

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 944

Short Title: Zoning/Siting Swine Farms.

(Public)

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Sponsors: Representative H. Hunter.

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Referred to: Rules, Calendar and Operations of the House.

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April 15, 1997

A BILL TO BE ENTITLED

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2 AN ACT TO AMEND, FOR THE PURPOSE OF PROTECTING THE HEALTH,  
3 SAFETY, AND WELFARE OF COUNTY CITIZENS, THE ZONING LAWS IN  
4 ORDER TO CLARIFY THE AUTHORITY OF COUNTIES TO REGULATE  
5 SWINE OPERATIONS BY ORDINANCE AND TO IMPROVE THE SWINE  
6 FARM SITING ACT WITH RESPECT TO THE NOTICE REQUIREMENTS AND  
7 THE SITING LIMIT FROM AN OCCUPIED RESIDENCE.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 153A-340 reads as rewritten:

10 "**§ 153A-340. Grant of power.**

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

18 (b) These regulations may not affect bona fide farms, but any use of farm property  
19 for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the  
20 production and activities relating or incidental to the production of crops, fruits,

1 vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms  
2 of agricultural products having a domestic or foreign market. These regulations may  
3 apply to swine operations subject to permits under G.S. 143-215.10C. These swine  
4 operations are not bona fide farms within the meaning of this section.

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

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

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

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

31 (g) Any regulations adopted under this section that affect a swine operation subject  
32 to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes shall not  
33 be considered a governmental taking, an action of eminent domain, or a condemnation.  
34 No person affected by any such regulations shall be entitled to compensation pursuant to  
35 Chapter 40A of the General Statutes."

36 Section 2. G.S. 130A-39 is amended by adding a new subsection to read:

37 "(h) Any rules adopted by a local board of health under this section that affect a  
38 swine operation subject to a permit under Part 1A of Article 21 of Chapter 143 of the  
39 General Statutes shall not be considered a governmental taking, an action of eminent  
40 domain, or a condemnation. No person affected by any such rules shall be entitled to  
41 compensation pursuant to Chapter 40A of the General Statutes."

42 Section 3. G.S. 106-805 reads as rewritten:

43 "**§ 106-805. Written notice of swine farms.**

1 Any person who intends to construct a swine farm whose animal waste management  
2 system is subject to a permit under Part 1A of Article 21 of Chapter 143 of the General  
3 Statutes shall, after completing a site evaluation and before the farm site is modified,  
4 attempt to notify all adjoining property owners and all property owners who own  
5 property located across a public road, street, or highway from the swine farm of that  
6 person's intent to construct the swine farm. This notice shall be by certified mail sent to  
7 the address on record at the property tax office in the county in which the land is located.

8 The written notice shall include all of the following:

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

20 Also this person shall cause a copy of the written notice to be published once a week  
21 for three successive weeks in a newspaper that is qualified for legal advertising in  
22 accordance with G.S. 1-597 and G.S. 1-598 and that is circulated in the county or  
23 counties in which the proposed swine farm is located."

24 Section 4. G.S. 106-803(a) reads as rewritten:

25 "(a) A swine house or a lagoon that is a component of a swine farm shall be located  
26 at least ~~1,500~~2,500 feet from any occupied residence; at least 2,500 feet from any school,  
27 hospital, or church; and at least 500 feet from any property boundary. The outer  
28 perimeter of the land area onto which waste is applied from a lagoon that is a component  
29 of a swine farm shall be at least 50 feet from any boundary of property on which an  
30 occupied residence is located and from any perennial stream or river, other than an  
31 irrigation ditch or canal.

32 (b) A swine house or a lagoon that is a component of a swine farm may be located  
33 closer to a residence, school, hospital, church, or a property boundary than is allowed  
34 under subsection (a) of this section if written permission is given by the owner of the  
35 property and recorded with the Register of Deeds."

36 Section 5. G.S. 106-804(b) reads as rewritten:

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

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

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

- 1           (3)   Property whose boundary is located less than 500 feet from a swine  
2           house or lagoon in violation of G.S. 106-803.
- 3           (4)   Property on which an occupied residence is located and whose boundary  
4           is less than 50 feet from the outer perimeter of the land area onto which  
5           waste is applied from a lagoon that is a component of a swine farm in  
6           violation of G.S. 106-803.
- 7           (5)   Property that abuts a perennial stream or river, or on which a perennial  
8           stream or river is located, and that property and that perennial stream or  
9           river are less than 50 feet from the outer perimeter of the land area onto  
10          which waste is applied from a lagoon that is a component of a swine  
11          farm in violation of G.S. 106-803."

12           Section 6. A zoning regulation that is applicable to swine operations under  
13          G.S. 153A-340, as amended by Section 1 of this act, and that is adopted by a board of  
14          county commissioners prior to the date that Section 1 of this act becomes effective is  
15          retroactively validated.

16           Section 7. This act is effective when it becomes law. Section 4 of this act  
17          applies to new construction and expansions for which a site evaluation is conducted on or  
18          after that date.