

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 1171 Session of  
2018

---

INTRODUCED BY BROOKS, HUTCHINSON, VULAKOVICH, WAGNER AND BROWNE,  
MAY 18, 2018

---

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 16, 2018

---

AN ACT

1 Amending Titles 3 (Agriculture) and 27 (Environmental Resources)  
2 of the Pennsylvania Consolidated Statutes, in nutrient  
3 management and odor management, further providing for the  
4 Nutrient Management Advisory Board; and, in Agricultural  
5 Advisory Board, further providing for establishment of board, <--  
6 FOR POWERS OF BOARD AND FOR REVIEW OF REGULATIONS.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 510(a) and (d) of Title 3 of the  
10 Pennsylvania Consolidated Statutes are amended to read:

11 § 510. Nutrient Management Advisory Board.

12 (a) Creation.--There is created the Nutrient Management  
13 Advisory Board. The board shall consist of 16 members appointed  
14 by the chairman of the commission and approved by a two-thirds  
15 vote of the commission. The members so appointed shall consist  
16 of [five] six active commercial farm owners or operators  
17 representing the livestock, swine, meat poultry, egg poultry and  
18 dairy industry nominated by Statewide general farm

1 organizations, one veterinary nutrition specialist, one  
2 representative from the feed industry, one representative from  
3 the fertilizer industry, [one representative of commercial  
4 agricultural lenders,] one representative of local government,  
5 one representative of academia who shall be an agronomist or  
6 plant scientist faculty member of the school of agriculture of a  
7 Pennsylvania college or university, one representative of  
8 academia who shall be an animal science faculty member with an  
9 expertise in odor management from the school of agriculture of a  
10 college or university within this Commonwealth, one hydrologist,  
11 two citizen representatives who are not farmers and one  
12 environmental representative, all of whom shall have sufficient  
13 knowledge, experience or familiarity with agronomic practices,  
14 nutrient management practices or odor management practices and  
15 all of whom shall be residents of this Commonwealth. The six  
16 active commercial farm owners or operators shall be nominated in  
17 a manner that provides representation of the northwest, north  
18 central, northeast, southwest, south central and southeast  
19 regions of this Commonwealth, corresponding to the regions  
20 served by the Department of Environmental Protection regional  
21 offices. Two of the six active commercial farm owners or  
22 operators shall hold an active concentrated animal feeding  
23 operation permit as required by the act of June 22, 1937  
24 (P.L.1987, No.394), known as The Clean Streams Law.

25 \* \* \*

26 (d) Duties.--The board shall review and comment on all  
27 commission proposed regulations[, the interim guidelines under <--  
28 section 504(2) (relating to powers and duties of commission) and  
29 the interim criteria under section 504(5)] developed to <--  
30 implement the provisions of this chapter. The commission shall

1 have no power to promulgate regulations[, interim guidelines or <--  
2 interim criteria] under this chapter until receipt of written <--  
3 comments on the proposed regulations[, guidelines or criteria] <--  
4 from the board or until [60] 90 days have expired from the date  
5 when the regulations[, guidelines or criteria] were submitted by <--  
6 the commission to the board for its comments. Existing  
7 regulations[, guidelines and criteria] shall continue until <--  
8 modified, superseded or repealed by the commission.

9 \* \* \*

10 ~~Section 2. Section 702(b) of Title 27 is amended by adding a <--  
11 paragraph to read:~~

12 SECTION 2. SECTIONS 702(B) (2), ~~703 AND 704(A) AND (B) AND <--  
13 703 OF TITLE 27 ARE AMENDED TO READ:~~

14 § 702. Establishment of board.

15 \* \* \*

16 (b) Members.--The following persons shall comprise the  
17 board:

18 \* \* \*

19 ~~(7) Two members appointed by the secretary that hold an <--  
20 active concentrated animal feeding operation permit as  
21 required by the act of June 22, 1937 (P.L.1987, No.394),  
22 known as The Clean Streams Law.~~

23 \* \* \*

24 (2) A DAIRY PRODUCER, A LIVESTOCK PRODUCER, A POULTRY <--  
25 PRODUCER, A GRAIN PRODUCER, A FRUIT PRODUCER, A VEGETABLE  
26 PRODUCER, A REPRESENTATIVE OF THE ORNAMENTAL HORTICULTURAL  
27 INDUSTRY, A PRODUCER ENGAGED IN SUSTAINABLE AGRICULTURE, A  
28 REPRESENTATIVE FROM THE AGRICULTURAL CHEMICAL MANUFACTURERS  
29 INDUSTRY AND A REPRESENTATIVE FROM THE AGRIBUSINESS INDUSTRY.  
30 THE GOVERNOR SHALL APPOINT THESE REPRESENTATIVES TO SIT FOR A

1 THREE-YEAR TERM. REPRESENTATIVES APPOINTED UNDER THIS  
2 PARAGRAPH MUST RECEIVE A MAJORITY OF THEIR GROSS INCOME FROM  
3 THE ACTIVITY WHICH THEY REPRESENT. TWO OF THE REPRESENTATIVES  
4 APPOINTED UNDER THIS PARAGRAPH SHALL HOLD AN ACTIVE  
5 CONCENTRATED ANIMAL FEEDING OPERATION PERMIT AS REQUIRED BY  
6 THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE  
7 CLEAN STREAMS LAW.

8 \* \* \*

9 § 703. POWERS OF BOARD.

10 (A) GENERAL RULE.--THE BOARD SHALL HAVE THE FOLLOWING  
11 POWERS:

12 (1) PROVIDE ADVICE AND EXPERTISE TO THE [SECRETARY] <--  
13 DEPARTMENT REGARDING THE NATURE OF AGRICULTURE IN THIS  
14 COMMONWEALTH.

15 (2) [ASSIST THE SECRETARY AND PROVIDE WRITTEN COMMENTS <--  
16 ON NEW DEPARTMENTAL POLICY THAT WILL IMPACT UPON AGRICULTURE  
17 IN THIS COMMONWEALTH.

18 (3) ASSIST THE SECRETARY AND PROVIDE COMMENT ON  
19 REGULATORY, ~~PERMITTING, TECHNICAL GUIDANCE AND POLICY~~ <--  
20 PROPOSALS PURSUANT TO SECTION 704 (RELATING TO REVIEW OF  
21 REGULATIONS).] CONSULT WITH THE DEPARTMENT ON NEW <--  
22 DEPARTMENTAL POLICY AND REVISIONS TO EXISTING DEPARTMENTAL  
23 POLICY AND ON PROPOSED TECHNICAL GUIDANCE THAT WILL AFFECT  
24 AGRICULTURE IN THIS COMMONWEALTH.

25 (4) [PROVIDE COMMENT TO THE SECRETARY REGARDING EXISTING <--  
26 DEPARTMENTAL POLICY, ~~PERMITTING, TECHNICAL GUIDANCE~~ AND <--  
27 REGULATIONS AFFECTING AGRICULTURE IN THIS COMMONWEALTH.] <--  
28 CONSULT WITH THE DEPARTMENT ON PROPOSED REGULATIONS AND  
29 PROPOSED GENERAL PERMITS THAT REGULATE AGRICULTURE IN THIS  
30 COMMONWEALTH.

1 (B) EXEMPT REGULATIONS.--REGULATIONS SUBJECT TO REVIEW BY  
2 THE SEASONAL FARM LABOR COMMITTEE UNDER THE ACT OF JUNE 23, 1978  
3 (P.L.537, NO.93), KNOWN AS THE SEASONAL FARM LABOR ACT, ARE  
4 EXEMPT FROM REVIEW UNDER SUBSECTION (A).

5 SECTION 2.1. SECTION 704(A) AND (B) OF TITLE 27 ARE AMENDED <--  
6 AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

7 § 704. REVIEW OF REGULATIONS AND OTHER DOCUMENTS.

8 (A) NOTICE TO BOARD.--

9 ~~(1) THE DEPARTMENT SHALL NOTIFY OF AND PROVIDE THE BOARD <--~~  
10 ~~[OF THE DEVELOPMENT OF] WITH ANY REGULATORY PROPOSAL, PERMIT, <--~~  
11 ~~TECHNICAL GUIDANCE OR DEPARTMENTAL POLICY OR PROPOSED GENERAL <--~~  
12 ~~PERMIT WHICH WOULD REGULATE OR AFFECT AGRICULTURE [AS EARLY <--~~  
13 ~~AS POSSIBLE BUT NOT LESS THAN 120 DAYS PRIOR TO: <--~~

14 ~~(I) THE DATE THE ENVIRONMENTAL QUALITY BOARD MEETS~~  
15 ~~TO INITIALLY CONSIDER ANY PROPOSED RULEMAKING RESULTING~~  
16 ~~FROM THE REGULATORY PROPOSAL. <--~~

17 ~~(II) THE DATE THE DEPARTMENT PUBLISHES NOTICE TO~~  
18 ~~ESTABLISH OR CHANGE A PERMIT; OR~~

19 ~~(III) THE DATE THE DEPARTMENT ESTABLISHES A POLICY.~~

20 ~~(2) NOT LESS THAN 60 DAYS PRIOR TO AN ACTION UNDER~~  
21 ~~PARAGRAPH (1)(I), (II) OR (III), THE DEPARTMENT SHALL PROVIDE~~  
22 ~~THE BOARD WITH A WRITTEN VERSION IN SUBSTANTIALLY THE FORM~~  
23 ~~THAT WILL BE PUBLISHED OR ESTABLISHED OF ANY REGULATORY,~~  
24 ~~PERMIT, TECHNICAL GUIDANCE OR DEPARTMENTAL POLICY PROPOSAL~~  
25 ~~THAT WOULD REGULATE OR AFFECT AGRICULTURE.~~

26 ~~(3) THE DEPARTMENT MAY NOT PUBLISH OR ESTABLISH ANY~~  
27 ~~REGULATORY, PERMIT, TECHNICAL GUIDANCE OR DEPARTMENTAL POLICY~~  
28 ~~PROPOSAL THAT REGULATES OR AFFECTS AGRICULTURE PRIOR TO BOARD~~  
29 ~~REVIEW OF A DOCUMENT PROVIDED UNDER PARAGRAPH (2). ANY~~  
30 ~~DISCUSSION OR DECISION BY THE BOARD RELATED TO THE REVIEW~~

1 ~~SHALL BE REFLECTED IN THE MINUTES OF THE BOARD.~~

2 (B) MEETING AND CONSULTATION WITH BOARD.--AT THE REQUEST OF  
3 THE BOARD, IF THE REQUEST IS MADE WITHIN 30 DAYS FROM THE DATE  
4 OF RECEIPT OF THE NOTICE REQUIRED BY SUBSECTION (A), THE  
5 DEPARTMENT SHALL MEET AND CONSULT WITH THE BOARD IN THE  
6 FORMULATION OF ANY SUCH REGULATORY, ~~PERMIT, TECHNICAL GUIDANCE~~ <--  
7 ~~OR DEPARTMENTAL POLICY~~ PROPOSAL, AND THEREAFTER THE BOARD MAY  
8 PROVIDE THE DEPARTMENT WITH WRITTEN COMMENTS THEREON.] OR ANY <--  
9 PROPOSED TECHNICAL GUIDANCE THAT WOULD AFFECT AGRICULTURE.

10 (B.1) BOARD REVIEW.--THE DEPARTMENT MAY NOT PUBLISH ANY  
11 PROPOSED REGULATION OR PROPOSED GENERAL PERMIT THAT REGULATES  
12 AGRICULTURE OR PROPOSED TECHNICAL GUIDANCE THAT AFFECTS  
13 AGRICULTURE PRIOR TO:

14 (1) CONSULTATION WITH THE BOARD IN THE FORMULATION OF  
15 THE PROPOSED REGULATION, PROPOSED GENERAL PERMIT OR PROPOSED  
16 TECHNICAL GUIDANCE, AS REFLECTED IN THE MINUTES OR BY WRITTEN  
17 COMMENTS OF THE BOARD; OR

18 (2) SIXTY DAYS FROM THE DATE WHEN THE PROPOSED  
19 REGULATION, PROPOSED GENERAL PERMIT OR PROPOSED TECHNICAL  
20 GUIDANCE WAS PROVIDED UNDER SUBSECTION (A), UNLESS THE BOARD  
21 SOONER DECIDES BY MAJORITY VOTE THAT NO CONSULTATION UNDER  
22 PARAGRAPH (1) IS REQUIRED.

23 \* \* \*

24 Section 3. Members of the Nutrient Management Advisory Board  
25 AND MEMBERS OF THE AGRICULTURAL ADVISORY BOARD, as of the <--  
26 effective date of this section, shall continue to serve as  
27 members OF THEIR RESPECTIVE BOARDS until their present terms of <--  
28 office expire.

29 Section 4. This act shall take effect in 60 days.