**South Carolina General Assembly**

122nd Session, 2017-2018

**A139, R144, H3929**

**STATUS INFORMATION**

General Bill

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

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Introduced in the House on March 7, 2017

Introduced in the Senate on May 11, 2017

Last Amended on February 27, 2018

Passed by the General Assembly on March 1, 2018

Governor's Action: March 12, 2018, Signed

Summary: Agricultural animal facilities

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/7/2017 House Introduced and read first time ([House Journal‑page 78](file:///h:\hj\20170307.docx))

3/7/2017 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 78](file:///h:\hj\20170307.docx))

3/30/2017 House Member(s) request name removed as sponsor: Toole

4/27/2017 House Committee report: Favorable with amendment **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 1](file:///h:\hj\20170427.docx))

5/2/2017 House Requests for debate‑Rep(s). Hiott, B Newton, Clary, Forrester, Toole, Hixon, Cogswell, Burns, GR Smith, Brown, Martin, Elliott, JE Smith, Weeks, Anderson, Davis, Cobb‑Hunter, Kirby, Jefferson, Williams, Hill, West, Ballentine, Spires, King, Huggins, Hewitt, Fry, Hardee, Erickson, W Newton, Wheeler, Hart, Norrell, Murphy, Chumley ([House Journal‑page 46](file:///h:\hj\20170502.docx))

5/3/2017 House Member(s) request name added as sponsor: S.Rivers

5/9/2017 House Member(s) request name added as sponsor: Magnuson, Long, Chumley, Burns, Loftis, Gagnon

5/9/2017 House Amended ([House Journal‑page 146](file:///h:\hj\20170509.docx))

5/9/2017 House Read second time ([House Journal‑page 146](file:///h:\hj\20170509.docx))

5/9/2017 House Roll call Yeas‑77 Nays‑12 ([House Journal‑page 173](file:///h:\hj\20170509.docx))

5/10/2017 House Read third time and sent to Senate ([House Journal‑page 34](file:///h:\hj\20170510.docx))

5/11/2017 Senate Introduced and read first time ([Senate Journal‑page 7](file:///h:\sj\20170511.docx))

5/11/2017 Senate Referred to Committee on **Agriculture and Natural Resources** ([Senate Journal‑page 7](file:///h:\sj\20170511.docx))

1/11/2018 Senate Committee report: Favorable with amendment **Agriculture and Natural Resources** ([Senate Journal‑page 7](file:///h:\sj\20180111.docx))

2/20/2018 Senate Special order, set for February 20, 2018 ([Senate Journal‑page 26](file:///h:\sj\20180220.docx))

2/20/2018 Senate Roll call Ayes‑41 Nays‑4 ([Senate Journal‑page 26](file:///h:\sj\20180220.docx))

2/21/2018 Senate Debate interrupted ([Senate Journal‑page 39](file:///h:\sj\20180221.docx))

2/22/2018 Senate Debate interrupted ([Senate Journal‑page 11](file:///h:\sj\20180222.docx))

2/27/2018 Senate Committee Amendment Adopted ([Senate Journal‑page 12](file:///h:\sj\20180227.docx))

2/27/2018 Senate Amended ([Senate Journal‑page 12](file:///h:\sj\20180227.docx))

2/27/2018 Senate Read second time ([Senate Journal‑page 12](file:///h:\sj\20180227.docx))

2/27/2018 Senate Roll call Ayes‑41 Nays‑1 ([Senate Journal‑page 12](file:///h:\sj\20180227.docx))

2/28/2018 Senate Read third time and returned to House with amendments ([Senate Journal‑page 47](file:///h:\sj\20180228.docx))

3/1/2018 House Concurred in Senate amendment and enrolled ([House Journal‑page 26](file:///h:\hj\20180301.docx))

3/1/2018 House Roll call Yeas‑95 Nays‑0 ([House Journal‑page 26](file:///h:\hj\20180301.docx))

3/7/2018 Ratified R 144

3/12/2018 Signed By Governor

3/14/2018 Effective date 03/12/18

3/20/2018 Act No. 139

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**VERSIONS OF THIS BILL**

[3/7/2017](file:///p:\pprever\2017-18\3929_20170307.docx)

[4/27/2017](file:///p:\pprever\2017-18\3929_20170427.docx)

[5/9/2017](file:///p:\pprever\2017-18\3929_20170509.docx)

[5/10/2017](file:///p:\pprever\2017-18\3929_20170510.docx)

[1/11/2018](file:///p:\pprever\2017-18\3929_20180111.docx)

[2/27/2018](file:///p:\pprever\2017-18\3929_20180227.docx)

(A139, R144, H3929)

**AN ACT 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, LICENSING, CERTIFICATION OR OTHER APPROVAL OF POULTRY AND OTHER ANIMAL FACILITIES, EXCEPT SWINE FACILITIES; TO AMEND SECTION 44‑1‑60, RELATING TO APPEALS FROM DHEC DECISIONS GIVING RISE TO CONTESTED CASES, SO AS TO REVISE AND CLARIFY PROCEDURES FOR REVIEWING PERMITS FOR POULTRY AND OTHER ANIMAL FACILITIES, EXCEPT SWINE FACILITIES; AND TO AMEND SECTION 46‑45‑80, RELATING TO SETBACK DISTANCES FOR POULTRY AND OTHER ANIMAL FACILITIES, EXCEPT SWINE FACILITIES, SO AS TO PROHIBIT DHEC FROM REQUIRING ADDITIONAL SETBACK DISTANCES IF ESTABLISHED DISTANCES ARE ACHIEVED, TO ALLOW WAIVER OF THE ESTABLISHED SETBACK DISTANCES IN CERTAIN CIRCUMSTANCES, AND FOR OTHER PURPOSES.**

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

**Appeals of DHEC permitting decisions for animal facilities**

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 has seventy‑two hours to provide in writing a withdrawal or rescission of the waiver.

(D)(1) 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.

(2) Notwithstanding any other provision of law, a final decision to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, may not be contested if the proposed building footprint is located eight hundred feet or more from the facility owner’s property line or located one thousand feet or more from an adjacent property owner’s residence.

(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 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.”

**DHEC appeals and contested case reviews**

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 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.”

**Animal agricultural facility setback distances**

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. Such distances from property lines or residences may be waived or reduced by written consent of the adjoining property owners. All animal facilities affected by these setback provisions must have an evergreen buffer between the facility and the affected residence as established by DHEC unless otherwise agreed to in writing by the adjoining landowners.”

**Inapplicability of act to swine feeding operation**

SECTION 4. Nothing in this act shall be construed as affecting or applying to confined swine feeding operations.

**Time effective**

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

Ratified the 7th day of March, 2018.

Approved the 12th day of March, 2018.

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