

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 2784

Short Title: Extend Moratoria/Cost-Share Funds. (Public)

Sponsors: Representatives Justice, Carney, Harrison, Wright (Primary Sponsors);
Alexander, L. Allen, Bordsen, Fisher, Jeffus, Luebke, Martin, McComas,
Underhill, and Weiss.

Referred to: Appropriations.

May 30, 2006

A BILL TO BE ENTITLED

1 AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL
2 RESOURCES TO DEVELOP A COST-SHARE PROGRAM TO ASSIST SWINE
3 GROWERS IN FUNDING INNOVATIVE ANIMAL WASTE MANAGEMENT
4 SYSTEMS THAT REPLACE SYSTEMS EMPLOYING ANAEROBIC
5 LAGOONS, TO CREATE A TASK FORCE TO ASSIST THE DEPARTMENT OF
6 ENVIRONMENT AND NATURAL RESOURCES IN DEVELOPING CRITERIA
7 FOR IMPLEMENTING THE COST-SHARE PROGRAM, TO APPROPRIATE
8 FUNDS FOR THE COST-SHARE PROGRAM, AND TO EXTEND THE
9 MORATORIA ON THE CONSTRUCTION OR EXPANSION OF SWINE
10 FARMS.
11

12 The General Assembly of North Carolina enacts:

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14 **PART I. COST-SHARE PROGRAM FOR INNOVATIVE ANIMAL WASTE**
15 **MANAGEMENT SYSTEMS THAT REPLACE SYSTEMS THAT EMPLOY**
16 **ANAEROBIC LAGOONS**

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18 **SECTION 1.1.** Beginning no later than October 1, 2006, the Department of
19 Environment and Natural Resources shall develop a cost-share program to provide
20 financial and technical assistance to qualifying growers who volunteer to replace any
21 existing anaerobic lagoon that is a primary component of an animal waste management
22 system with an innovative animal waste management system.

23 **SECTION 1.2.** A task force is created within the Department of
24 Environment and Natural Resources. The Secretary of Environment and Natural
25 Resources shall select no more than 21 members to serve on this task force. Members
26 shall include, but not necessarily be limited to, the following:

- 27 (1) The Governor, or the Governor's designee.

- 1 (2) The Attorney General or the Attorney General's designee.
- 2 (3) The Commissioner of Agriculture or the Commissioner's designee.
- 3 (4) The Secretary of Commerce or the Secretary's designee.
- 4 (5) The Secretary of Revenue or the Secretary's designee.
- 5 (6) The Director of the Division of Soil and Water Conservation of the
- 6 Department of Environment and Natural Resources or the Director's
- 7 designee.
- 8 (7) The Director of the Division of Water Quality of the Department of
- 9 Environment and Natural Resources or the Director's designee.
- 10 (8) The Designee appointed pursuant to the agreement entered into by the
- 11 North Carolina Attorney General and Smithfield Foods, Inc., dated
- 12 July 25, 2000, or the Designee's designee.
- 13 (9) The Director of the Carolina Environmental Program at the University
- 14 of North Carolina at Chapel Hill or the Director's designee.
- 15 (10) The President of Frontline Farmers or the President's designee.
- 16 (11) The President of the North Carolina Pork Council or the President's
- 17 designee.
- 18 (12) The President of the North Carolina Farm Bureau Federation or the
- 19 President's designee.
- 20 (13) The Southeast Regional Director of Environmental Defense or the
- 21 Regional Director's designee.
- 22 (14) The Executive Director of the Southern Environmental Law Center or
- 23 the Executive Director's designee.
- 24 (15) The President of the Rural Economic Development Center, Inc., or the
- 25 President's designee.
- 26 (16) A member of a local conservation or a community organization.
- 27 (17) A scientist with established expertise in swine waste management.
- 28 (18) An economist.

29 **SECTION 1.3.(a)** The task force created under this Part shall establish
30 program criteria for the implementation of the cost-share program under this Part and
31 the evaluation of the program's performance. The task force shall assist the Secretary of
32 Environment and Natural Resources regarding all of the following:

- 33 (1) Subject to subsection (b) of this section, identifying animal waste
- 34 management systems that qualify as innovative.
- 35 (2) Develop additional criteria for selecting innovative animal waste
- 36 management systems that are eligible to receive cost-share funds for
- 37 installation on swine farms under this program, including the cost of
- 38 purchasing and maintaining the system, potential markets for waste
- 39 by-products, whether waste collection and treatment is centralized, and
- 40 any other criteria the task force deems pertinent.
- 41 (3) Developing criteria to establish funding priorities to guide the selection
- 42 of swine farms that are eligible for participation in this program,
- 43 including criteria regarding the farm's geographic location, the

1 grower's compliance history, and any other factors the task force
2 deems pertinent.

3 (4) Determining the financial support participating growers must
4 contribute under the program and developing criteria for selecting
5 growers to participate in the program.

6 (5) Developing a timetable for growers to implement the innovative
7 animal waste management systems for participating swine farms.

8 (6) Developing a process for soliciting and reviewing applications from
9 growers and a process for selecting growers to participate.

10 (7) Assessing markets for by-products derived from swine waste,
11 facilitating development of these markets, and recommending policies
12 to remove obstacles to the creation of these markets.

13 (8) Examining ways to encourage swine producers and utility providers to
14 cooperate in the production and use of renewable energy or other
15 marketable by-products derived from swine waste, including an
16 examination of tax incentives, carbon sequestration credits, and trading
17 mechanisms.

18 (9) Monitoring the performance of the program under this Part.

19 (10) Designating the nonprofit corporation or State agency to implement
20 the cost-share program under this Part, to select the growers to receive
21 cost-share funds under this program, and to disburse the cost-share
22 funds.

23 (11) Beginning March 1, 2007, and every six months thereafter, preparing a
24 report to be submitted to the Environmental Review Commission on
25 the success of the program to date in replacing lagoons on swine farms
26 with innovative animal waste management systems, on policies that
27 will provide the greatest benefits to the environment, communities, and
28 swine growers, and on how to modify this program to reflect these
29 policies.

30 **SECTION 1.3.(b)** Animal waste management system technology shall not
31 be considered innovative by the Secretary of Environment and Natural Resources unless
32 the provider of the technology demonstrates to the satisfaction of the Secretary that the
33 technology meets all of the standards set forth in either subdivision (7) or subdivision
34 (8) of subsection (b) of Section 1.1 of S.L. 1997-458, as amended by Section 2 of S.L.
35 1998-188. The Secretary may rely on the determinations of the Technical Advisory
36 Committee established pursuant to the agreements entered into by the North Carolina
37 Attorney General and Smithfield Foods, Inc., Premium Standard Farms, Inc., and
38 Frontline Farmers, although the Secretary may consider innovative animal waste
39 management system technologies that were not evaluated pursuant to these agreements.

40 **SECTION 1.4.** As part of this cost-share program, the Department of
41 Environment and Natural Resources, or the nonprofit corporation or State agency
42 designated under subdivision (10) of subsection (a) of Section 1.3 of this Part to
43 implement this program, may contract as needed with third-party waste management
44 companies for the transport, management, or treatment of waste produced on swine

1 farms participating in this cost-share program. The Department of Environment and
2 Natural Resources, or the nonprofit corporation or State agency designated under
3 subdivision (10) of subsection (a) of Section 1.3 of this Part to implement this program,
4 may receive and spend any funds received from private, federal, and other public
5 sources for the costs of the cost-share program under this Part and may adopt rules
6 necessary to implement this program.

7 **SECTION 1.5.** The Secretary of Environment and Natural Resources shall
8 report to the General Assembly no later than August 1, 2007, on the progress of the
9 development and the implementation of the cost-share program under this Part.

10 **SECTION 1.6.** As used in this Part, the following definitions apply:

- 11 (1) Anaerobic lagoon. – Defined in Section 1.1(a) of S.L. 1997-458, as
12 amended by Section 2 of S.L. 1998-188.
- 13 (2) Animal waste management system. – Defined in G.S. 143-215.10B.
- 14 (3) Grower. – Defined in G.S. 143-215.10H.
- 15 (4) Innovative animal waste management system. – An animal waste
16 management system that meets all of the standards set forth in either
17 subdivision (7) or subdivision (8) of subsection (b) of Section 1.1 of
18 S.L. 1997-458, as amended by Section 2 of S.L. 1998-188.
- 19 (5) Swine farm. – Defined in G.S. 106-802.

20 **SECTION 1.7.(a)** There is appropriated from the General Fund to the
21 Department of Environment and Natural Resources the sum of ten million dollars
22 (\$10,000,000) for the 2006-2007 fiscal year for the costs of implementing this Part and
23 for cost-share funds for growers participating in the cost-share program under this Part.

24 **SECTION 1.7.(b)** Funds appropriated under subsection (a) of this section
25 shall not be disbursed as cost-share funds for financial or technical assistance to growers
26 under the cost-share program under this Part until criteria have been developed under
27 Section 1.3 of this Part.

28 29 **PART II. EXTEND MORATORIA**

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31 **SECTION 2.1.** Subsection (a1) of Section 1.1 of S.L. 1997-458, as amended
32 by Section 2 of S.L. 1998-188, Section 2.1 of S.L. 1999-329, Section 1 of S.L.
33 2001-254, and Section 1 of S.L. 2003-266, reads as rewritten:

34 "(a1) There is hereby established a moratorium on the construction or expansion of
35 swine farms and on lagoons and animal waste management systems for swine farms.
36 The purposes of this moratorium are to allow time for the completion of ongoing
37 evaluations of animal waste management technologies and related research and studies;
38 to allow the General Assembly to receive and act on the findings and recommendations
39 of those evaluations, research, and studies; and to allow for the implementation of any
40 legislation that may be enacted. Except as provided in subsection (b) of this section, the
41 Environmental Management Commission shall not issue a permit for an animal waste
42 management system for a new swine farm or the expansion of an existing swine farm
43 for a period beginning on 1 March 1997 and ending on 1 September ~~2007~~, 2009. The
44 construction or expansion of a swine farm or animal waste management system for a

1 swine farm is prohibited during the period of the moratorium regardless of the date on
2 which a site evaluation for the swine farm is completed and regardless of whether the
3 animal waste management system is permitted under G.S. 143-215.1 or Part 1A of
4 Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North
5 Carolina Administrative Code 2H.0217."

6 **SECTION 2.2.** Section 1.2 of S.L. 1997-458, as amended by Section 3 of
7 S.L. 1998-188, Section 2.2 of S.L. 1999-329, Section 2 of S.L. 2001-254, and Section 2
8 of S.L. 2003-266, reads as rewritten:

9 "Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same
10 meaning as in G.S. 106-802. As used in this section, 'animal waste management system'
11 has the same meaning as in G.S. 143-215.10B. There is hereby established a
12 moratorium for any new or expanding swine farm or lagoon for which a permit is
13 required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any
14 county in the State: (i) that has a population of less than 75,000 according to the most
15 recent decennial federal census; (ii) in which there is more than one hundred fifty
16 million dollars (\$150,000,000) of expenditures for travel and tourism based on the most
17 recent figures of the Department of Commerce; and (iii) that is not in the coastal area as
18 defined by G.S. 113A-103. Effective 1 January 1997, until 1 September ~~2007~~,2009, the
19 Environmental Management Commission shall not issue a permit for an animal waste
20 management system, as defined in G.S. 143-215.10B, or for a new or expanded swine
21 farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of
22 Section 1.1 of this act do not apply to the moratorium established under this section.

23 (b) In order to protect travel and tourism, effective 1 September ~~2007~~,2009, no
24 animal waste management system shall be permitted except under an individual permit
25 issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in
26 the State: (i) that has a population of less than 75,000 according to the most recent
27 decennial federal census; (ii) in which there is more than one hundred fifty million
28 dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent
29 figures of the Department of Commerce; and (iii) that is not in the coastal area as
30 defined by G.S. 113A-103."

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32 **PART III. EFFECTIVE DATE.**

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34 **SECTION 3.1.** This act becomes effective July 1, 2006.