~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 27, 2017

**H. 3929**

Introduced by Reps. Hiott, Pitts, Kirby, Forrest, Yow, Sandifer, Atkinson, Hayes, Hixon and V.S. Moss

S. Printed 4/27/17--H.

Read the first time March 7, 2017.

**THE COMMITTEE ON AGRICULTURE, NATURAL**

**RESOURCES AND ENVIRONMENTAL AFFAIRS**

To whom was referred a Bill (H. 3929) to amend the Code of Laws of South Carolina, 1976, by adding Section 44‑1‑65 so as to establish specific requirements for the review and appeal of decisions, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 1, Title 44 of the 1976 Code is amended by adding:

“Section 44‑1‑65. (A) In making a staff decision on a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, pursuant to Section 44‑1‑60(D), or if the department conducts a final review conference related to a decision on a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, pursuant to Section 44‑1‑60(F), the department shall base its decision solely on whether the permit complies with the applicable department regulations governing the permitting of poultry and other agricultural animal facilities, other than swine facilities.

(B) For purposes of permitting, licensing, certification, or other approval of a poultry facility or another agricultural animal facility, other than a swine facility:

(1) in addition to an applicant, permittee, and licensee, only an affected person may request a final review conference pursuant to Section 44‑1‑60(F);

(2) only an affected person may request a contested case hearing pursuant to Section 44‑1‑60(G);

(3) in addition to an applicant, permittee, and licensee, only an affected person may become a party to a final review conference;

(4) only an affected person may become a party to a contested case hearing; and

(5) in addition to an applicant, permittee, and licensee, only an affected person is entitled as of right to be admitted as a party pursuant to Section 1‑23‑310(5) of the South Carolina Administrative Procedures Act.

(C)(1) In determining whether to issue a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, the department only may take into consideration the existing development on and use of property owned or occupied by an affected person on the date the department receives the applicant’s complete application package as prescribed by regulation. The department must not take into consideration any changes to the development or use of property after receipt of the application including, but not limited to, the construction of a residence.

(2) If a property owner signs a setback waiver of the right to contest the issuance of a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, including waiver of the right to notice and a public hearing on a permit, license, certification, or other approval and to file a contested case or other action, the affected person may not withdraw or rescind the waiver.

(D) An applicant, permittee, licensee, and an affected person who has exhausted all administrative remedies within the department relating to a decision to issue or deny a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, and who is aggrieved by a final decision is entitled to appeal the decision pursuant to Section 1‑23‑380.

(E) For purposes of this section, ‘affected person’ means a property owner with standing within a one‑mile radius of the proposed building footprint or permitted poultry facility or other agricultural animal facility, except a swine facility, who is challenging on its own behalf the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable department regulations governing the permitting of poultry facilities and other agricultural animal facilities, other than swine facilities.”

SECTION 2. Section 44‑1‑60(A) of the 1976 Code is amended to read:

“(A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case ~~shall~~ must be made using the procedures set forth in this section. A department decision referenced in this subsection relating to a poultry facility or another agricultural animal facility, except a swine facility, also must comply with the provisions of Section 44‑1‑65.”

SECTION 3. Section 46‑45‑80 of the 1976 Code is amended to read:

“Section 46‑45‑80. Any setback distances given in R. 61‑43, Standards for Permitting of Agricultural Animal Facilities, are minimum siting requirements as established by the Department of Health and Environmental Control. As long as the established setbacks are achieved, the department may not require additional setback distances ~~on a case‑by‑ case basis considering the factors set forth in the regulation~~. Such distances from property lines or residences may be waived or reduced by written consent of the adjoining property owners~~, or otherwise without consent of the adjoining property owners, when there are innovative and alternative technologies approved by the department pursuant to the Innovative and Alternative Technologies Section of R. 61‑43.~~ All agricultural animal facilities affected by these setback provisions must have a vegetative buffer between the facility and the affected ~~residence~~ person as established by DHEC unless otherwise agreed to in writing by the adjoining landowners.”

SECTION 4. This act takes effect upon approval by the Governor.

Renumber sections to conform.

Amend title to conform.

DAVID R. HIOTT for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44‑1‑65 SO AS TO ESTABLISH SPECIFIC REQUIREMENTS FOR THE REVIEW AND APPEAL OF DECISIONS BY THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (DHEC) REGARDING THE PERMITTING OF CERTAIN AGRICULTURAL ANIMAL FACILITIES; TO AMEND SECTION 44‑1‑60, AS AMENDED, RELATING TO APPEALS FROM DHEC DECISIONS GIVING RISE TO CONTESTED CASES, SO AS TO REVISE AND CLARIFY PROCEDURES FOR REVIEWING PERMITS FOR CERTAIN AGRICULTURAL ANIMAL FACILITIES; TO AMEND SECTION 46‑45‑60, RELATING TO APPLICABILITY OR LOCAL ORDINANCES TO AGRICULTURAL OPERATIONS, SO AS TO CHANGE CERTAIN EXCEPTIONS; AND TO AMEND SECTION 46‑45‑80, RELATING TO SETBACK DISTANCES FOR CERTAIN AGRICULTURAL ANIMAL FACILITIES, SO AS TO PROHIBIT DHEC FROM REQUIRING ADDITIONAL SETBACK DISTANCES IF ESTABLISHED DISTANCES ARE ACHIEVED, TO PROHIBIT THE WAIVER OR REDUCTION OF SETBACK DISTANCES IF THEY ARE ACHIEVED, WITH EXCEPTIONS, WITHOUT WRITTEN CONSENT OF ADJOINING PROPERTY OWNERS, AND TO ALLOW DHEC TO REQUIRE CERTAIN BUFFERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 44 of the 1976 Code is amended by adding:

“Section 44‑1‑65. (A) In making a staff decision on a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, pursuant to Section 44‑1‑60(D), or if the department conducts a final review conference related to a decision on a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, pursuant to Section 44‑1‑60(F), the department shall base its decision solely on whether the permit complies with the applicable department regulations governing the permitting of poultry and other agricultural animal facilities, other than swine facilities.

(B) For purposes of permitting, licensing, certification, or other approval of a poultry facility or another agricultural animal facility, other than a swine facility:

(1) in addition to an applicant, permittee, and licensee, only an affected person may request a final review conference pursuant to Section 44‑1‑60(F);

(2) only an affected person may request a contested case hearing pursuant to Section 44‑1‑60(G);

(3) in addition to an applicant, permittee, and licensee, only an affected person may become a party to a final review conference;

(4) only an affected person may become a party to a contested case hearing; and

(5) in addition to an applicant, permittee, and licensee, only an affected person is entitled as of right to be admitted as a party pursuant to Section 1‑23‑310(5) of the South Carolina Administrative Procedures Act.

(C)(1) In determining whether to issue a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, the department only may take into consideration the existing development on and use of property owned or occupied by an affected person on the date the department receives the applicant’s initial permit application. The department must not take into consideration any changes to the development or use of property after receipt of the application including, but not limited to, the construction of a residence.

(2) If a property owner signs a setback waiver of the right to contest the issuance of a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, including waiver of the right to notice and a public hearing on a permit, license, certification, or other approval and to file a contested case or other action, the affected person may not withdraw or rescind the waiver.

(D) An applicant, permittee, licensee, and an affected person who has exhausted all administrative remedies within the department relating to a decision to issue or deny a permit, license, certification, or other approval of a poultry facility or another agricultural animal facility, except a swine facility, and who is aggrieved by a final decision is entitled to appeal the decision pursuant to Section 1‑23‑380. The cost to appeal a decision is five thousand dollars.

(E) For purposes of this section, ‘affected person’ means a property owner or resident with standing within a two‑mile radius of the proposed building footprint or permitted poultry facility or other agricultural animal facility, except a swine facility, who is challenging the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable department regulations governing the permitting of poultry facilities and other agricultural animal facilities, other than swine facilities.”

SECTION 2. Section 44‑1‑60(A) of the 1976 Code is amended to read:

“(A) All department decisions involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department which may give rise to a contested case ~~shall~~ must be made using the procedures set forth in this section. A department decision referenced in this subsection relating to a poultry facility or another agricultural animal facility, except a swine facility, also must comply with the provisions of Section 44‑1‑65.”

SECTION 3. Section 46‑45‑60(A) of the 1976 Code is amended to read:

“(A) Notwithstanding any local law or ordinance, an agricultural operation or facility is considered to be in compliance with the local law or ordinance if the operation or facility would otherwise comply with state law or regulations governing the facility or operation~~.~~, with the exception of new swine operations and new slaughterhouse operations, to the extent an ordinance of a unit of local government:

(1) attempts to regulate the licensing or operation of an agricultural facility in any manner that is not identical to and not more stringent than the laws of this State and regulations of the Department of Health and Environmental Control and amendments thereto;

(2) makes the operation of an agricultural facility or an agricultural operation at an agricultural facility a nuisance or providing for abatement as a nuisance in derogation of this chapter; or

(3) is not identical to state law and regulations governing agricultural operations or agricultural facilities, is null and void. The provisions of this section do not apply whenever a nuisance results from the negligent, illegal, or improper operation of an agricultural facility. The provisions of this section do not apply to an agricultural facility or agricultural operation at an agricultural facility located within the corporate limits of a city.”

SECTION 4. Section 46‑45‑80 of the 1976 Code is amended to read:

“Section 46‑45‑80. Any setback distances given in R. 61‑43, Standards for Permitting of Agricultural Animal Facilities, are minimum siting requirements as established by the Department of Health and Environmental Control. As long as the established setbacks are achieved, the department may not require additional setback distances ~~on a case‑by‑ case basis considering the factors set forth in the regulation~~. Such distances from property lines or residences may be waived or reduced by written consent of the adjoining property owners~~, or otherwise without consent of the adjoining property owners, when there are innovative and alternative technologies approved by the department pursuant to the Innovative and Alternative Technologies Section of R. 61‑43. All agricultural animal facilities affected by these setback provisions must have a vegetative buffer between the facility and the affected residence as established by DHEC unless otherwise agreed to in writing by the adjoining landowners~~. The department may require a vegetative buffer within the established setback between the facility and the affected residence.”

SECTION 5. This act takes effect upon approval by the Governor.

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