

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1171 Session of 2018

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

SENATOR VOGEL, AGRICULTURE AND RURAL AFFAIRS, AS AMENDED, MAY 22, 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
4 declaration of legislative purpose, for definitions and for
5 powers and duties of commission and repealing provisions
6 relating to Nutrient Management Advisory Board; and
7 establishing the Farm Animal Advisory Board.

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

10 Section 1. Section 502(3) and (5) of Title 3 of the
11 Pennsylvania Consolidated Statutes are amended to read:

12 § 502. Declaration of legislative purpose.

13 The purposes of this chapter are as follows:

14 \* \* \*

15 (3) To require the State Conservation Commission, in
16 conjunction with the Cooperative Extension Service of The
17 Pennsylvania State University, the Department of
18 Environmental Protection, the department and the [Nutrient
19 Management Advisory Board] Farm Animal Advisory Board to
20 develop and provide technical and financial assistance for

1 nutrient management and alternative uses of animal manure,  
2 including a manure marketing and distribution program.

3 \* \* \*

4 (5) To require the State Conservation Commission, in  
5 conjunction with the [Nutrient Management Advisory Board]  
6 Farm Animal Advisory Board, to develop and administer a  
7 regulatory program requiring odor management plans addressing  
8 new and expanded animal housing facilities and manure  
9 management facilities at concentrated animal operations and  
10 concentrated animal feeding operations after July 19, 1993,  
11 and to encourage the voluntary implementation of odor  
12 management plans for other agricultural operations.

13 Section 2. The definition of "board" in section 503 of Title  
14 3 is amended to read:

15 § 503. Definitions.

16 The following words and phrases when used in this chapter  
17 shall have the meanings given to them in this section unless the  
18 context clearly indicates otherwise:

19 \* \* \*

20 "Board." The [Nutrient Management Advisory Board created by  
21 section 510 (relating to Nutrient Management Advisory Board).]  
22 Farm Animal Advisory Board under 27 Pa.C.S. Ch. 8 (relating to  
23 Farm Animal Advisory Board).

24 \* \* \*

25 Section 3. Section 504(7) of Title 3 is amended to read:

26 § 504. Powers and duties of commission.

27 The commission shall have the following powers and duties:

28 \* \* \*

29 (7) To consult with the board as provided in [section  
30 510 (relating to Nutrient Management Advisory Board).] 27

1 Pa.C.S. Ch. 8 (relating to Farm Animal Advisory Board).

2 \* \* \*

3 Section 4. Section 510 of Title 3 is repealed:

4 [§ 510. Nutrient Management Advisory Board.

5 (a) Creation.--There is created the Nutrient Management  
6 Advisory Board. The board shall consist of 16 members appointed  
7 by the chairman of the commission and approved by a two-thirds  
8 vote of the commission. The members so appointed shall consist  
9 of five active commercial farm owners or operators representing  
10 the livestock, swine, meat poultry, egg poultry and dairy  
11 industry nominated by Statewide general farm organizations, one  
12 veterinary nutrition specialist, one representative from the  
13 feed industry, one representative from the fertilizer industry,  
14 one representative of commercial agricultural lenders, one  
15 representative of local government, one representative of  
16 academia who shall be an agronomist or plant scientist faculty  
17 member of the school of agriculture of a Pennsylvania college or  
18 university, one representative of academia who shall be an  
19 animal science faculty member with an expertise in odor  
20 management from the school of agriculture of a college or  
21 university within this Commonwealth, one hydrologist, two  
22 citizen representatives who are not farmers and one  
23 environmental representative, all of whom shall have sufficient  
24 knowledge, experience or familiarity with agronomic practices,  
25 nutrient management practices or odor management practices and  
26 all of whom shall be residents of this Commonwealth.

27 (b) Compensation.--Board members shall not receive a salary  
28 but shall be reimbursed for all reasonable and necessary  
29 expenses incurred in the performance of their duties.

30 (c) Meetings.--A majority of the board shall constitute a

1 quorum. All actions of the board shall be by a majority vote.  
2 The board shall meet upon the call of the commission, but not  
3 less than semiannually, to carry out its duties under this  
4 chapter. The board shall annually select a chairman and such  
5 other officers as it deems appropriate.

6 (d) Duties.--The board shall review and comment on all  
7 commission proposed regulations, the interim guidelines under  
8 section 504(2) (relating to powers and duties of commission) and  
9 the interim criteria under section 504(5) developed to implement  
10 the provisions of this chapter. The commission shall have no  
11 power to promulgate regulations, interim guidelines or interim  
12 criteria under this chapter until receipt of written comments on  
13 the proposed regulations, guidelines or criteria from the board  
14 or until 60 days have expired from the date when the  
15 regulations, guidelines or criteria were submitted by the  
16 commission to the board for its comments. Existing regulations,  
17 guidelines and criteria shall continue until modified,  
18 superseded or repealed by the commission.

19 (e) Term.--The term of office for each board member shall be  
20 three years except that the commission shall stagger the initial  
21 terms of the charter members such that five shall serve for one  
22 year, five shall serve for two years and six shall serve for  
23 three years. Board members may be appointed to successive terms  
24 at the discretion of the commission, provided that no member may  
25 serve more than two three-year terms.]

26 Section 5. Title 27 is amended by adding a chapter to read:

27 CHAPTER 8

28 FARM ANIMAL ADVISORY BOARD

29 Sec.

30 801. Definitions.

1 802. Establishment of Farm Animal Advisory Board.

2 803. Powers of board.

3 804. Review of regulations.

4 § 801. Definitions.

5 The following words and phrases when used in this chapter  
6 shall have the meanings given to them in this section unless the  
7 context clearly indicates otherwise:

8 "Agricultural operation." An enterprise that is engaged in  
9 agriculture as defined in section 701 (relating to definitions).

10 "Animal operation." An agricultural operation in which  
11 animals are raised or kept for commercial purposes.

12 "Board." The Farm Animal Advisory Board established under  
13 section 802 (relating to establishment of Farm Animal Advisory  
14 Board).

15 "CAO operator." The owner or operator of a concentrated  
16 animal operation.

17 "Commission." The State Conservation Commission established  
18 by the act of May 15, 1945 (P.L.547, No.217), known as the  
19 Conservation District Law.

20 "Commission chair." The chairperson of the State  
21 Conservation Commission.

22 "Concentrated animal feeding operation" or "CAFO." As  
23 defined in 25 Pa. Code § 92a.2 (relating to definitions).

24 "Concentrated animal operation" or "CAO." An animal  
25 operation that meets the criteria established under 3 Pa.C.S.  
26 Ch. 5 (relating to nutrient management and odor management).

27 "Department." The Department of Environmental Protection of  
28 the Commonwealth.

29 "General CAFO permittee." An owner or operator of a CAFO  
30 which has received approval from the department to operate under

1 a National Pollutant Discharge Elimination System general  
2 permit.

3 "Individual CAFO permittee." An owner or operator of a CAFO  
4 that has been issued a National Pollutant Discharge Elimination  
5 System individual permit by the department.

6 "Regulatory proposal." A proposed regulation or guideline,  
7 proposed amendment to a regulation or guideline or proposed  
8 change in interpretation of administrative, regulatory or  
9 enforcement policy that intends to or will have the effect of  
10 increasing requirements imposed or imposing more stringent  
11 standards on animal operations.

12 "Secretary." The Secretary of Environmental Protection of  
13 the Commonwealth.

14 "Voting members." Board members listed in section 802(b)(1),  
15 (2) and (3).

16 § 802. Establishment of Farm Animal Advisory Board.

17 (a) Establishment.--The Farm Animal Advisory Board is  
18 established within the department.

19 (b) Members.--The board shall be comprised of the following  
20 members:

21 (1) Four individuals who own or operate an animal  
22 operation, selected from nominations submitted by the  
23 Pennsylvania Farm Bureau, Pennsylvania State Grange, PennAg  
24 Industries Association and Pennsylvania Farmers Union. Each  
25 organization under this paragraph shall submit a list of  
26 nominations to the secretary, who shall appoint one member  
27 from each organization's list.

28 (2) Five general CAFO permittees or CAO operators from  
29 mature dairy cow, veal calf, cattle other than mature dairy  
30 cows or veal calves, swine, horse, sheep or lamb, turkey,

1 laying hen or broiler, chicken other than laying hens, and  
2 duck operations. All individuals appointed under this  
3 paragraph shall be from distinct operations.

4 (3) Two individual CAFO permittees from distinct  
5 operations listed under paragraph (2).

6 (4) Four individuals, who shall serve as ex officio,  
7 nonvoting members:

8 (i) Two members of the faculty of The Pennsylvania  
9 State University, one with expertise in agronomy and  
10 plant science and one with expertise in animal science  
11 and odor management, appointed annually by The  
12 Pennsylvania State University.

13 (ii) One deputy secretary from the Department of  
14 Agriculture and one deputy secretary from the department.  
15 If a named deputy secretary is unable to serve on the  
16 board, the deputy secretary shall be replaced by another  
17 deputy secretary or by the secretary of the department  
18 represented.

19 (c) Appointment and term.--The secretary, in consultation  
20 with the Secretary of Agriculture, shall appoint the members to  
21 serve under subsections (b) (1), (2) and (3). APPOINTMENTS SHALL <--  
22 BE MADE IN A MANNER THAT PROVIDES REPRESENTATION OF THE  
23 NORTHWEST, NORTH CENTRAL, NORTHEAST, SOUTHWEST, SOUTH CENTRAL  
24 AND SOUTHEAST REGIONS OF THIS COMMONWEALTH, CORRESPONDING TO THE  
25 REGIONS SERVED BY THE DEPARTMENT'S REGIONAL OFFICES. The terms  
26 of each member shall be three years, but the secretary shall  
27 stagger the initial terms of charter members under this  
28 subsection such that three shall serve for one year, three shall  
29 serve for two years and five shall serve for three years. Board  
30 members may be appointed to successive terms.

1 (d) Compensation.--Board members shall not receive a salary  
2 but shall be reimbursed for all reasonable and necessary  
3 expenses incurred in the performance of their duties.

4 (e) Meetings.--A majority of the board shall constitute a  
5 quorum. All actions of the board shall be by a majority vote of  
6 the voting members. The board shall meet upon call of the  
7 secretary, but not less than semiannually, to carry out the  
8 board's duties under this chapter.

9 (f) Chairperson.--The board shall annually elect a board  
10 chairperson from among the voting members.

11 (g) Staff.--The department shall furnish the board with  
12 administrative support, including the development of board  
13 bylaws consistent with this chapter and providing meeting space.

14 § 803. Powers of board.

15 The board shall have the following powers:

16 (1) To provide advice and expertise to the secretary and  
17 the commission chair concerning animal operations.

18 (2) To provide advice and expertise to the commission  
19 and the commission chair regarding nutrient management and  
20 alternative uses of animal manure.

21 (3) To assist the secretary and the commission chair in  
22 the development of regulatory standards and provide written  
23 comments on new and existing interpretive, administrative and  
24 enforcement policies and regulatory proposals affecting  
25 animal operations in this Commonwealth, including  
26 requirements, time lines and fee schedules for general and  
27 individual National Pollution Discharge Elimination System  
28 permits.

29 (4) To assist the secretary and the commission by  
30 providing comments on regulatory proposals under section 804

1 (relating to review of regulations).

2 § 804. Review of regulations.

3 (a) Notice to board.--The department and commission shall  
4 notify the board of the development of a regulatory proposal  
5 that may affect animal operations as early as possible but not  
6 less than 150 days prior to the date the proposal is formally  
7 initiated by an agency.

8 (b) Meeting and consultation with board.--At the request of  
9 the board, if the request is made within 30 days from the date  
10 of receipt of the notice required by subsection (a), the  
11 proposing agency shall meet and consult with the board in the  
12 formulation of the regulatory proposal, and then the board may  
13 provide the proposing agency with written comments.

14 (c) Inclusion of comments with proposed rulemaking.--The  
15 proposing agency shall include any written comments of the board  
16 received prior to the initiation of proposed rulemaking or  
17 formal action taken on the regulatory proposal. For a regulatory  
18 proposal for which proposed rulemaking is not required, the  
19 proposing agency shall prepare and submit to the board a  
20 document that responds to comments offered by the board,  
21 including reasons why recommendations offered by the board in  
22 its comments were not adopted.

23 (d) Exceptions.--The requirements of this section shall not  
24 apply to regulations with mandatory statutory deadlines, court-  
25 ordered regulations, emergency regulations, final regulations  
26 adopted under section 204 of the act of July 31, 1968 (P.L.769,  
27 No.240), referred to as the Commonwealth Documents Law, or  
28 interim regulations otherwise authorized by statute. As soon as  
29 possible, the department shall advise the board as to the  
30 development of regulations under this subsection that would

1 regulate animal operations.

2 Section 6. This act shall take effect in 60 days.