

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1156**

Short Title: Extend Swine Farm Moratoria-3.

(Public)

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Sponsors: Representative Hackney.

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Referred to: Environment and Natural Resources.

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April 12, 2001

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE MORATORIA ON CONSTRUCTION OR EXPANSION  
2 OF SWINE FARMS.  
3

4 Whereas, the 1997 General Assembly established moratoria on the  
5 construction or expansion of certain swine farms and on lagoons and animal waste  
6 management systems for certain swine farms; and

7 Whereas, among the purposes of these moratoria were to allow completion of  
8 certain studies related to swine farms and animal waste management systems; and

9 Whereas, the 1998 General Assembly extended these moratoria and  
10 established exceptions for animal waste management systems that meet certain  
11 performance standards; and

12 Whereas, the 1999 General Assembly further extended the moratoria so that  
13 moratoria have remained in effect continuously since 1 March 1997; and

14 Whereas, it appears that additional research and study is needed to identify  
15 and develop animal waste technologies that meet the performance standards established  
16 by the General Assembly; and

17 Whereas, on 25 July 2000, the Attorney General of North Carolina entered  
18 into an agreement with Smithfield Foods, Incorporated, and certain other companies;  
19 and

20 Whereas, this agreement commits those companies to work cooperatively to  
21 develop and implement animal waste management technologies that meet the  
22 performance standards established by the General Assembly; and

23 Whereas, the companies that are parties to this agreement constitute a  
24 significant portion of the swine production capacity of the State; and

25 Whereas, the companies that are parties to this agreement have agreed to  
26 provide substantial resources to assist the State in the development and implementation  
27 of animal waste management technologies that meet the performance standards  
28 established by the General Assembly; Now, therefore,

1 The General Assembly of North Carolina enacts:

2 **SECTION 1.** Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L.  
3 1998-188 and Section 2.1 of S.L. 1999-329, reads as rewritten:

4 "Section 1.1. (a) Moratorium Established. – As used in this section:

5 (1) 'Swine farm' and 'lagoon' have the same meaning as in G.S. 106-802.

6 (2) 'Animal waste management system' has the same meaning as in G.S.  
7 143-215.10B.

8 (3) 'Anaerobic lagoon' means a lagoon that treats waste by converting it  
9 into carbon dioxide, methane, ammonia, and other gaseous  
10 compounds; organic acids; and cell tissue through an anaerobic  
11 process.

12 (4) 'Anaerobic process' means a biological treatment process that occurs in  
13 the absence of dissolved oxygen.

14 (a1) There is hereby established a moratorium on the construction or expansion of  
15 swine farms and on lagoons and animal waste management systems for swine farms.  
16 The purposes of this moratorium are to allow counties time to adopt zoning ordinances  
17 under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the  
18 completion of the studies authorized by the 1995 General Assembly (1996 Second Extra  
19 Session); and to allow the 1999 General Assembly to receive and act on the findings  
20 and recommendations of those studies. Except as provided in subsection (b) of this  
21 section, the Environmental Management Commission shall not issue a permit for an  
22 animal waste management system for a new swine farm or the expansion of an existing  
23 swine farm for a period beginning on 1 March 1997 and ending on ~~1 July 2001.~~  
24 1 September 2003. The construction or expansion of a swine farm or animal waste  
25 management system for a swine farm is prohibited during the period of the moratorium  
26 regardless of the date on which a site evaluation for the swine farm is completed and  
27 regardless of whether the animal waste management system is permitted under G.S.  
28 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed  
29 permitted under 15A North Carolina Administrative Code 2H.0217.

30 (b) Exceptions. – The moratorium established by subsection (a1) of this section  
31 does not prohibit:

32 (1) Construction to repair a component of an existing swine farm or  
33 lagoon.

34 (2) Construction to replace a component of an existing swine farm or  
35 lagoon if the replacement does not result in an increase in swine  
36 population, except as provided in subdivision (3) (7), or (8) of this  
37 subsection.

38 (3) Construction or expansion for the purpose of increasing the swine  
39 population to the projected population or to the population that the  
40 animal waste management system serving that swine farm is designed  
41 to accommodate, as set forth in a certified animal waste management  
42 plan filed with the Department of Environment, Health, and Natural  
43 Resources prior to 1 March 1997.

- 1 (4) Construction or expansion for the purpose of complying with  
2 applicable animal waste management rules and not for the purpose of  
3 increasing the swine population.
- 4 (5) Construction or expansion, if the person undertaking the construction  
5 or expansion of the swine farm, lagoon, or animal waste management  
6 system has been issued a permit for that construction or expansion  
7 under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the  
8 General Statutes prior to the date this act becomes effective.
- 9 (6) Construction or expansion, if the person undertaking the construction  
10 or expansion of the swine farm, lagoon, or animal waste management  
11 system has, prior to 1 March 1997, either:
- 12 a. Laid a foundation for a component of the swine farm, lagoon, or  
13 animal waste management system.
- 14 b. Entered into a bona fide written contract for the construction or  
15 expansion of the swine farm, lagoon, or animal waste  
16 management system.
- 17 c. Been approved for a loan or line of credit to finance the  
18 construction or expansion of the swine farm, lagoon, or animal  
19 waste management system and has obligated or expended funds  
20 derived from the loan or line of credit.
- 21 (7) Construction or expansion of an animal waste management system that  
22 does not employ an anaerobic lagoon as the primary method of  
23 treatment, does not employ land application of waste except by  
24 injection into soil or by surface application if the injection or surface  
25 application meets the requirements of sub-subdivisions a. through e. of  
26 this subdivision, and is designed to be the subject of a research project.  
27 The Environmental Management Commission shall issue a permit for  
28 the construction or expansion of an animal waste management system  
29 under this subdivision only if the Commission determines, after  
30 consultation with the Animal and Poultry Waste Management Center  
31 of North Carolina State University, that additional research is  
32 necessary to evaluate whether the animal waste treatment system will:
- 33 a. Eliminate the discharge of animal waste to surface waters and  
34 groundwater through direct discharge, seepage, or runoff.
- 35 b. Substantially eliminate atmospheric emissions of ammonia.
- 36 c. Substantially eliminate the emission of odor that is detectable  
37 beyond the boundaries of the parcel or tract of land on which  
38 the swine farm is located.
- 39 d. Substantially eliminate the release of disease-transmitting  
40 vectors and airborne pathogens.
- 41 e. Substantially eliminate nutrient and heavy metal contamination  
42 of soil and groundwater.
- 43 (8) Construction or expansion of an animal waste management system that  
44 does not employ an anaerobic lagoon as the primary method of

1 treatment and does not employ land application of waste except by  
2 injection into soil or by surface application if the injection or surface  
3 application meets the requirements of sub-subdivisions a. through e. of  
4 this subdivision. The Environmental Management Commission may  
5 issue permits under this subdivision only in a manner consistent with  
6 G.S. 143-215.1(b)(2). The Commission shall issue a permit for the  
7 construction or expansion of an animal waste management system  
8 under this subdivision only if the Commission determines, after  
9 consultation with the Animal and Poultry Waste Management Center  
10 of North Carolina State University, that the animal waste management  
11 system has been in use on a swine farm with climatic conditions and  
12 soil characteristics that are similar to those that will be encountered at  
13 the proposed site of the swine farm for at least a year, that the animal  
14 waste management system has been evaluated for at least a year, and  
15 that sufficient data exists to establish that the animal waste  
16 management system will:

- 17 a. Eliminate the discharge of animal waste to surface waters and  
18 groundwater through direct discharge, seepage, or runoff.
- 19 b. Substantially eliminate atmospheric emissions of ammonia.
- 20 c. Substantially eliminate the emission of odor that is detectable  
21 beyond the boundaries of the parcel or tract of land on which  
22 the swine farm is located.
- 23 d. Substantially eliminate the release of disease-transmitting  
24 vectors and airborne pathogens.
- 25 e. Substantially eliminate nutrient and heavy metal contamination  
26 of soil and groundwater.

27 (c) Establishing Eligibility for an Exemption. – It shall be the responsibility of an  
28 applicant for a permit for an animal waste management system for a new swine farm or  
29 for the expansion of an existing swine farm under subdivisions (1) through (8) of  
30 subsection (b) of this section to provide information and documentation to the  
31 Department of Environment, Health, and Natural Resources that establishes, to the  
32 satisfaction of the Department, that the applicant is eligible for the permit. In  
33 demonstrating eligibility for a permit under this section, the burden of proof shall be on  
34 the applicant.

35 (d) Rule Making Not Required; Administrative and Judicial Review. –  
36 Notwithstanding the provisions of Article 2A of Chapter 150B of the General Statutes,  
37 this section shall not be construed to obligate the Commission or the Department to  
38 adopt a temporary or permanent rule to implement this section. The Commission and  
39 the Department shall implement the provisions of this section by evaluating each  
40 application for a permit for an animal waste management system on a case-by-case  
41 basis. A decision of the Commission or the Department under this section is subject to  
42 administrative and judicial review as provided in Articles 3 and 4 of Chapter 150B of  
43 the General Statutes."

1           **SECTION 2.** Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L.  
2 1998-188 and Section 2.2 of S.L. 1999-329, reads as rewritten:

3           "Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same  
4 meaning as in G.S. 106-802. As used in this section, 'animal waste management system'  
5 has the same meaning as in G.S. 143-215.10B. There is hereby established a  
6 moratorium for any new or expanding swine farm or lagoon for which a permit is  
7 required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any  
8 county in the State: (i) that has a population of less than 75,000 according to the most  
9 recent decennial federal census; (ii) in which there is more than one hundred fifty  
10 million dollars (\$150,000,000) of expenditures for travel and tourism based on the most  
11 recent figures of the Department of Commerce; and (iii) that is not in the coastal area as  
12 defined by G.S. 113A-103. Effective 1 January 1997, until ~~1 July 2001~~, 1 September  
13 2003, the Environmental Management Commission shall not issue a permit for an  
14 animal waste management system, as defined in G.S. 143-215.10B, or for a new or  
15 expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in  
16 subsection (b) of Section 1.1 of this act do not apply to the moratorium established  
17 under this section.

18           (b) In order to protect travel and tourism, effective ~~1 July 2001~~, 1 September  
19 2003, no animal waste management system shall be permitted except under an  
20 individual permit issued under Part 1 of Article 21 of Chapter 143 of the General  
21 Statutes in any county in the State: (i) that has a population of less than 75,000  
22 according to the most recent decennial federal census; (ii) in which there is more than  
23 one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism  
24 based on the most recent figures of the Department of Commerce; and (iii) that is not in  
25 the coastal area as defined by G.S. 113A-103."

26           **SECTION 3.** If any section or provision of this act is declared  
27 unconstitutional or invalid by the courts, the unconstitutional or invalid section or  
28 provision does not affect the validity of this act as a whole or any part of this act other  
29 than the part declared to be unconstitutional or invalid.

30           **SECTION 4.** This act is effective when it becomes law.