~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 11, 2018

**H. 3929**

Introduced by Reps. Hiott, Pitts, Kirby, Forrest, Yow, Sandifer, Atkinson, Hayes, Hixon, V.S. Moss, S. Rivers, Magnuson, Long, Chumley, Burns, Loftis and Gagnon

S. Printed 1/11/18--S.

Read the first time May 11, 2017.

**THE COMMITTEE ON**

**AGRICULTURE AND NATURAL RESOURCES**

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 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 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 animal facilities, other than swine facilities.

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

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

(C)(1) In determining whether to issue a permit, license, certification, or other approval of a poultry facility or another 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 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, then the affected person may not withdraw or rescind the waiver.

(D) An applicant, permittee, licensee, or 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 animal facility, except a swine facility, and who is aggrieved by a final decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act.

(E) For purposes of this section, ‘affected person’ means a property owner within a one‑mile radius of the proposed building footprint or permitted poultry facility or other animal facility, except a swine facility, who is challenging on his 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 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 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 ~~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~~ an evergreen 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. Nothing in this act shall be construed as affecting or applying to confined swine feeding operations.

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

Renumber sections to conform.

Amend title to conform.

DANIEL B. VERDIN III 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 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.

‑‑‑‑XX‑‑‑‑