

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2641

By: Bonny

AS INTRODUCED

An Act relating to agriculture; amending 2 O.S. 1991, Sections 9-204, as last amended by Section 4, Chapter 331 O.S.L. 1997, and 9-210, as last amended by Section 16, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Sections 9-204 and 9-210), which relate to the Oklahoma Concentrated Animal Feeding Operations Act; creating the Oklahoma Concentrated Animal Feeding Operations Rule Advisory Committee of the Department of Agriculture; providing for incorporation of federal statute or regulation; providing for appointment; providing qualifications; providing for duties and meetings; removing protection against nuisance actions for certain concentrated animal feeding operations; amending 50 O.S. 1991, Sections 1 and 1.1, which relate to nuisances for agricultural activities; removing protection against nuisance actions for certain agricultural activities; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-204, as last amended by Section 4, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-204), is amended to read as follows:

~~Section 9-204. A. The State Board of Agriculture shall appoint a rule advisory committee who, without compensation, shall act as advisors to the Board in the formulation of the rules promulgated pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.~~

~~B. Six members shall be animal feeding operators; one member shall represent the field of geology; one member shall be a soil scientist; and one member shall represent the general public. Two shall serve for a one-year term; three shall serve for two-year terms; and four shall serve for three-year terms.~~

~~C. Upon reappointment for the one-year terms and the two-year terms herein created, all appointments shall be for a three-year term. All advisors shall serve in such capacity during said term at the pleasure of the Board.~~

~~D. 1. Except for emergency rules, the Department shall submit proposed rules to the rule advisory committee thirty (30) days prior to the rules being considered by the Board. The Board shall consider the comments of the rule advisory committee at least fifteen (15) days prior to any official action by the Board on the rules.~~

1. As the rulemaking body for the Department of Agriculture, the State Board of Agriculture is specifically charged with the duty of promulgating rules which will implement the duties and responsibilities of the Department pursuant to the Oklahoma Concentrated Animal Feeding Operations Act. Rules shall be promulgated with the advice of the Oklahoma Concentrated Animal Feeding Operations Rule Advisory Committee for the State Board of Agriculture. Proposed permanent rules shall not be considered by the Board for promulgation until receipt of the Committee's recommendation on such promulgation; however, the Board may

promulgate emergency rules without the advice of the Committee when the time constraints of the emergency, as determined by the Board, do not permit the timely development of recommendations by the Committee. All actions of the Committee with regard to rulemaking shall be deemed actions of the Board for the purposes of complying with the Administrative Procedures Act.

2. Proposed emergency rules shall be submitted by the Department to the rule advisory committee at least five (5) days prior to the rules being considered by the Board.

B. There is hereby created the Oklahoma Concentrated Animal Feeding Operations Rule Advisory Committee to the State Board of Agriculture which shall consist of two (2) ex officio nonvoting members and nine (9) members appointed by the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate as follows:

1. The ex officio members shall be:

- a. the Secretary of Environment or designated representative, and
- b. the Secretary of Agriculture or designated representative; and

2. The appointed members of the Committee shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing the licensed managed feeding operations in this state,
 - (2) one member representing a statewide nonprofit environmental organization, and
 - (3) one member representing the general public,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing the growers in this state,

- (2) one member representing the animal feed operations in this state other than concentrated animal feeding operations, and
- (3) one member representing the field of hydrogeology, and

c. the Speaker of the House of Representatives shall appoint three members as follows:

- (1) one member shall be a soil scientist,
- (2) one member shall be an engineer, and
- (3) one member representing the field of agriculture.

C. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms. Members of the Committee shall serve at the pleasure of and may be removed from office by the appointing authority. Members shall continue to serve until their successors are appointed.

D. The initial term for all appointed members shall begin September 1, 1998.

E. Appointed members of the Committee may be removed from office by the appointing authority.

F. The members of the Committee shall serve without pay but may be reimbursed for actual expenses pursuant to the State Travel Reimbursement Act.

G. The Committee shall elect from among its membership a chair, vice-chair and secretary to serve a term of not more than one (1) year ending on July 1 of the year designated by the Committee. Members may be elected for more than one term. The chair or vice-chair shall preside at all meetings. The chair, vice-chair and secretary shall perform such duties as may be decided by the Committee in order to effectively administer its duties pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

H. A majority of Committee members at a meeting shall constitute a quorum to transact official business.

I. The Committee shall meet within sixty (60) days after September 1, 1998, and shall meet thereafter at such times as the Committee deems necessary to implement its duties pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

J. The Committee shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or vice-chair, or by the concurrence of any eight members by delivery of written notice to each member of the Committee.

K. 1. In addition to other powers and duties assigned to the Committee by the Oklahoma Concentrated Animal Feeding Operations Act or by the State Board of Agriculture, the Committee shall have authority to recommend proposed permanent rules to the Board.

2. Proposed permanent rules shall not be considered by the Board for promulgation until receipt of the Committee's recommendation on such proposed rules; however, the Board may promulgate emergency rules without the advice of the Committee when the time constraints of the emergency, as determined by the Board, do not permit the timely development of recommendations by the Committee. All actions of the Committee with regard to rulemaking shall be deemed actions of the Board for the purposes of complying with the Administrative Procedures Act.

3. The Committee shall not recommend rules for promulgation by the Board unless all applicable requirements of the Administrative Procedures Act have been followed, including, but not limited to, notice, rule impact statement and rulemaking hearings.

4. Before recommending any permanent rules to the Board, the Committee shall give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act. The Committee shall:

- a. have the authority to make written recommendations to the Board which have been concurred upon by at least a majority of the membership of the Committee, and
- b. have the authority to provide a public forum for the discussion of issues it considers relevant to its areas of jurisdiction, and to:
 - (1) pass nonbinding resolutions expressing the sense of the Committee, and
 - (2) make recommendations to the Board or Department concerning the need and the desirability of conducting meetings, workshops and seminars.

5. The Committee shall cooperate with the public and the Board in order to coordinate the rules to achieve maximum efficiency and effectiveness in furthering the objectives of the Oklahoma Concentrated Animal Feeding Operations Act.

L. The Committee is authorized to utilize the staff of the Department of Agriculture and conference rooms of the Board and obtain administrative assistance from the Board, as required.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9-204a of Title 2, unless there is created a duplication in numbering, reads as follows:

Insofar as permitted by law and upon recommendation from the Rule Advisory Committee to the State Board of Agriculture, rules promulgated by the State Board of Agriculture may incorporate a federal statute or regulation by reference. Any Board rule which incorporates a federal provision by reference incorporates the language of the federal provision as it existed at the time of the incorporation by reference. Any subsequent modification, repeal or invalidation of the federal provision shall not be deemed to affect the incorporating Board rule.

SECTION 3. AMENDATORY 2 O.S. 1991, Section 9-210, as last amended by Section 16, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-210), is amended to read as follows:

Section 9-210. ~~A.~~ In addition to any other requirement of the Oklahoma Concentrated Animal Feeding Operations Act, animal feeding operations owners and operators who are granted an animal feeding operations license shall:

1. Provide adequate veterinarian services for detection, control, and elimination of livestock diseases;
2. Have available for use at all necessary times mechanical means of scraping, cleaning, and grading feed yards premises; and
3. Provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks, and feeding devices.

~~B. 1. Any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with the rules promulgated by the Board, shall be deemed to be prima facie evidence that a nuisance does not exist; provided, no animal feeding operation shall be located or operated in violation of any zoning regulations.~~

~~2. Any animal feeding operation licensed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, operated in compliance with such standards, and in compliance with rules promulgated by the Board, that is located on land more than three (3) miles outside the incorporated limits of any municipality and which is not located within one (1) mile of ten or more occupied residences shall not be deemed a nuisance unless it is shown by a preponderance of the evidence that the operation endangers the health or safety of others.~~

SECTION 4. AMENDATORY 50 O.S. 1991, Section 1, is amended to read as follows:

Section 1. A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

~~First.~~ 1. Annoys, injures or endangers the comfort, repose, health, or safety of others; ~~or~~

~~Second.~~ 2. Offends decency; ~~or~~

~~Third.~~ 3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, stream, canal or basin, or any public park, square, street or highway; or

~~Fourth.~~ 4. In any way renders other persons insecure in life, or in the use of property; ~~provided,~~ this section shall not apply to preexisting agricultural activities, as such term is defined by Section 1.1 of this title.

SECTION 5. AMENDATORY 50 O.S. 1991, Section 1.1, is amended to read as follows:

Section 1.1 A. ~~As defined in~~ For purposes of this act title:

1. "Agricultural activities" ~~shall include~~ includes, but is not ~~be~~ limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products; and

2. "Farmland" ~~shall include~~ includes, but is not ~~be~~ limited to, land devoted primarily to production of livestock or agricultural commodities.

B. 1. Agricultural activities conducted on farm or ranch land, if consistent with good agricultural practices and established prior to nearby nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the agricultural activity has a substantial adverse affect on the public health and safety.

2. If that agricultural activity is undertaken in conformity with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

3. The provisions of this subsection shall not apply to:

- a. concentrated animal feeding operations, or
- b. an existing animal feeding operation that expands operations, as such term is defined by the Oklahoma Concentrated Animal Feeding Operations Act.

SECTION 6. 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.

46-2-8385

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