

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3140

By: Glover

COMMITTEE SUBSTITUTE

An Act relating to corporations; establishing a moratorium on licenses, permits, certificates or other authorizations for expansions to existing swine feeding operations; providing exceptions; amending 18 O.S. 1991, Section 954, as amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1997, Section 954), which relates to farming or ranching business corporations; modifying exceptions; prohibiting certain operations; requiring certain reports; providing for contents; providing for procedures and availability; prohibiting expansion; providing penalty; authorizing production contracts; amending 19 O.S. 1991, Sections 868.4, as amended by Section 1, Chapter 103, O.S.L. 1995, 868.10, 868.14, 868.17, 868.18, 868.20 and 868.22 (19 O.S. Supp. 1997, Section 868.4), which relate to planning and zoning in the unincorporated areas of a county; providing for appointment of certain county employees; providing for certain interlocal agreements; deleting population restrictions applicable to counties; providing for noncodification; and declaring an emergency.

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

SECTION 1. A. There is hereby imposed a moratorium on the issuance of any licenses, permits, certificates or other authorizations for new swine feeding operations, or for licenses, permits, certificates or other authorizations for expansions to existing swine feeding operations by the State Board of Agriculture and the Department of Agriculture, except as otherwise provided by this act.

B. The moratorium is established for a one-year period beginning on the effective date of this act, unless earlier repealed or revoked by the Oklahoma Legislature.

C. The moratorium shall not prevent the issuance of any new license, permit, certificate or other authorization for:

1. Any swine feeding operation for which a substantially completed application has been accepted by the Department of Agriculture prior to the effective date of this act; and

2. The issuance of any renewal license, permit, certificate or other authorization.

D. In addition, the moratorium shall not apply to any license, permit, certificate or other authorization necessary for:

1. The construction to repair a component of an existing feeding operation for swine licensed, permitted, certificated or authorized by the Department of Agriculture; or

2. The construction to replace a component of an existing swine feeding operation licensed, permitted, certificated or authorized by the Department of Agriculture, if the replacement does not result in an increase in swine population at the facility.

E. For purposes of this act, "swine animal feeding operation" means an animal feeding operation where swine are primarily housed in a roof-covered structure and which uses a liquid waste management system. The terms animal feeding operation, licensed managed feeding operation and liquid waste management system shall have the same meaning as such terms are defined by the Oklahoma Concentrated Animal Feeding Operations Act.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 954, as amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1997, Section 954), is amended to read as follows:

Section 954. A. ~~The provisions of this act, Section 951 et seq. of this title,~~ prohibitions from engaging in ranching or farming business corporations shall not apply ~~where~~ if a corporation, either domestic or foreign:

1. Engages in research and/or feeding arrangements or operations concerned with the feeding of livestock or poultry, but only to the extent of such research and/or feeding arrangements or such livestock or poultry operations; or

2. Engages in operations concerned with the production and raising of livestock or poultry for sale or use as breeding stock and including only directly related operations, such as breeding or feeding livestock or poultry which are not selected or sold as breeding stock; or

3. Engages in poultry ~~and/or swine operations~~, including only directly related operations, such as operating hatcheries, facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation; or

4. Engages, prior to April 15, 1998, in swine feeding operations, including only directly related operations, such as operating facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation, except as provided by this section;
or

5. Engages in forestry as defined by Section 1-4 of Title 2 of the Oklahoma Statutes; or

~~5. Whose~~ 6. Has a corporate purpose ~~is~~ either charitable or eleemosynary; or

~~6.~~ 7. Presently engages in fluid milk processing within the State of Oklahoma or leases to a fluid milk processor so engaged; provided, this exception is limited to such dairy operations as are necessary to meet such processor's needs.

B. 1. Any corporation either domestic or foreign meeting the conditions and qualifications of paragraph 4 of subsection A of this section shall submit, by April 15, 1998, and April 15 of each year thereafter, a report containing a monthly accounting of the number of animal units, by species and weight, located on any land or at any facility owned or operated by the corporation on such date and such other information required by the State Board of Agriculture.

2. The report shall be signed by the board of directors of the corporation under penalty of perjury.

3. The report shall be filed with the Office of the Secretary of State and the Department of Agriculture, and shall be available to the public at such offices.

4. On and after April 15, 1998, no corporation, domestic or foreign, engaging in swine feeding operations shall increase the number of swine regardless of weight beyond that number specified in the report filed by April 15, 1998. Any increase in the number of swine beyond the specified or failure to file the required reports shall be grounds for termination or suspension of any certificate authorizing such corporation to do business in this state.

C. The provisions of this section shall not prevent the execution of production contracts by the corporation and a person engaged in farming for the production of agricultural products, including but not limited to swine production.

SECTION 3. AMENDATORY 19 O.S. 1991, Section 868.4, as amended by Section 1, Chapter 103, O.S.L. 1995 (19 O.S. Supp. 1997, Section 868.4), is amended to read as follows:

Section 868.4 The county planning commission may appoint such employees as it may deem necessary for its work and may contract with planners and other consultants for such services as it may require, and may incur other necessary expenses; provided that the expenditures of the county funds by the planning commission shall not be in excess of the amounts appropriated for that purpose by the board of county commissioners. It shall be lawful for the board of county commissioners to appropriate funds for the administration of this act and to contract with the governing body of the county seat city to contribute jointly to pay expenses and salaries of a combined staff to serve the county planning commission, county board of adjustment, city planning commission and city board of adjustment, and to provide offices for such combined staff either in the county courthouse or the municipal building.

For building permits issued pursuant to this section, the county engineer or circuit district engineer or a qualified designee of the circuit engineering district shall collect a fee

set by the county planning commission, which shall be approved every two (2) years by the board of county commissioners. For each petition for amendments to zoning regulations, the county planning commission shall, upon approval and authorization by the board of county commissioners, collect a fee sufficient to cover the cost of mailing notices and conducting investigations into the applicant's petition. In the event the petition is withdrawn by the applicant before consideration by the county planning commission but after notice and mailing of such public hearing on applicant's amendments to zoning regulations or in the event the applicant's petition is denied by the county planning commission and an appeal is not pursued to the county board of adjustment, the applicant shall not be permitted to file another petition for amendment to zoning regulations covering the matter withdrawn or denied until ninety (90) days from such withdrawal or denial and upon payment of a nonrefundable fee as set by the county planning commission, which shall be approved by the board of county commissioners. For each appeal to the county board of adjustment, the county planning commission shall collect a fee of Fifteen Dollars (\$15.00). All fees collected by the county planning commission and the county engineer or circuit district engineer or a qualified designee of the circuit engineering district shall be deposited with the county treasurer daily, as is now provided by law, to the credit of the county planning commission and such fees shall be placed in a separate fund to the credit of the said county planning commission, to be designated as the "County Planning Commission Special Fund," and shall be expended by the county planning commission, as follows: for salaries of the staff or any member thereof, for mailing cost to potentially affected members of the public concerning notice of petitions for amendment to zoning regulations, for books, records, supplies, fixtures and other necessary expenses incurred in the operation of said Planning Commission, provided that any of the fee so expended shall be upon verified claims duly filed, and approved by the board of county commissioners of the county as provided by law. Provided, however, that in the event the fees shall be in excess

of the necessary operating expenses of the planning commission, said excess shall revert to the general fund of any such county at the end of the fiscal year. Provided further, that in the event said fees shall not be sufficient to operate the planning commission, the difference may be supplied by appropriation as provided by law. On the first day of each month the county engineer or circuit district engineer or a qualified designee of the circuit engineering district and the county planning commission shall each submit to the board of county commissioners a verified report of all fees charged and collected during the preceding month. The board of county commissioners may levy five (5) mills and appropriate the revenue derived thereof for the administration of this act.

SECTION 4. AMENDATORY 19 O.S. 1991, Section 868.10, is amended to read as follows:

Section 868.10 After the board of county commissioners shall have established building or set-back lines on such major highways, no new building or structure shall be erected within such building or set-back lines outside the corporate limits of any city or town, and no permit for such building shall be issued by the county engineer or circuit district engineer or a qualified designee of the circuit engineering district who is hereby designated as the officer to administer and enforce such building or set-back line regulations. The county board of adjustment, hereinbefore created, shall hear appeals of any property owner aggrieved by such building line regulations. Said board of adjustment shall have the power to modify or vary the building or set-back line regulations in specific cases, in order that unwarranted hardship, which constitutes an unreasonable deprivation of uses as distinguished from a mere grant of privilege, may be avoided, the intended purpose of the regulations strictly observed, and the public welfare and public safety protected.

SECTION 5. AMENDATORY 19 O.S. 1991, Section 868.14, is amended to read as follows:

Section 868.14 A legally existing use, building or structure, existing at the time of the adoption and recording of any regulations authorized hereunder, but not in conformity therewith, may be continued but shall not be extended or structurally altered unless the same be changed to conform to such regulations or changed to a higher or more restrictive use. This shall include operations subject to provisions of Sections 951 through 956 of Title 18 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 19 O.S. 1991, Section 868.17, is amended to read as follows:

Section 868.17 After the adoption of such zoning regulations or building line regulations by the board of county commissioners, no building or other structure within the area authorized by this act to be zoned shall be erected, constructed, enlarged or altered in such manner as to prolong the life of the buildings, nor shall the use of any land within such area be changed without a permit issued by the county engineer or circuit district engineer or a qualified designee of the circuit engineering district. The county engineer or circuit district engineer or a qualified designee of the circuit engineering district shall have the duty of administering the rules and regulations under this act and shall make such inspections and investigations as may be necessary to the proper enforcement of such rules and regulations.

SECTION 7. AMENDATORY 19 O.S. 1991, Section 868.18, is amended to read as follows:

Section 868.18 Appeals to the county board of adjustment may be taken by any person aggrieved or by a public officer, department, board or bureau affected by any decision of the county engineer or circuit district engineer or a qualified designee of the circuit engineering district in administering the county zoning regulations. Such appeals shall be taken within a period of not more than ten (10) days, by filing written notice with the county board of adjustment stating the grounds therefor. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify to the board that by reason of facts stated in the

certificate a stay would, in ~~his~~ the officer's opinion, cause imminent peril to life or property. The county board of adjustment shall have the following powers and it shall be its duty:

1. To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the county engineer or circuit district engineer or a qualified designee of the circuit engineering district in the enforcement of the county zoning regulations;

2. To hear and decide requests for map interpretations or for decisions on other special questions upon which it is authorized to pass by the regulations adopted by the board of county commissioners; and

3. Where, by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this act would result in peculiar and exceptional difficulties to, or exceptional and demonstrable undue hardship upon, the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such demonstrable difficulties or hardships, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning plan as embodied in the zoning regulations and map. For every variance granted, the county board of adjustment shall state in detail as a matter of record the exceptional and demonstrable undue hardship upon the owner of such property.

In exercising the above powers, such board may, in conformity with the provisions of the act, reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as should be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

SECTION 8. AMENDATORY 19 O.S. 1991, Section 868.20, is amended to read as follows:

Section 868.20 A. The jurisdiction of the county planning commission and the county board of adjustment is exclusively limited to the unincorporated areas of the county and any conflict between the acts of the county planning commission or the county board of adjustment and any city or town shall be resolved in favor of said city or town.

B. To carry out the provisions of this act, counties may, pursuant to the Interlocal Cooperation Act, enter into agreements to work together to provide planning and zoning which would conform throughout a region of the state.

SECTION 9. AMENDATORY 19 O.S. 1991, Section 868.22, is amended to read as follows:

Section 868.22 ~~The provisions of this act shall apply only to counties having a population in excess of five hundred thousand (500,000) according to the latest Federal Decennial Census~~ may be adopted by resolution of the board of county commissioners of any county in this state.

SECTION 10. NONCODIFICATION Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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