for an intensive swine operation, the Department shall
18 conduct a public hearing at the applicant's expense if the Department receives at least 20
19 written requests for the public hearing."

20 Section 2. G.S. 143-215.10C(b) reads as rewritten:

21 "(b) An animal waste management system shall be designed, constructed, and
22 operated so that the animal operation served by the animal waste management system
23 does not cause pollution in the waters of the State except as may result because of rainfall
24 from a storm event more severe than the 25-year, 24-hour storm. No animal waste
25 management system for which a permit is required under this section shall be constructed
26 on land classified as wetlands. No component of a liquid animal waste management
27 system for which a permit is required under this section, other than a land application
28 site, shall be constructed on land that is located within the 100-year floodplain."

29 Section 3. G.S. 153A-340 reads as rewritten:

30 "**§ 153A-340. Grant of power.**

31 (a) For the purpose of promoting health, safety, morals, or the general welfare, a
32 county may regulate and restrict the height, number of stories and size of buildings and
33 other structures, the percentage of lots that may be occupied, the size of yards, courts and
34 other open spaces, the density of population, and the location and use of buildings,
35 structures, and land for trade, industry, residence, or other purposes, and to provide
36 density credits or severable development rights for dedicated rights-of-way pursuant to
37 G.S. 136-66.10 or G.S. 136-66.11.

38 (b) These regulations may not affect bona fide farms, but any use of farm property
39 for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the
40 production and activities relating or incidental to the production of crops, fruits,
41 vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms
42 of agricultural products having a domestic or foreign market. These regulations may

1 apply to swine operations subject to permits under G.S. 143-215.10C. Such swine
2 operations are not bona fide farms within the meaning of this section.

3 (c) The regulations may provide that a board of adjustment may determine and
4 vary their application in harmony with their general purpose and intent and in accordance
5 with general or specific rules therein contained. The regulations may also provide that
6 the board of adjustment or the board of commissioners may issue special use permits or
7 conditional use permits in the classes of cases or situations and in accordance with the
8 principles, conditions, safeguards, and procedures specified therein and may impose
9 reasonable and appropriate conditions and safeguards upon these permits. Where
10 appropriate, the conditions may include requirements that street and utility rights-of-way
11 be dedicated to the public and that recreational space be provided. When issuing or
12 denying special use permits or conditional use permits, the board of commissioners shall
13 follow the procedures for boards of adjustment except that no vote greater than a majority
14 vote shall be required for the board of commissioners to issue such permits, and every
15 such decision of the board of commissioners shall be subject to review by the superior
16 court by proceedings in the nature of certiorari.

17 (d) A county may regulate the development over estuarine waters and over lands
18 covered by navigable waters owned by the State pursuant to G.S. 146-12, within the
19 bounds of that county.

20 (e) For the purpose of this section, the term 'structures' shall include floating
21 homes.

22 (f) Any petition for review by the superior court shall be filed with the clerk of
23 superior court within 30 days after the decision of the board of commissioners is filed in
24 such office as the ordinance specifies, or after a written copy thereof is delivered to every
25 aggrieved party who has filed a written request for such copy with the clerk at the time of
26 the hearing of the case, whichever is later. The decision of the board of commissioners
27 may be delivered to the aggrieved party either by personal service or by registered mail
28 or certified mail return receipt requested."

29 Section 4. Part 1A of Article 21 of Chapter 143 of the General Statutes is
30 amended by adding a new section to read:

31 "**§ 143-215.10H. Groundwater protection and monitoring required at swine**
32 **operations.**

33 (a) Animal waste generated at a swine operation that is subject to a permit under
34 G.S. 143-215.10C shall not be applied onto land when the water table underlying the land
35 is within five feet of the surface.

36 (b) A swine operation that is subject to a permit under G.S. 143-215.10C shall
37 install at least one up-gradient and two down-gradient monitoring wells at a depth
38 determined appropriate by the Department as a condition of obtaining the permit under
39 G.S 143-215.10C. Each monitoring well must be tested semiannually for the presence of
40 contaminants associated with the production of livestock, including nitrogen, copper,
41 zinc, phosphorus, and fecal coliform. If tests detect an increase in the presence of these
42 contaminants above background levels, the owner or operator of the swine operation shall

1 notify the owners and residents of adjoining property. The Department shall require
2 appropriate remediation at the expense of the owner of the swine operation."

3 Section 5. A zoning regulation applicable to swine operations under Section 3
4 of this act that is adopted by a board of county commissioners prior to the date that
5 Section 3 of this act becomes effective is retroactively validated.

6 Section 6. This act is effective when it becomes law. In addition, the
7 provisions of this act applicable to intensive swine operations as defined in G.S. 106-802,
8 as amended by Section 1 of this act, apply January 1, 1997, notwithstanding Section 24 of
9 Chapter 626 of the 1995 (1996 Regular Session) Session Laws.