

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1171 Session of 2018

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

AS AMENDED ON THIRD CONSIDERATION, JUNE 19, 2018

AN ACT

~~Amending Titles 3 (Agriculture) and 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes, in nutrient management and odor management, further providing for declaration of legislative purpose, for definitions and for powers and duties of commission and repealing provisions relating to Nutrient Management Advisory Board; and establishing the Farm Animal Advisory Board.~~

AMENDING TITLES 3 (AGRICULTURE) AND 27 (ENVIRONMENTAL RESOURCES) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, IN NUTRIENT MANAGEMENT AND ODOR MANAGEMENT, FURTHER PROVIDING FOR THE NUTRIENT MANAGEMENT ADVISORY BOARD; AND, IN AGRICULTURAL ADVISORY BOARD, FURTHER PROVIDING FOR ESTABLISHMENT OF BOARD.

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

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

~~§ 502. Declaration of legislative purpose.~~

~~The purposes of this chapter are as follows:~~

~~\* \* \*~~

~~(3) To require the State Conservation Commission, in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the Department of Environmental Protection, the department and the [Nutrient~~

1 ~~Management Advisory Board]~~ Farm Animal Advisory Board to  
2 develop and provide technical and financial assistance for  
3 nutrient management and alternative uses of animal manure,  
4 including a manure marketing and distribution program.

5 \* \* \*

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

15 Section 2. The definition of "board" in section 503 of Title  
16 3 is amended to read:

17 § 503. Definitions.

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

21 \* \* \*

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

26 \* \* \*

27 Section 3. Section 504(7) of Title 3 is amended to read:  
28 § 504. Powers and duties of commission.

29 The commission shall have the following powers and duties:

30 \* \* \*

1           ~~(7) To consult with the board as provided in [section~~  
2           ~~510 (relating to Nutrient Management Advisory Board).] 27-~~  
3           ~~Pa.C.S. Ch. 8 (relating to Farm Animal Advisory Board).~~

4           \* \* \*

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

6           ~~§ 510. Nutrient Management Advisory Board.~~

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

29           ~~(b) Compensation. Board members shall not receive a salary~~  
30           ~~but shall be reimbursed for all reasonable and necessary~~

1 ~~expenses incurred in the performance of their duties.~~

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

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

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

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

29 ~~CHAPTER 8~~

30 ~~FARM ANIMAL ADVISORY BOARD~~

1 ~~Sec.~~

2 ~~801. Definitions.~~

3 ~~802. Establishment of Farm Animal Advisory Board.~~

4 ~~803. Powers of board.~~

5 ~~804. Review of regulations.~~

6 ~~§ 801. Definitions.~~

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

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

12 ~~"Animal operation." An agricultural operation in which~~  
13 ~~animals are raised or kept for commercial purposes.~~

14 ~~"Board." The Farm Animal Advisory Board established under~~  
15 ~~section 802 (relating to establishment of Farm Animal Advisory~~  
16 ~~Board).~~

17 ~~"CAO operator." The owner or operator of a concentrated~~  
18 ~~animal operation.~~

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

22 ~~"Commission chair." The chairperson of the State~~  
23 ~~Conservation Commission.~~

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

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

29 ~~"Department." The Department of Environmental Protection of~~  
30 ~~the Commonwealth.~~

1 ~~"General CAFO permittee." An owner or operator of a CAFO~~  
2 ~~which has received approval from the department to operate under~~  
3 ~~a National Pollutant Discharge Elimination System general~~  
4 ~~permit.~~

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

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

14 ~~"Secretary." The Secretary of Environmental Protection of~~  
15 ~~the Commonwealth.~~

16 ~~"Voting members." Board members listed in section 802(b)(1),~~  
17 ~~(2) and (3).~~

18 ~~§ 802. Establishment of Farm Animal Advisory Board.~~

19 ~~(a) Establishment. The Farm Animal Advisory Board is~~  
20 ~~established within the department.~~

21 ~~(b) Members. The board shall be comprised of the following~~  
22 ~~members:~~

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

30 ~~(2) Five general CAFO permittees or CAO operators from~~

1 ~~mature dairy cow, veal calf, cattle other than mature dairy~~  
2 ~~cows or veal calves, swine, horse, sheep or lamb, turkey,~~  
3 ~~laying hen or broiler, chicken other than laying hens, and~~  
4 ~~duck operations. All individuals appointed under this~~  
5 ~~paragraph shall be from distinct operations.~~

6 ~~(3) Two individual CAFO permittees from distinct~~  
7 ~~operations listed under paragraph (2).~~

8 ~~(4) Four individuals, who shall serve as ex officio,~~  
9 ~~nonvoting members:~~

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

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

21 ~~(c) Appointment and term. The secretary, in consultation~~  
22 ~~with the Secretary of Agriculture, shall appoint the members to~~  
23 ~~serve under subsections (b) (1), (2) and (3). Appointments shall~~  
24 ~~be made in a manner that provides representation of the~~  
25 ~~northwest, north central, northeast, southwest, south central~~  
26 ~~and southeast regions of this Commonwealth, corresponding to the~~  
27 ~~regions served by the department's regional offices. The terms~~  
28 ~~of each member shall be three years, but the secretary shall~~  
29 ~~stagger the initial terms of charter members under this~~  
30 ~~subsection such that three shall serve for one year, three shall~~

1 ~~serve for two years and five shall serve for three years. Board~~  
2 ~~members may be appointed to successive terms.~~

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

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

11 ~~(f) Chairperson. The board shall annually elect a board~~  
12 ~~chairperson from among the voting members.~~

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

16 ~~§ 803. Powers of board.~~

17 ~~The board shall have the following powers:~~

18 ~~(1) To provide advice and expertise to the secretary and~~  
19 ~~the commission chair concerning animal operations.~~

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

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

1 ~~(4) To assist the secretary and the commission by~~  
2 ~~providing comments on regulatory proposals under section 804~~  
3 ~~(relating to review of regulations).~~

4 ~~§ 804. Review of regulations.~~

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

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

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

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

1 ~~possible, the department shall advise the board as to the~~  
2 ~~development of regulations under this subsection that would~~  
3 ~~regulate animal operations.~~

4 ~~Section 6. This act shall take effect in 60 days.~~

5 SECTION 1. SECTION 510(A) AND (D) OF TITLE 3 OF THE <--  
6 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

7 § 510. NUTRIENT MANAGEMENT ADVISORY BOARD.

8 (A) CREATION.--THERE IS CREATED THE NUTRIENT MANAGEMENT  
9 ADVISORY BOARD. THE BOARD SHALL CONSIST OF 16 MEMBERS APPOINTED  
10 BY THE CHAIRMAN OF THE COMMISSION AND APPROVED BY A TWO-THIRDS  
11 VOTE OF THE COMMISSION. THE MEMBERS SO APPOINTED SHALL CONSIST  
12 OF [FIVE] SIX ACTIVE COMMERCIAL FARM OWNERS OR OPERATORS  
13 REPRESENTING THE LIVESTOCK, SWINE, MEAT POULTRY, EGG POULTRY AND  
14 DAIRY INDUSTRY NOMINATED BY STATEWIDE GENERAL FARM  
15 ORGANIZATIONS, ONE VETERINARY NUTRITION SPECIALIST, ONE  
16 REPRESENTATIVE FROM THE FEED INDUSTRY, ONE REPRESENTATIVE FROM  
17 THE FERTILIZER INDUSTRY, [ONE REPRESENTATIVE OF COMMERCIAL  
18 AGRICULTURAL LENDERS,] ONE REPRESENTATIVE OF LOCAL GOVERNMENT,  
19 ONE REPRESENTATIVE OF ACADEMIA WHO SHALL BE AN AGRONOMIST OR  
20 PLANT SCIENTIST FACULTY MEMBER OF THE SCHOOL OF AGRICULTURE OF A  
21 PENNSYLVANIA COLLEGE OR UNIVERSITY, ONE REPRESENTATIVE OF  
22 ACADEMIA WHO SHALL BE AN ANIMAL SCIENCE FACULTY MEMBER WITH AN  
23 EXPERTISE IN ODOR MANAGEMENT FROM THE SCHOOL OF AGRICULTURE OF A  
24 COLLEGE OR UNIVERSITY WITHIN THIS COMMONWEALTH, ONE HYDROLOGIST,  
25 TWO CITIZEN REPRESENTATIVES WHO ARE NOT FARMERS AND ONE  
26 ENVIRONMENTAL REPRESENTATIVE, ALL OF WHOM SHALL HAVE SUFFICIENT  
27 KNOWLEDGE, EXPERIENCE OR FAMILIARITY WITH AGRONOMIC PRACTICES,  
28 NUTRIENT MANAGEMENT PRACTICES OR ODOR MANAGEMENT PRACTICES AND  
29 ALL OF WHOM SHALL BE RESIDENTS OF THIS COMMONWEALTH. THE SIX  
30 ACTIVE COMMERCIAL FARM OWNERS OR OPERATORS SHALL BE NOMINATED IN

1 A MANNER THAT PROVIDES REPRESENTATION OF THE NORTHWEST, NORTH  
2 CENTRAL, NORTHEAST, SOUTHWEST, SOUTH CENTRAL AND SOUTHEAST  
3 REGIONS OF THIS COMMONWEALTH, CORRESPONDING TO THE REGIONS  
4 SERVED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION REGIONAL  
5 OFFICES. TWO OF THE SIX ACTIVE COMMERCIAL FARM OWNERS OR  
6 OPERATORS SHALL HOLD AN ACTIVE CONCENTRATED ANIMAL FEEDING  
7 OPERATION PERMIT AS REQUIRED BY THE ACT OF JUNE 22, 1937  
8 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS LAW.

9 \* \* \*

10 (D) DUTIES.--THE BOARD SHALL REVIEW AND COMMENT ON ALL  
11 COMMISSION PROPOSED REGULATIONS, THE INTERIM GUIDELINES UNDER  
12 SECTION 504(2) (RELATING TO POWERS AND DUTIES OF COMMISSION) AND  
13 THE INTERIM CRITERIA UNDER SECTION 504(5) DEVELOPED TO IMPLEMENT  
14 THE PROVISIONS OF THIS CHAPTER. THE COMMISSION SHALL HAVE NO  
15 POWER TO PROMULGATE REGULATIONS, INTERIM GUIDELINES OR INTERIM  
16 CRITERIA UNDER THIS CHAPTER UNTIL RECEIPT OF WRITTEN COMMENTS ON  
17 THE PROPOSED REGULATIONS, GUIDELINES OR CRITERIA FROM THE BOARD  
18 OR UNTIL [60] 90 DAYS HAVE EXPIRED FROM THE DATE WHEN THE  
19 REGULATIONS, GUIDELINES OR CRITERIA WERE SUBMITTED BY THE  
20 COMMISSION TO THE BOARD FOR ITS COMMENTS. EXISTING REGULATIONS,  
21 GUIDELINES AND CRITERIA SHALL CONTINUE UNTIL MODIFIED,  
22 SUPERSEDED OR REPEALED BY THE COMMISSION.

23 \* \* \*

24 SECTION 2. SECTION 702(B) OF TITLE 27 IS AMENDED BY ADDING A  
25 PARAGRAPH TO READ:

26 § 702. ESTABLISHMENT OF BOARD.

27 \* \* \*

28 (B) MEMBERS.--THE FOLLOWING PERSONS SHALL COMPRISE THE  
29 BOARD:

30 \* \* \*

1           (7) TWO MEMBERS APPOINTED BY THE SECRETARY THAT HOLD AN  
2           ACTIVE CONCENTRATED ANIMAL FEEDING OPERATION PERMIT AS  
3           REQUIRED BY THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394),  
4           KNOWN AS THE CLEAN STREAMS LAW.

5           \* \* \*

6           SECTION 3. MEMBERS OF THE NUTRIENT MANAGEMENT ADVISORY  
7 BOARD, AS OF THE EFFECTIVE DATE OF THIS SECTION, SHALL CONTINUE  
8 TO SERVE AS MEMBERS UNTIL THEIR PRESENT TERMS OF OFFICE EXPIRE.

9           SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.