STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2646 By: DeWitt

AS INTRODUCED

An Act relating to agriculture; enacting the CAFO Rural Economic Development Initiative Act; amending 2 O.S. 2001, Section 9-205.1, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-8), which relates to concentrated animal feeding operations; modifying notice and hearing requirements for licenses; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "CAFO Rural Economic Development Initiative Act".

SECTION 2. AMENDATORY 2 O.S. 2001, Section 9-205.1, as renumbered by Section 25, Chapter 292, O.S.L. 2005 (2 O.S. Supp. 2005, Section 20-8), is amended to read as follows:

Section 20-8. A. 1. Any person applying for a license for ~~an~~ a new or expanding animal feeding operation shall comply with the notice and hearing requirements as specified by this section and rules promulgated ~~pursuant thereto~~ by the State Board of Agriculture.

2. Notice requirements shall include notice to affected property owners by certified mail, return-receipt requested ~~pursuant to subsection C of this section~~ and public notice ~~pursuant to subsection D of this section~~.

B. After submission of a completed application as provided by the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated thereto, the ~~State~~ Oklahoma Department of Agriculture,

Food, and Forestry shall have sixty (60) working days to review the application for a new or expanding operation for physical and technical suitability.

C. 1. After ~~such~~ review and after the applicant has submitted any additional required information to the Department, the Department shall require the applicant to notify all affected property owners of the proposed facility or expanding ~~operations~~ operation. ~~Such notice~~ Notice shall be sent by certified mail, return-receipt requested. The notice shall identify that an application for ~~an~~ a new or expanding animal feeding operation has been submitted to the Department, the location where the facility is to be located, that a hearing may be requested pursuant to this subsection, and the date the application will be available for public review~~, which shall begin~~ beginning no earlier than the day following the certified mailing of all the required notices, and ~~such~~ any other information required by the Department.

2. Each affected property owner requesting a hearing shall submit, in writing, the following information:

a. the name and address of the interested party and proof of standing by showing that the interested party is an affected property owner,

b. a statement of specific allegations showing that the proposed facility or expanding operation may have a direct, substantial and immediate effect upon a legally protected interest of the interested party, and

c. the relief sought by the interested party.

3. If any of the affected property owners request an administrative hearing and all information listed above is found to be complete and adequate in the request for hearing, ~~such~~ the scheduling conference for the hearing shall be held by the Department within ~~not less than thirty (30) days nor more than~~ sixty

(60) calendar days after the close of the public review period ~~pursuant to subsection D of this section~~. All interested parties may be joined as parties to the hearing ~~pursuant to rules promulgated by the State Board of Agriculture~~.

4. a. In addition to any other information deemed necessary by the Department, at the hearing the Department shall hear testimony and accept evidence pertaining to the physical and technical suitability of the proposed facility or expanding operations. ~~In addition, any~~ Any interested party may present specific allegations based on scientific and technical findings of fact showing that the proposed facility or expanding operations may have a direct, substantial and immediate effect upon a legally protected interest of the affected property owner. The burden of proof shall be on the interested party.

b. For new applications submitted on and after ~~the effective date of this act~~ August 1, 1998, the Department shall deny the issuance of a license to an applicant for a licensed managed feeding operation if an interested party within:

(1) one (1) mile of the designated perimeter of the proposed licensed managed feeding operation or expansion thereof, or

(2) the setback distance of an occupied residence ~~as provided in subsection A of Section 16 of this act~~ if ~~such~~ setback distances are greater than one (1) mile,

proves that the granting of the license will cause significant harm to the property value of the interested party.

5. Any administrative hearing held pursuant to the provisions of this subsection shall comply with ~~Article II of~~ the Administrative Procedures Act and rules promulgated ~~pursuant thereto~~ by the ~~Department~~ Board.

6. Establishment of property usage ~~which~~ is the date the animal feeding operation application was made available~~, pursuant to this section,~~ for public review versus date of initial construction or placement of occupied residence and shall be given consideration when determining a contested matter between an applicant and an interested party on issues other than pollution of the waters of the state.

D. 1. In addition to the individual notice ~~required by subsection C of this section~~, the Department shall require the applicant to give public notice of the opportunity to comment on the granting of the license.

2. The public notice for a new or expanding operation shall be published as a legal notice prior to the date the application is available for public viewing, in at least one newspaper of general circulation in the county where the proposed facility or expanding operation is to be located.

3. The notice shall identify locations where the application shall be available for viewing. ~~Such~~ The locations shall include the office of the Department and a specific public location in the county where the proposed facility or expanding operation is to be located.

4. The application shall be available for public review during normal business hours. The copies of the application posted for public viewing shall be complete except for proprietary provisions otherwise protected by law and ~~must~~ shall remain posted during normal business hours for at least twenty (20) working days after notice is published.

5. The Department, as necessary, may hold public meetings at a location convenient to the population center nearest the proposed facility or expanding operation to address public comments on the proposed facility or expanding operation.

E. Prior to the issuance of any license for an animal feeding operation, or expanding operation, the Department shall require the applicant to submit:

1. Documentation certifying notice has been issued to all affected property owners. A map of all affected property owners and the corresponding mailing list shall be submitted with each application; and

2. Proof of publication notice of a new or expanding application for an animal feeding operation license ~~required by this section~~.

~~F. Applicants for licenses for licensed managed feeding operations with a capacity of more than two thousand (2,000) animal units which have given the notice required by this section to all surface property owners within one (1) mile of the designated perimeter of the operation prior to March 9, 1998, shall not be required to provide notice by mail to owners of surface property more than one (1) mile but within two (2) miles of the designated perimeter of the operation.~~

SECTION 3. This act shall become effective November 1, 2006.

50-2-8042 SAB 01/18/06