

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 ENGROSSED SENATE  
5 BILL NO. 596

By: Jech of the Senate

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An Act relating to agriculture; amending 2 O.S. 2011, Sections 20-3, as amended by Section 1, Chapter 123, O.S.L. 2013 (2 O.S. Supp. 2016, Section 20-3), 20-6, and 20-19, which relate to the Oklahoma Swine Feeding Operations Act; modifying definition; removing requirement to obtain license under certain circumstance; providing for exemption from setback requirement; and providing an effective date.

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

SECTION 1. AMENDATORY 2 O.S. 2011, Section 20-3, as amended by Section 1, Chapter 123, O.S.L. 2013 (2 O.S. Supp. 2016, Section 20-3), is amended to read as follows:

Section 20-3. A. Concentrated swine feeding operations are point sources subject to the license program established pursuant to the provisions of the Oklahoma Swine Feeding Operations Act.

B. As used in the Oklahoma Swine Feeding Operations Act:

1. "Affected property owner" means a surface landowner within:

- 1 a. one (1) mile of the designated perimeter of a swine  
2 feeding operation which:  
3 (1) does not meet the definition of a licensed  
4 managed feeding operation, or  
5 (2) is previously unlicensed or an expanding licensed  
6 managed feeding operation with a capacity of two  
7 thousand (2,000) or less swine animal units, or  
8 b. two (2) miles of the designated perimeter of a  
9 licensed managed feeding operation or an expanding  
10 operation with a capacity of more than two thousand  
11 (2,000) swine animal units for which a license is  
12 being sought;

13 2. "Swine feeding operation" means a lot or facility where the  
14 following conditions are met:

- 15 a. swine have been, are, or will be stabled or confined  
16 and fed or maintained for a total of ninety (90)  
17 consecutive days or more in any twelve-month period,  
18 and  
19 b. crops, vegetation, forage growth or post-harvest  
20 residues are not sustained in the normal growing  
21 season over any portion of the lot or facility;

22 3. "Swine animal unit" means a unit of measurement for any  
23 swine feeding operation calculated by adding the following numbers:  
24 The number of swine weighing over twenty-five (25) kilograms,

1 approximately fifty-five (55) pounds, multiplied by four-tenths  
2 (0.4), plus the number of weaned swine weighing under twenty-five  
3 (25) kilograms multiplied by one-tenth (0.1);

4 4. "Swine waste" means swine excrement, swine carcasses, feed  
5 wastes, process wastewaters or any other waste associated with the  
6 confinement of swine from a swine feeding operation;

7 5. "Swine Waste Management Plan" or "Nutrient Management Plan"  
8 means a written plan that includes a combination of conservation and  
9 management practices designed to protect the natural resources of  
10 the state prepared by an owner or operator of a swine feeding  
11 operation as required by the Department pursuant to the provisions  
12 of Section 20-10 of this title;

13 6. "Swine waste management system" means a combination of  
14 structures and nonstructural practices serving a swine feeding  
15 operation that provides for the collection, treatment, disposal,  
16 distribution, storage and land application of swine waste;

17 7. "Artificially constructed" means constructed by humans;

18 8. "Best Management Practices" means schedules of activities,  
19 prohibitions of practices, maintenance procedures, and other  
20 management practices to prevent or reduce the pollution of waters of  
21 the state as established by the Oklahoma Department of Agriculture,  
22 Food, and Forestry pursuant to Section 20-10 of this title;

23 9. "Board" means the State Board of Agriculture;

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1 10. "Common ownership" includes but is not limited to any  
2 corporation, partnership or individual where the same owner has  
3 power or authority to manage, direct, restrict, regulate or oversee  
4 the operation or has financial control of the facility;

5 11. "Concentrated swine feeding operation" means:

- 6 a. a licensed managed feeding operation, or  
7 b. a swine feeding operation which meets the following  
8 criteria:

9 (1) more than the number of swine specified in any of  
10 the following categories are confined:

11 (a) 750 swine each weighing over 25 kilograms or  
12 approximately 55 pounds,

13 (b) 3,000 weaned swine each weighing under 25  
14 kilograms, or

15 (c) 300 swine animal units, and

16 (2) either one of the following conditions are met:

17 (a) pollutants are discharged into waters of the  
18 state through an artificially constructed  
19 ditch, flushing system or other similar  
20 artificially constructed device, or

21 (b) pollutants are discharged directly into  
22 navigable waters which originate outside of  
23 and pass over, across or through the facility  
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1 or otherwise come into direct contact with  
2 the swine confined in the operation.

3 Provided, however, that no swine feeding operation  
4 pursuant to this subparagraph is a concentrated swine  
5 feeding operation if the swine feeding operation  
6 discharges only in the event of a twenty-five-year,  
7 twenty-four-hour storm event, ~~or~~

8 c. the Board determines that the operation is a  
9 significant contributor of pollution to waters of the  
10 state pursuant to Section 20-6 of this title, or

11 d. any new swine feeding operation established after  
12 November 1, 2011, with more than one hundred animal  
13 units;

14 12. "Department" means the Oklahoma Department of Agriculture,  
15 Food, and Forestry;

16 13. "Designated perimeter" means the perimeter of any structure  
17 or combination of structures utilized to control swine waste until  
18 it can be disposed of in an authorized manner. Structures shall  
19 include but not be limited to pits, burial sites, barns or roof-  
20 covered structures housing swine, composters, waste storage sites,  
21 or retention structures or appurtenances or additions thereto;

22 14. "Expanding operation" means:

23 a. a facility that either increases its swine animal unit  
24 capacity to a number that causes the facility to

1 initially meet the definition of a licensed managed  
2 feeding operation, or

- 3 b. a licensed managed feeding operation that seeks to  
4 increase its licensed capacity in excess of five  
5 percent (5%) of the original facility's licensed  
6 capacity;

7 15. "Facility" means any place, site, or location or part  
8 thereof where swine are kept, handled, housed, or otherwise  
9 maintained and processed and includes but is not limited to  
10 buildings, lots, pens, and swine waste management systems;

11 16. "Interested party" means an affected property owner found  
12 to meet the burden of proof pursuant to the provisions of Section  
13 20-8 of this title;

14 17. "Land application" means the spreading on, or incorporation  
15 of swine waste into the soil mantle primarily for beneficial  
16 purposes;

17 18. "Licensed managed feeding operations" means a swine feeding  
18 operation primarily using a liquid swine waste management system,  
19 where swine are primarily housed in a roof-covered structure and  
20 which has more than the number of swine specified in any of the  
21 following categories confined:

- 22 a. 2,500 swine each weighing over 55 pounds,  
23 b. 10,000 weaned swine each weighing under 55 pounds, or  
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1 c. any combination of swine weighing over 55 pounds or  
2 under 55 pounds which would equal one thousand (1,000)  
3 swine animal units;

4 19. "Liquid swine waste management system" means any swine  
5 waste management system which uses water as the primary carrier of  
6 swine waste into a primary retention structure;

7 20. "Nutrient-limited watershed" means a watershed of a water  
8 body which is designated as "nutrient-limited" in the most recent  
9 Oklahoma Water Quality Standards;

10 21. "Nutrient-vulnerable groundwater" means groundwater which  
11 is designated "nutrient-vulnerable" in the most recent Oklahoma  
12 Water Quality Standards;

13 22. "Odor Abatement Plan" means schedules of activities,  
14 prohibitions of practices, maintenance procedures and other  
15 management practices to prevent or reduce odor as established by the  
16 Department pursuant to ~~Section 20-11~~ of the Oklahoma Swine Feeding  
17 Operations Act;

18 23. "Occupied residence" means a habitable structure designed  
19 and constructed for full-time occupancy in all weather conditions  
20 and:

- 21 a. is not readily mobile,
- 22 b. is connected to a public or permanent source of  
23 electricity and a permanent waste disposal system or  
24 public waste disposal system, and

1 c. is occupied as a residence;

2 24. "Pollution Prevention Plan" means a written plan to control  
3 the discharge of pollutants which has been prepared in accordance  
4 with industry-acceptable engineering and management practices by the  
5 owner or operator of a swine feeding operation as required pursuant  
6 to Section 20-9 of this title;

7 25. "Process wastewater" means any water utilized in the  
8 facility that comes into contact with any manure, litter, bedding,  
9 raw, intermediate, or final material or product used in or resulting  
10 from the production of swine and any products directly or indirectly  
11 used in the operation of a facility, such as spillage or overflow  
12 from swine watering systems; washing, cleaning, or flushing pens,  
13 barns, manure pits, direct contact, swimming, washing or spray  
14 cooling of swine; and dust control and any precipitation which comes  
15 into contact with swine or swine waste;

16 26. "Retention structures" means, but is not limited to, all  
17 collection ditches, conduits and swales for the collection of runoff  
18 water and process wastewater, and basins, ponds and lagoons or other  
19 structures used to store swine wastes;

20 27. "Spill" means the release from a swine feeding operation of  
21 any process wastewater or manure that does not reach waters of the  
22 state;

23 28. "Waste facility" means any structure or combination of  
24 structures utilized to control swine waste until it can be disposed



1 of in an authorized manner. The structures shall include but not be  
2 limited to pits, burial sites, barns or roof-covered structures  
3 housing swine, composters, waste storage sites, or retention  
4 structures or appurtenances or additions thereto; and

5 29. "Waters of the state" means all streams, lakes, ponds,  
6 marshes, watercourses, waterways, wells, springs, irrigation  
7 systems, drainage systems, storm sewers and all other bodies or  
8 accumulations of water, surface and underground, natural or  
9 artificial, public or private, which are contained within, flow  
10 through or border upon this state or any portion thereof, and shall  
11 include under all circumstances the waters of the United States  
12 which are contained within the boundaries of, flow through or border  
13 upon this state or any portion thereof. Provided, waste treatment  
14 systems, including treatment ponds and lagoons designed to meet  
15 federal and state requirements other than cooling ponds as defined  
16 in the Federal Clean Water Act or rules promulgated pursuant  
17 thereto, are not waters of the state.

18 SECTION 2. AMENDATORY 2 O.S. 2011, Section 20-6, is  
19 amended to read as follows:

20 Section 20-6. A. 1. Any swine feeding operation meeting the  
21 criteria defining a concentrated swine feeding operation shall be  
22 required to obtain a license to operate pursuant to the Oklahoma  
23 Swine Feeding Operations Act and rules promulgated pursuant thereto.

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1           2. No swine feeding operation which voluntarily obtains a  
2 license pursuant to the Oklahoma Swine Feeding Operations Act shall  
3 be considered to be a concentrated swine feeding operation unless  
4 the operation meets the definition of concentrated swine feeding  
5 operation.

6           ~~3. Any new swine feeding operation established after November  
7 1, 2011, with more than one hundred animal units shall be required  
8 to be licensed pursuant to the provisions of the Oklahoma Swine  
9 Feeding Operations Act and the rules promulgated pursuant to that  
10 act.~~

11           ~~4.~~ Any other swine feeding operation, regardless of the number  
12 of swine, shall only be required to be licensed pursuant to the  
13 provisions of the Oklahoma Swine Feeding Operations Act and rules  
14 promulgated pursuant thereto if the State Board of Agriculture  
15 determines the operation to be a significant contributor of  
16 pollution to waters of the state.

17           B. 1. Two or more swine feeding operations under common  
18 ownership are considered, for the purposes of licensure, to be a  
19 single swine feeding operation if they adjoin each other or if they  
20 use a common area or system for the disposal of wastes.

21           2. A licensed managed feeding operation shall be required to  
22 seek a modification of its license for any increase in excess of  
23 five percent (5%) of the original facility's licensed capacity.

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1 C. An expanding operation shall be required to seek a  
2 modification of its license prior to expansion.

3 D. 1. The Board may make a case-by-case designation of  
4 concentrated swine feeding operations pursuant to this section. Any  
5 swine feeding operation may be designated as a concentrated swine  
6 feeding operation if it is determined to be a significant  
7 contributor of pollution to the waters of the state. In making this  
8 designation, the Board shall consider the following factors:

- 9 a. the size of the swine feeding operation and the amount  
10 of wastes reaching waters of the state,
- 11 b. the location of the swine feeding operation relative  
12 to waters of the state,
- 13 c. the means of conveyance of swine waste and wastewater  
14 into waters of the state,
- 15 d. the method of disposal for swine waste and process  
16 wastewater disposal,
- 17 e. the slope, vegetation, rainfall and other factors  
18 affecting the likelihood or frequency of discharge of  
19 swine wastes and process wastewaters into waters of  
20 the state, and
- 21 f. other factors relative to the significance of the  
22 pollution problem sought to be regulated.

23 2. In no case shall an application for a license be required  
24 from a swine feeding operation pursuant to this subsection until

1 there has been an on-site inspection of the operation and a  
2 determination by the Oklahoma Department of Agriculture, Food, and  
3 Forestry that the operation is a concentrated swine feeding  
4 operation. Should the Department determine that the operation is a  
5 concentrated swine feeding operation, the Department shall notify  
6 the operation of the determination and of an opportunity for the  
7 owner or operator of the facility to request an administrative  
8 hearing on the issue.

9 3. Process wastewater in the overflow may be discharged to  
10 navigable waters whenever rainfall events, either chronic or  
11 catastrophic, cause an overflow of process wastewater from a  
12 retention structure properly designed, constructed and operated to  
13 contain all process wastewaters plus the runoff from a twenty-five-  
14 year, twenty-four-hour rainfall event for the location of the point  
15 source. There shall be no effluent limitations on discharges from a  
16 waste facility constructed and properly maintained to contain the  
17 twenty-five-year, twenty-four-hour storm event; provided, the proper  
18 design, construction and operation of the retention structure shall  
19 include but not be limited to one (1) foot of free board.

20 E. No new concentrated swine feeding operation or expansion of  
21 a concentrated swine feeding operation requiring a license pursuant  
22 to the Oklahoma Swine Feeding Operations Act shall be constructed or  
23 placed in operation unless final design plans, specifications and a  
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1 Pollution Prevention Plan developed pursuant to Section 20-9 of this  
2 title have been approved by the Department.

3 F. No new licensed managed feeding operation or expanding  
4 operation shall be constructed until a building permit for such  
5 facility or expansion has been issued by the Department. No new  
6 licensed managed feeding operation or expanding operation shall be  
7 placed in operation until a license for the facility or a  
8 modification for an existing license has been issued by the  
9 Department.

10 G. When requesting a modification of a license, a licensed  
11 managed feeding operation shall comply with all notice and hearing  
12 requirements as specified by this section and rules promulgated by  
13 the State Board of Agriculture. In its request for a modification  
14 of a license, a licensed managed feeding operation shall provide all  
15 information specified in subsection G of Section 20-7 of this title.

16 H. Any hearings regarding modification of a license shall focus  
17 on the modifications being proposed by the licensed managed feeding  
18 operation.

19 I. A decision to deny modification of a license shall have no  
20 impact on the original license.

21 SECTION 3. AMENDATORY 2 O.S. 2011, Section 20-19, is  
22 amended to read as follows:

23 Section 20-19. A. Except as authorized by this subsection, no  
24 liquid swine waste shall be land applied within five hundred (500)

1 feet of the nearest corner of an occupied residence not owned or  
2 leased by the owner of the swine feeding operation.

3 B. Except as otherwise provided by Section 20-20 of the  
4 Oklahoma Swine Feeding Operations Act, no concentrated swine feeding  
5 operation shall be established within one (1) mile of ten or more  
6 residences that are occupied residences at the time of the  
7 establishment of the concentrated swine feeding operation.

8 C. The proscription contained in subsections A and B of this  
9 section shall not apply if the applicable property owner executes a  
10 written waiver with the owner or operator of the swine feeding  
11 operation, under the terms and conditions that the parties  
12 negotiate. The written waiver becomes effective upon recording of  
13 the waiver in the offices of the recorder of deeds in the county  
14 where the property is located. The filed waiver shall preclude  
15 enforcement of the setback requirements contained in subsections A  
16 and B of this section. A change in ownership of the applicable  
17 property or change in the ownership of the property on which the  
18 swine feeding operation is located shall not affect the validity of  
19 the waiver.

20 D. No liquid swine waste shall be land applied within three  
21 hundred (300) feet of an existing public or private drinking water  
22 well.

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1 E. Except as provided by Section 20-20 of the Oklahoma Swine  
2 Feeding Operations Act, no concentrated swine feeding operation  
3 shall be established if located:

4 1. Within three (3) miles of a state park or resort;

5 2. On land within three (3) miles of the incorporated limits of  
6 any municipality, unless the municipality's governing body grants a  
7 written waiver of the setback for the particular swine feeding  
8 operation. A change in ownership of the property on which the  
9 animal feeding operation is located shall not affect the validity of  
10 the waiver; or

11 3. Within three (3) miles of the high water mark of a surface  
12 public water supply if the concentrated swine feeding operation is  
13 located within the drainage basin for the public water supply.

14 F. All distances between occupied residences and swine feeding  
15 operations shall be measured from the closest corner of the walls of  
16 the occupied residence to the closest point of the nearest waste  
17 facility, as determined by the Department. The property boundary  
18 line of the real property is not used unless it coincides with the  
19 closest point of the waste facility or occupied residence.

20 SECTION 4. This act shall become effective November 1, 2017.

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22 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT,  
23 dated 04/04/2017 - DO PASS.  
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