

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1312
Committee Substitute Favorable 4/24/01
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 6/21/01**

Short Title: Extend Swine Moratoria/Animal Waste Amends.

(Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO EXTEND THE MORATORIA ON CONSTRUCTION OR EXPANSION
3 OF SWINE FARMS, TO PROVIDE FOR THE ISSUANCE OF GENERAL
4 PERMITS FOR ANIMAL WASTE MANAGEMENT SYSTEMS UNDER
5 ARTICLE 21 OF CHAPTER 143 OF THE GENERAL STATUTES AND THE
6 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES),
7 TO EXTEND THE PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE
8 MANAGEMENT SYSTEMS, TO AUTHORIZE THE LEGISLATIVE
9 RESEARCH COMMISSION TO STUDY FUNDING OPTIONS TO IMPROVE
10 ANIMAL WASTE MANAGEMENT SYSTEMS, AND TO DIRECT THE
11 DEPARTMENT OF COMMERCE TO DEVELOP A PLAN TO IDENTIFY AND
12 DEVELOP MARKETS FOR BY-PRODUCTS OF ANIMAL WASTE
13 MANAGEMENT SYSTEMS.

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

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

19 Whereas, the 1998 General Assembly extended these moratoria and
20 established exceptions for animal waste management systems that meet certain
21 performance standards; and

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

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

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

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

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

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

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** Subsection (a1) of Section 1.1 of S.L. 1997-458, as amended
15 by Section 2 of S.L. 1998-188 and Section 2.1 of S.L. 1999-329, reads as rewritten:

16 "(a1) There is hereby established a moratorium on the construction or expansion of
17 swine farms and on lagoons and animal waste management systems for swine farms.
18 The purposes of this moratorium are to allow counties time to adopt zoning ordinances
19 under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the
20 completion of the studies authorized by the 1995 General Assembly (1996 Second Extra
21 Session); and to allow the 1999 General Assembly to receive and act on the findings
22 and recommendations of those studies. Except as provided in subsection (b) of this
23 section, the Environmental Management Commission shall not issue a permit for an
24 animal waste management system for a new swine farm or the expansion of an existing
25 swine farm for a period beginning on 1 March 1997 and ending on ~~1 July 2001.~~
26 September 2003. The construction or expansion of a swine farm or animal waste
27 management system for a swine farm is prohibited during the period of the moratorium
28 regardless of the date on which a site evaluation for the swine farm is completed and
29 regardless of whether the animal waste management system is permitted under G.S.
30 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed
31 permitted under 15A North Carolina Administrative Code 2H.0217."

32 **SECTION 2.** Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L.
33 1998-188 and Section 2.2 of S.L. 1999-329, reads as rewritten:

34 "Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same
35 meaning as in G.S. 106-802. As used in this section, 'animal waste management system'
36 has the same meaning as in G.S. 143-215.10B. There is hereby established a
37 moratorium for any new or expanding swine farm or lagoon for which a permit is
38 required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any
39 county in the State: (i) that has a population of less than 75,000 according to the most
40 recent decennial federal census; (ii) in which there is more than one hundred fifty
41 million dollars (\$150,000,000) of expenditures for travel and tourism based on the most
42 recent figures of the Department of Commerce; and (iii) that is not in the coastal area as

1 defined by G.S. 113A-103. Effective 1 January 1997, until ~~1 July 2001~~, 1 September
2 2003, the Environmental Management Commission shall not issue a permit for an
3 animal waste management system, as defined in G.S. 143-215.10B, or for a new or
4 expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in
5 subsection (b) of Section 1.1 of this act do not apply to the moratorium established
6 under this section.

7 (b) In order to protect travel and tourism, effective ~~1 July 2001~~, 1 September
8 2003, no animal waste management system shall be permitted except under an
9 individual permit issued under Part 1 of Article 21 of Chapter 143 of the General
10 Statutes in any county in the State: (i) that has a population of less than 75,000
11 according to the most recent decennial federal census; (ii) in which there is more than
12 one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism
13 based on the most recent figures of the Department of Commerce; and (iii) that is not in
14 the coastal area as defined by G.S. 113A-103."

15 **SECTION 3.** G.S. 143-215.10C(a) reads as rewritten:

16 "(a) No person shall construct or operate an animal waste management system for
17 an animal operation without first obtaining an individual permit ~~under Part 1 of this~~
18 ~~Article~~ or a general permit under this ~~Part~~. Article. The Commission shall develop a
19 system of individual and general permits for animal operations based on species,
20 number of animals, and other relevant factors. It is the intent of the General Assembly
21 that most animal waste management systems be permitted under a general ~~permit issued~~
22 ~~under this Part~~. permit. The Commission, in its discretion, may require that an animal
23 waste management system be permitted under an individual permit ~~issued under Part 1~~
24 ~~of this Article~~ if the Commission determines that an individual permit is necessary to
25 protect water quality, public health, or the environment."

26 **SECTION 4.** G.S. 143-215.10C(c) reads as rewritten:

27 "(c) The Commission shall act on a permit application as quickly as possible and
28 may conduct any inquiry or investigation it considers necessary before acting on an
29 application. ~~If the Commission fails to act on an application for a permit, including a~~
30 ~~renewal of a permit, within 90 days after the applicant submits all information required~~
31 ~~by the Commission, the application is considered to be approved."~~

32 **SECTION 5.** Section 15.4(a) of S.L. 1997-443, as amended by Section 3.1
33 of S.L. 1999-329, reads as rewritten:

34 "(a) The Department of Environment and Natural Resources shall develop and
35 implement a pilot program to begin no later than ~~November 1, 1997~~, 1 November 1997,
36 and to terminate ~~1 July 2001~~, 1 September 2002, regarding the annual inspections of
37 animal operations that are subject to a permit under ~~Part 1A of Article 21 of Chapter~~
38 143 of the General Statutes. The Department shall select two counties located in a part
39 of the State that has a high concentration of swine farms to participate in this pilot
40 program. In addition, Brunswick County shall be added to the program.
41 Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the
42 Department of Environment and Natural Resources shall conduct inspections of all

1 animal operations that are subject to a permit under ~~Part 1A of~~ Article 21 of Chapter
2 143 of the General Statutes in these three counties at least once a year to determine
3 whether any animal waste management system is causing a violation of water quality
4 standards and whether the system is in compliance with its animal waste management
5 plan or any other condition of the permit. The personnel of the Division of Soil and
6 Water Conservation who are to conduct these inspections in each of these three counties
7 shall be located in an office in the county in which that person will be conducting
8 inspections. As part of this pilot program, the Department of Environment and Natural
9 Resources shall establish procedures whereby resources within the local Soil and Water
10 Conservation Districts serving the three counties are used for the quick response to
11 complaints and reported problems previously referred only to the Division of Water
12 Quality of the Department of Environment and Natural Resources."

13 **SECTION 6.** Section 3.3 of S.L. 1999-329 reads as rewritten:

14 "Section 3.3. The Department of Environment and Natural Resources, in
15 consultation with both the Division of Water Quality and the Division of Soil and Water
16 Conservation, shall submit interim reports no later than 15 October 1999, 15 April 2000,
17 15 October 2000, 15 April 2001, 15 October 2001, and 15 April 2002 and shall submit a
18 final report no later than ~~15 July 2001~~ 15 October 2002 to the Environmental Review
19 Commission and to the Fiscal Research Division. These reports shall indicate whether
20 the pilot program has increased the effectiveness of the annual inspections program or
21 the response to complaints and reported problems, specifically whether the pilot
22 program had resulted in identifying violations earlier, taking corrective actions earlier,
23 increasing compliance with the animal waste management plans and permit conditions,
24 improving the time to respond to discharges, complaints, and reported problems,
25 improving communications between farmers and Department employees, and any other
26 consequences deemed pertinent by the Department. The final report shall include a
27 recommendation as to whether to continue or expand the pilot program under this act.
28 The Environmental Review Commission may recommend to the ~~2001~~2003 General
29 Assembly whether to continue or expand the pilot program under this act and may make
30 any related legislative proposals."

31 **SECTION 7.** The Legislative Research Commission may study ways to fund
32 improvements in animal waste management systems. This study shall consider all of the
33 following issues and any other issues the committee determines are relevant to its main
34 charge:

- 35 (1) How to fund the implementation of innovative animal waste
36 management systems and animal waste management systems that have
37 fewer or less severe environmental impacts than the most widely used
38 animal waste management systems.
- 39 (2) How to fund the closure of inactive animal waste lagoons that present
40 a threat to public health or the environment.

1 (3) How to fund the remediation of groundwater contamination, including
2 providing alternative water supplies, if any drinking water wells are
3 found to be contaminated.

4 (4) How to fund the remediation of other environmental damage directly
5 related to animal waste management systems or animal operations.

6 **SECTION 8.** The Department of Commerce, in consultation with the
7 Department of Agriculture and Consumer Services, the Department of Environment and
8 Natural Resources, the Department of Transportation, and the North Carolina Utilities
9 Commission shall develop a plan to identify and develop markets for by-products of
10 animal waste management systems. The Department of Commerce shall present the
11 completed plan to the Environmental Review Commission no later than 1 May 2002.

12 **SECTION 9.** If any section or provision of this act is declared
13 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
14 provision does not affect the validity of this act as a whole or any part of this act other
15 than the part declared to be unconstitutional or invalid.

16 **SECTION 10.** This act becomes effective 30 June 2001.