

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 822*
Committee Substitute Favorable 5/10/07
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 7/8/08

Short Title: Swine Farm Siting Act Amends.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH CERTAIN EXCEPTIONS TO THE SETBACK
3 REQUIREMENTS OF THE SWINE FARM SITING ACT, TO PROVIDE FOR A
4 VARIANCE FROM THE SETBACK REQUIREMENTS IN CERTAIN
5 CIRCUMSTANCES, AND TO PROVIDE FOR ENFORCEMENT OF THE
6 SWINE FARM SITING ACT.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 106-802 reads as rewritten:

9 **"§ 106-802. Definitions.**

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

11 (0a) "Gestation pen" means an enclosure designed to confine more than one
12 sow during the time the sows are pregnant.

13 (0b) "Gestation stall" means an enclosure designed to confine one sow
14 during the time of its pregnancy.

15 (1) "Lagoon" means a confined body of water to hold animal byproducts
16 including bodily waste from animals or a mixture of waste with feed,
17 bedding, litter or other agricultural materials.

18 (2) Repealed by Session Laws 1995 (Regular Session, 1996), c. 626, s. 7.

19 (3) "Occupied residence" means a dwelling actually inhabited by a person
20 on a continuous basis as exemplified by a person living in his or her
21 home.

22 (3a) "Outdoor recreational facility" means any plot or tract of land on
23 which there is located an outdoor swimming pool, tennis court, or golf
24 course that is open to either the general public or to the members and
25 guests of any organization having 50 or more members.

26 (4) "Site evaluation" means an investigation to determine if a site meets all
27 federal and State standards as evidenced by the Waste Management

1 Facility Site Evaluation Report on file with the Soil and Water
2 Conservation District office or a comparable report certified by a
3 professional engineer or a comparable report certified by a technical
4 specialist approved by the North Carolina Soil and Water Conservation
5 Commission.

6 (5) "Swine farm" means a tract of land devoted to raising 250 or more
7 animals of the porcine species.

8 (6) "Swine house" means a building that shelters porcine animals on a
9 continuous basis."

10 **SECTION 2.** G.S. 106-803 reads as rewritten:

11 **"§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto**
12 **which waste is applied at swine ~~farms~~.farms; exceptions; variances; and**
13 **enforcement.**

14 (a) Swine House and Lagoon Setbacks. – A swine house or a lagoon that is a
15 component of a swine farm shall be located:

16 (1) At least 1,500 feet from any occupied residence.

17 (2) At least 2,500 feet from any school; hospital; church; outdoor
18 recreational facility; national park; State Park, as defined in
19 G.S. 113-44.9; historic property acquired by the State pursuant to
20 G.S. 121-9 or listed in the North Carolina Register of Historic Places
21 pursuant to G.S. 121-4.1; or child care center, as defined in
22 G.S. 110-86, that is licensed under Article 7 of Chapter 110 of the
23 General Statutes.

24 (3) At least 500 feet from any property boundary.

25 (4) At least 500 feet from any well supplying water to a public water
26 system, as defined in G.S. 130A-313.

27 (5) At least 500 feet from any other well that supplies water for human
28 consumption. This subdivision does not apply to a well located on the
29 same parcel or tract of land on which the swine house or lagoon is
30 located and that supplies water only for use on that parcel or tract of
31 land or for use on adjacent parcels or tracts of land all of which are
32 under common ownership or control.

33 (a1) Sprayfield Setbacks. – The outer perimeter of the land area onto which waste
34 is applied from a lagoon that is a component of a swine farm shall be at least 75 feet
35 from any boundary of property on which an occupied residence is located and from any
36 perennial stream or river, other than an irrigation ditch or canal.

37 (a2) Animal Waste Management System Setbacks. – No component of a liquid
38 animal waste management system for which a permit is required under Part 1 or 1A of
39 Article 21 of Chapter 143 of the General Statutes, other than a land application site,
40 shall be constructed on land that is located within the 100-year floodplain.

41 (b) Exception to Setbacks Permitted by Permission. – A swine house or a lagoon
42 that is a component of a swine farm may be located closer to a residence, school,
43 hospital, church, or a property boundary than is allowed under subsection (a) of this

1 section if written permission is given by the owner of the property and recorded with the
2 Register of Deeds.

3 (c) Exception to Certain Setbacks if Swine House is Destroyed by Fire or an Act
4 of God. – Notwithstanding the setback requirements set out in subsection (a) of this
5 section, the owner or operator of a swine house that has been destroyed or damaged by
6 fire or an act of God may construct a new swine house on the same site if all of the
7 following apply:

8 (1) The cost of repairing or rebuilding the swine house is greater than
9 thirty-three percent (33%) of the insurance value of the swine house
10 prior to the fire or act of God.

11 (2) The destroyed or damaged swine house was constructed or under
12 construction prior to 11 July 1995.

13 (3) The construction of the swine house will not result in an increase in the
14 permitted capacity, stated as steady state live weight, of the animal
15 waste management system serving the swine house.

16 (4) No part of the new swine house is located in a 100-year floodplain.

17 (5) The owner or operator who constructs the swine house has operated
18 and maintained all animal waste management systems for which it is
19 permitted in substantial compliance with the permits and all applicable
20 federal and State laws, regulations, and rules.

21 (6) The swine house will not be enlarged beyond its original dimensions.

22 (7) It is impractical to replace the swine house in compliance with the
23 setback requirements set out in subsection (a) of this section.

24 (8) The swine house will be rebuilt so as to comply with the setback
25 requirements set out in subsection (a) of this section to the maximum
26 extent practicable.

27 (d) Exception to Certain Setbacks for Gestation Pens. – Notwithstanding the
28 setback requirements set out in subsection (a) of this section, the owner or operator of a
29 swine house may alter that swine house, construct a new swine house, or both in order
30 to convert gestation stalls in a swine house to gestation pens so as to increase the space
31 available to gestating sows and to allow the sows to move about the gestation pen if all
32 of the following apply:

33 (1) The swine house was constructed or under construction prior to 11
34 July 1995.

35 (2) The alteration or construction of the swine house will not result in an
36 increase in the permitted capacity, stated as steady state live weight, of
37 the animal waste management system serving the swine house.

38 (3) No part of the swine house, any alteration of the swine house, or any
39 new swine house is or will be located in the 100-year floodplain.

40 (4) The owner or operator who alters or constructs the swine house has
41 operated and maintained all animal waste management systems for
42 which it is permitted in substantial compliance with the permits and all
43 applicable federal and State laws, regulations, and rules.

- 1 (5) Alteration or construction of the swine house in compliance with the
2 requirements of subsection (a) of this section is impracticable.
- 3 (6) The alteration or construction of the swine house will not increase the
4 noncompliance at the farm with the requirements of subsection (a) of
5 this section, in that no part of the altered swine house is located closer
6 to the place, boundary, or well that is protected by a setback
7 requirement set out in subsection (a) of this section.
- 8 (7) The swine house will be altered and any new swine house will be
9 constructed so as to comply with the setback requirements set out in
10 subsection (a) of this section to the maximum extent practicable.
- 11 (e) Exception to Certain Setbacks for Adaptation to Difference Operation. –
12 Notwithstanding the setback requirements set out in subsection (a) of this section, the
13 owner or operator of a swine house may alter that swine house on the same site in order
14 to adapt the swine house into a different type of swine production if all of the following
15 apply:
- 16 (1) The swine house was constructed or under construction prior to 11
17 July 1995.
- 18 (2) The alteration of the swine house will not result in an increase in the
19 permitted capacity, stated as steady state live weight, of the animal
20 waste management system serving the swine house.
- 21 (3) No part of the swine house or any alteration of the swine house is or
22 will be located in the 100-year floodplain.
- 23 (4) The owner or operator who alters the swine house has operated and
24 maintained all animal waste management systems for which it is
25 permitted in substantial compliance with the permits and all applicable
26 federal and State laws, regulations, and rules.
- 27 (5) Alteration of the swine house in compliance with the requirements of
28 subsection (a) of this section is impracticable.
- 29 (6) The alteration of the swine house will not increase the noncompliance
30 at the farm with the requirements of subsection (a), in that no part of
31 the altered swine house is located closer to the place, boundary, or well
32 that is protected by a setback requirement set out in subsection (a) of
33 this section.
- 34 (7) The swine house will be altered so as to comply with the setback
35 requirements set out in subsection (a) of this section to the maximum
36 extent practicable.
- 37 (f) Variance. – If the owner or operator of a swine house cannot alter the swine
38 house, construct a new swine house, or both in order to convert gestation stalls in a
39 swine house to gestation pens without increasing the noncompliance at the farm with
40 the requirements of subdivision (1), (2), (3), or (5) of subsection (a) of this section, the
41 owner or operator may apply to the Department of Environment and Natural Resources
42 for a variance. The Department shall grant the variance only if it finds that granting the
43 variance will not increase risk to public health, safety, or welfare, or to the environment
44 and if it finds that the variance is reasonably necessary to allow the alteration or

1 construction of the swine house. The Department shall grant only the minimum variance
2 it finds necessary to allow the alteration or construction of the swine house. The
3 Department may impose any conditions on the variance that it finds necessary to protect
4 public health, safety, or welfare, or the environment.

5 (g) Enforcement. –

6 (1) The Secretary of Environment and Natural Resources may assess a
7 civil penalty of not more than ten thousand dollars (\$10,000) against
8 any person who:

9 a. Alters or constructs a swine house or lagoon in violation of a
10 setback requirement set out in this section.

11 b. Violates a condition of a variance approved by the Department
12 of subsection (f) of this section.

13 (2) Each day of a continuing violation constitutes a separate violation. The
14 amount of the civil penalty shall be based on the factors set out in
15 G.S. 143B-282.1(b). The Secretary may remit a civil penalty under the
16 factors set out in G.S. 143B-282.1(c)(1).

17 (3) The Secretary may seek injunctive relief to enforce the provisions of
18 this Part as provided in G.S. 143-215.6C.

19 (4) This subsection does not limit any other civil or injunctive remedy that
20 may be available to the Secretary or to any other person under
21 provision of law."

22 **SECTION 3.** This act is effective when it becomes law.