An Act

ENROLLED HOUSE
BILL NO. 1957

By: McNiel of the House

and

Johnson (Rob) of the Senate

An Act relating to agriculture; amending 2 O.S. 2001, Section 9-204.1, as renumbered by Section 25, Chapter 292, O.S.L. 2005, and as last amended by Section 1, Chapter 3, O.S.L. 2008 (2 O.S. Supp. 2010, Section 20-6), which relates to the Oklahoma Concentrated Animal Feeding Operations Act; requiring certain operations be licensed pursuant to the Oklahoma Swine Feeding Operations Act; amending 2 O.S. 2001, Section 9-210.3, as renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended by Section 21, Chapter 31, O.S.L. 2007 (2 O.S. Supp. 2010, Section 20-21), which relates to the Oklahoma Swine Feeding Operations Act; establishing proximity requirements for certain new swine feeding operations; directing Board of Agriculture to consider list of factors to determine if area is a camp or recreational site; stating applicability where property is owned or leased prior to establishment of swine feeding operation; repealing 82 O.S. 2001, Section 1020.11a, as last amended by Section 105, Chapter 3, O.S.L. 2003 (82 O.S. Supp. 2010, Section 1020.11a), which relates to permits for swine feeding operations; and providing an effective date.

SUBJECT: Swine feeding operations

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 2001, Section 9-204.1, as renumbered by Section 25, Chapter 292, O.S.L. 2005, and as last

amended by Section 1, Chapter 3, O.S.L. 2008 (2 O.S. Supp. 2010, Section 20-6), is amended to read as follows:

Section 20-6. A. 1. Any swine feeding operation meeting the criteria defining a concentrated swine feeding operation shall be required to obtain a license to operate pursuant to the Oklahoma Swine Feeding Operations Act and rules promulgated pursuant thereto.

2. No swine feeding operation which voluntarily obtains a license pursuant to the Oklahoma Swine Feeding Operations Act shall be considered to be a concentrated swine feeding operation unless the operation meets the definition of concentrated swine feeding operation.

3. Any new swine feeding operation established after November 1, 2011, with more than one hundred animal units shall be required to be licensed pursuant to the provisions of the Oklahoma Swine Feeding Operations Act and the rules promulgated pursuant to that act.

4. Any other swine feeding operation, regardless of the number of swine, shall only be required to be licensed pursuant to the provisions of the Oklahoma Swine Feeding Operations Act and rules promulgated pursuant thereto if the State Board of Agriculture determines the operation to be a significant contributor of pollution to waters of the state.

B. 1. Two or more swine feeding operations under common ownership are considered, for the purposes of licensure, to be a single swine feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

2. A licensed managed feeding operation shall be required to seek a modification of its license for any increase in excess of five percent (5%) of the original facility's licensed capacity.

C. ~~Expanding operations~~ An expanding operation shall be required to seek a modification of its license prior to expansion.

D. 1. The Board may make a case-by-case designation of concentrated swine feeding operations pursuant to this section. Any swine feeding operation may be designated as a concentrated swine feeding operation if it is determined to be a significant contributor of pollution to the waters of the state. In making this designation, the Board shall consider the following factors:

a. the size of the swine feeding operation and the amount of wastes reaching waters of the state,

b. the location of the swine feeding operation relative to waters of the state,

c. the means of conveyance of swine waste and wastewater into waters of the state,

d. the method of disposal for swine waste and process wastewater disposal,

e. the slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of swine wastes and process wastewaters into waters of the state, and

f. other factors relative to the significance of the pollution problem sought to be regulated.

2. In no case shall an application for a license be required from a swine feeding operation pursuant to this subsection until there has been an on-site inspection of the operation and a determination by the Oklahoma Department of Agriculture, Food, and Forestry that the operation is a concentrated swine feeding operation. Should the Department determine that the operation is a concentrated swine feeding operation, the Department shall notify the operation of the determination and of an opportunity for the owner or operator of the facility to request an administrative hearing on the issue.

3. Process wastewater in the overflow may be discharged to navigable waters whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a retention structure properly designed, constructed and operated to contain all process wastewaters plus the runoff from a twenty-five-year, twenty-four-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from a waste facility constructed and properly maintained to contain the twenty-five-year, twenty-four-hour storm event; provided, the proper design, construction and operation of the retention structure shall include but not be limited to one (1) foot of free board.

E. No new concentrated swine feeding operation or expansion of a concentrated swine feeding operation requiring a license pursuant to the Oklahoma Swine Feeding Operations Act shall be constructed or placed in operation unless final design plans, specifications and a Pollution Prevention Plan developed pursuant to Section 20-9 of this title have been approved by the Department.

F. No new licensed managed feeding operation or expanding operation shall be constructed until a building permit for such facility or expansion has been issued by the Department. No new licensed managed feeding operation or expanding operation shall be placed in operation until a license for the facility or a modification for an existing license has been issued by the Department.

G. When requesting a modification of a license, a licensed managed feeding operation shall comply with all notice and hearing requirements as specified by this section and rules promulgated by the State Board of Agriculture. In its request for a modification of a license, a licensed managed feeding operation shall provide all information specified in subsection G of Section 20-7 of this title.

H. Any hearings regarding modification of a license shall focus on the modifications being proposed by the licensed managed feeding operation.

I. A decision to deny modification of a license shall have no impact on the original license.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 9-210.3, as renumbered by Section 25, Chapter 292, O.S.L. 2005, and as amended by Section 21, Chapter 31, O.S.L. 2007 (2 O.S. Supp. 2010, Section 20-21), is amended to read as follows:

Section 20-21. A. Except as otherwise provided by Section 20-19 of ~~the Oklahoma Swine Feeding Operations Act~~ this title and subsection ~~F~~ I of this section, swine feeding operations using liquid swine waste management systems and housing swine ~~are housed~~ in roof-covered structures shall not be located within the following applicable distances from an occupied residence:

1. More than 4000 swine animal units.....2 miles;

2. 2001 to 4000 swine animal units.....1 1/4 miles;

3. 1001 to 2000 swine animal units.....3/4 mile;

4. 601 to 1000 swine animal units.....1/2 mile;

5. 300 to 600 swine animal units.....1/4 mile; and

6. Less than 300 swine animal units.....no setback.

B. Except as otherwise provided by Section 20-19 of this title and subsection I of this section, new swine feeding operations established on or after November 1, 2011, using liquid swine waste management systems and housing swine in roof-covered structures shall not be located within three (3) miles from the outside boundary of any area or facility with an average annual registered attendance of not less than two thousand (2,000) people and owned or operated as a camp or recreational site by a nonprofit organization established prior to application of the swine feeding operation.

C. Except as otherwise provided by Section 20-19 of this title and subsection I of this section, new swine feeding operations established on or after November 1, 2011, using liquid swine waste management systems and housing swine in roof-covered structures shall not be located within one (1) mile from the outside boundary of any area or facility with an average annual registered attendance of less than two thousand (2,000) people and owned or operated as a camp or recreational site by a nonprofit organization established prior to application of the swine feeding operation.

D. Except as otherwise provided by this section, no licensed managed feeding operation which applies for a new or expanding concentrated swine feeding operation license shall be located within three (3) miles of the outside boundary of any area or facility owned or operated as a camp or recreational site by a nonprofit organization established prior to application of the concentrated swine feeding operation.

E. 1. In determining whether any such area or facility is a camp or recreational site, the State Board of Agriculture shall consider:

a. whether a reasonable person, after considering the totality of the circumstances, would determine that the area or facility is predominately used for camping or recreational purposes,

b. the type of permanent structures or fixtures of a recreational nature located on the land,

c. the frequency with which the site is used for recreational purposes,

d. the types of activities which are conducted or engaged in on the site, and

e. any other factors the Board deems directly relevant to the question of whether a site is recreational in nature.

2. The setbacks contained in subsections B, C and D shall apply only if the property was owned or leased by such organization prior to the construction or establishment of the swine feeding operation.

~~C.~~ F. The setback requirements contained in subsections A, ~~and~~ B, C or D of this section shall not apply to any property owner who executes a written waiver with the owner or operator of the swine feeding operation, under such terms and conditions as are agreed to by the parties. The written waiver shall be effective upon recording of the waiver in the office of the county clerk in the county in which the property is located. The filed waiver shall preclude enforcement of the setback requirements of ~~subsections~~ subsection A ~~or~~, B, C or D of this section with regard to property described in the waiver and owned by the person executing the waiver. A change in ownership of the applicable property or change in ownership of the property on which the swine feeding operation is located shall not affect the validity of the waiver.

~~D.~~ G. No licensed managed feeding operation established after ~~the effective date of this act~~ June 10, 1998 which applies for a new or expanding license shall be located:

1. Within three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act;

2. Within three (3) miles of the outside boundary of any historic property or museum owned by the State of Oklahoma;

3. Within three (3) miles of a public drinking water well;

4. Within one (1) mile of a water body specified as Outstanding Resource Waters that has recreational or ecological significance as

outlined by the most current Water Quality Standards promulgated by the Oklahoma Water Resources Board; or

5. Within three (3) miles of a national park designated by the United States Department of the Interior National Park Service.

~~E.~~ H. All distances between occupied residences and swine feeding operations shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste facility, as determined by the Oklahoma Department of Agriculture, Food, and Forestry. The property boundary line of the real property is not used unless it coincides with the closest point of the waste facility or occupied residence.

~~F.~~ I. The provisions of this section shall not apply to any swine feeding operation which has been licensed by or which had submitted an application to the Department on or prior to March 9, 1998. In addition, the provisions of this section shall not apply to any swine feeding operation with a capacity of 2000 swine animal units or less which was established prior to June 1, 1998.

SECTION 3. REPEALER 82 O.S. 2001, Section 1020.11a, as last amended by Section 105, Chapter 3, O.S.L. 2003 (82 O.S. Supp. 2010, Section 1020.11a), is hereby repealed.

SECTION 4. This act shall become effective November 1, 2011.

Passed the House of Representatives the 4th day of May, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 26th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 5th

day of May, **20** 11,

at 12:08 **o'clock** P **M.**

By: Jessica R Bryan

Approved by the Governor of the State of Oklahoma the 10th **day of** May, **20** 11, **at** 2:54 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 11th **day of** May, **20** 11,

at 4:50 **o'clock** P **M.**

By: Michelle R Day