

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE BILL 990

Short Title: Extend Swine Moratoria/Control Phosphorus. (Public)

Sponsors: Senator Reeves.

Referred to: Agriculture/Environment/Natural Resources.

April 3, 2003

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE MORATORIA ON CONSTRUCTION AND
2 EXPANSION OF SWINE FARMS AND TO PROVIDE FOR CONTROL OF THE
3 DISCHARGE OF PHOSPHORUS FROM POULTRY ANIMAL OPERATIONS.
4

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

8 Whereas, one of the original purposes of these moratoria was to allow
9 completion of certain studies related to swine farms and animal waste management
10 systems; and

11 Whereas, the 1998 General Assembly extended these moratoria and
12 established exceptions for animal waste management systems that meet certain
13 performance standards; and

14 Whereas, the 1999 General Assembly and the 2001 General Assembly further
15 extended the moratoria so that moratoria have remained in effect continuously since 1
16 March 1997; and

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

20 Whereas, on 29 September 2000, the Attorney General of North Carolina
21 entered into an agreement with Premium Standard Farms, Incorporated, and certain
22 other companies; and

23 Whereas, on 13 March 2002, the Attorney General of North Carolina entered
24 into an agreement with Frontline Farmers, Incorporated; and

25 Whereas, the companies that are parties to these agreements constitute a
26 significant portion of the swine production capacity of the State; and

27 Whereas, these agreements commit the companies that are parties to these
28 agreements to work cooperatively to develop and implement animal waste management

1 technologies that meet the performance standards established by the General Assembly;
2 and

3 Whereas, the companies that are parties to these agreements have agreed to
4 provide substantial resources to assist the State in the development and implementation
5 of animal waste management technologies that meet the performance standards
6 established by the General Assembly and that are economically feasible; and

7 Whereas, the Animal and Waste Poultry Waste Management Center at North
8 Carolina State University is currently evaluating a number of animal waste management
9 technologies in order to identify one or more technologies that meet the performance
10 standards established by the General Assembly and that are economically feasible, as
11 provided in the Smithfield and related agreements; and

12 Whereas, on 28 January 2003, the Environmental Review Commission
13 received a report from the Animal and Waste Poultry Waste Management Center on
14 progress in the evaluation of animal waste management technologies; and

15 Whereas, based on this report, it appears that additional time will be needed
16 to complete the evaluation of all technologies currently being evaluated; and

17 Whereas, it also appears that the General Assembly will need some time to
18 consider the results of this evaluation process once it has been completed and to enact
19 whatever legislation it determines to be appropriate; and

20 Whereas, it further appears that some time may be required for the
21 implementation of any legislation that may be enacted by the General Assembly; Now,
22 therefore,

23 The General Assembly of North Carolina enacts:

24 **SECTION 1.** Subsection (a1) of Section 1.1 of S.L. 1997-458, as amended
25 by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, and Section 1 of S.L.
26 2001-254, reads as rewritten:

27 "(a1) There is hereby established a moratorium on the construction or expansion of
28 swine farms and on lagoons and animal waste management systems for swine farms.
29 The purposes of this moratorium are ~~to allow counties time to adopt zoning ordinances~~
30 ~~under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the~~
31 ~~completion of the studies authorized by the 1995 General Assembly (1996 Second Extra~~
32 ~~Session); and to allow the 1999 to allow time for the completion of ongoing evaluations~~
33 of animal waste management technologies and related research and studies; to allow the
34 General Assembly to receive and act on the findings and recommendations of those
35 studies, evaluations, research, and studies; and to allow for the implementation of any
36 legislation that may be enacted. Except as provided in subsection (b) of this section, the
37 Environmental Management Commission shall not issue a permit for an animal waste
38 management system for a new swine farm or the expansion of an existing swine farm
39 for a period beginning on 1 March 1997 and ending on 1 September ~~2003-2008~~. The
40 construction or expansion of a swine farm or animal waste management system for a
41 swine farm is prohibited during the period of the moratorium regardless of the date on
42 which a site evaluation for the swine farm is completed and regardless of whether the
43 animal waste management system is permitted under G.S. 143-215.1 or Part 1A of

1 Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North
2 Carolina Administrative Code 2H.0217."

3 **SECTION 2.** Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L.
4 1998-188, Section 2.2 of S.L. 1999-329, and Section 2 of S.L. 2001-254, reads as
5 rewritten:

6 "Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same
7 meaning as in G.S. 106-802. As used in this section, 'animal waste management system'
8 has the same meaning as in G.S. 143-215.10B. There is hereby established a
9 moratorium for any new or expanding swine farm or lagoon for which a permit is
10 required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any
11 county in the State: (i) that has a population of less than 75,000 according to the most
12 recent decennial federal census; (ii) in which there is more than one hundred fifty
13 million dollars (\$150,000,000) of expenditures for travel and tourism based on the most
14 recent figures of the Department of Commerce; and (iii) that is not in the coastal area as
15 defined by G.S. 113A-103. Effective 1 January 1997, until 1 September ~~2003,2008~~, the
16 Environmental Management Commission shall not issue a permit for an animal waste
17 management system, as defined in G.S. 143-215.10B, or for a new or expanded swine
18 farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of
19 Section 1.1 of this act do not apply to the moratorium established under this section.

20 (b) In order to protect travel and tourism, effective 1 September ~~2003,2008~~, no
21 animal waste management system shall be permitted except under an individual permit
22 issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in
23 the State: (i) that has a population of less than 75,000 according to the most recent
24 decennial federal census; (ii) in which there is more than one hundred fifty million
25 dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent
26 figures of the Department of Commerce; and (iii) that is not in the coastal area as
27 defined by G.S. 113A-103."

28 **SECTION 3.** G.S. 143-215.10C(e)(6) reads as rewritten:

29 "(6) Provisions regarding periodic testing of waste products used as
30 nutrient sources as close to the time of application as practical and at
31 least within 60 days of the date of application and periodic testing, at
32 least annually, of soils at crop sites where the waste products are
33 applied. ~~Nitrogen shall be the rate determining element. Zinc and~~
34 ~~copper levels in the soils shall be monitored, and alternative crop sites~~
35 ~~shall be used when these metals approach excess levels."~~

36 **SECTION 4.** G.S. 143-215.10C(e) is amended by adding a new subdivision
37 to read:

38 "(9) Provisions regarding phosphorus loss potential in accordance with the
39 nutrient management standard adopted by the Soil and Water
40 Conservation Commission or, if the Soil and Water Conservation
41 Commission has not adopted an applicable standard, with the nutrient
42 management standard established by the Natural Resources
43 Conservation Service of the United States Department of Agriculture."

44 **SECTION 5.** G.S. 143-215.10C(f) reads as rewritten:

1 "~~Any~~ An operator of an animal operation with a involving 30,000 or more
2 birds that is served by a dry litter animal waste management system involving 30,000 or
3 ~~more birds~~ shall develop an animal waste management plan that complies with the
4 ~~testing and record-keeping requirements under of~~ subdivisions (6) through ~~(8)~~(9) of
5 subsection (e) of this section. An operator of an animal operation involving 55,000 or
6 more turkeys, 82,000 laying hens, or 125,000 or more chickens other than laying hens
7 that is served by a dry litter animal waste management system shall develop an animal
8 waste management plan that complies with the requirements of subdivisions (1) through
9 (9) of subsection (e) of this section. Any operator of this type of animal waste
10 management system shall retain records required under this section and by the
11 Department on-site for three years."

12 **SECTION 6.** An animal operation involving poultry shall, as a condition of
13 the permit for its animal waste management system, demonstrate compliance with the
14 requirements of G.S. 143-215.10C(e)(9), as enacted by Section 5 of this act, and G.S.
15 143-215.10C(f), as amended by Section 6 of this act, as follows:

- 16 (1) Any new animal operation involving poultry and any expansion of an
17 animal operation involving poultry that is in operation on the date this
18 act becomes effective shall demonstrate compliance before the
19 Department of Environment and Natural Resources issues a permit for
20 an animal waste management system to serve the animal operation.
- 21 (2) An animal operation involving poultry that is in operation on the date
22 this act becomes effective and that is permitted under a National
23 Pollution Discharge Elimination System permit shall demonstrate
24 compliance on or before 1 July 2007.
- 25 (3) An animal operation involving poultry that is in operation on the date
26 this act becomes effective and that is permitted under a State
27 nondischarge permit shall demonstrate compliance on or before 1 May
28 2008.

29 **SECTION 7.** If any section or provision of this act is declared
30 unconstitutional or invalid by the courts, the unconstitutional or invalid section or
31 provision does not affect the validity of this act as a whole or any part of this act other
32 than the part declared to be unconstitutional or invalid.

33 **SECTION 8.** This act is effective when it becomes law.