

Legal Analysis of Proposed Amendments to House Bill 1646 ('ACRE')

**Amendments Proposed by Rep. Jerry Stern (#36) Printers No. 2075 (AO1931)
Rep. Sheila Miller (#197) Printers No. 2075 (AO1591)**

Analysis Prepared by the Pennsylvania Family Farm Coalition

Introduction: *The Pennsylvania Family Farm Coalition – a statewide association of family farm organizations, municipal governments, and conservation groups – is providing members of the House Agriculture Committee with this analysis of two Amendments that have been proposed to House Bill 1646 (the 'ACRE' Initiative). Those Amendments are being proposed by Representative Sheila Miller (R-Berks) and Representative Jerry Stern (R-Blair). Representative Miller's Amendment deals solely with the odor management portion of House Bill 1646, and Representative Stern's Amendment deals solely with the adoption and enforcement of local Ordinances by local governmental units.*

The Pennsylvania Family Farm Coalition has already announced its strong opposition to House Bill 1646 – primarily because the "Agricultural Review Board" would establish State precedent in creating a five member Board of State political appointees legally empowered to overturn local Ordinances regulating and controlling corporate factory farms in the Commonwealth. In addition, the Coalition feels that creating a special system of enforcement for a group of special interests would subsidize and accelerate the loss of independent family livestock farmers across the Commonwealth.

Representative Stern's Amendment would alter that process for nullifying local Ordinances to one that wields the power of the State Attorney General against local governments. It would, in effect, place the Attorney General's office in the position of a Court, making decisions concerning the legality of certain local laws, and then deciding to sue to nullify the Ordinance, or enjoin the enforcement of an Ordinance.

Above all, both House Bill 1646 and Representative Stern's Amendment to the Bill, continue to circumvent the normal judicial process and place three political appointees, or one official, in a position to oversee and approve local laws adopted by duly elected municipal officials. They do so to exempt a certain set of interests from the normal processes of enforcing laws.

As such, the Pennsylvania Family Farm Coalition is urging the members of the House Agriculture Committee to vote "no" on Representative Stern's Amendment, and to vote "no" to refer House Bill 1646 to the full floor of the House. The Committee is currently scheduled to meet at 9:30 a.m. on Wednesday, June 22nd in Room 302 of the Irvis Office Building.

Analyses of the two amendments follow:

I. An Analysis of Representative Jerry Stern's Amendment:

Eliminates the Agricultural Review Board and the Office of Ordinance Review, and inserts a process that (1) prohibits the adoption of certain "unauthorized" Ordinances by local governments, (2) enables the owner or operator of a "normal agricultural operation" to file a request for review of an "unauthorized" Ordinance to the State Attorney General, (3) empowers the Attorney General to bring a lawsuit against the local government to nullify the Ordinance, and (4) enables any person "aggrieved" by an Ordinance to file suit against the local government directly in the Commonwealth Court.

The Amendment then establishes a process for the creation of "Commonwealth Court masters" under which the Commonwealth Court may establish special "masters" for the hearing of cases brought under the legislation. The decision by the "master" becomes a final decision by the Commonwealth Court if the president judge confirms the decision.

The Amendment then provides for attorneys fees to be paid by the local government if the Court (or "master") determines that the local government unit acted with "negligent disregard" of the "limitation of authority established under state law."

Impacts on Local Control: As with the current House Bill 1646, this Amendment not only creates a special system for the enforcement of existing law, but would also:

- (1) expand State preemption by prohibiting local governments from adopting local laws that "restrict or limit the ownership structure of a normal agricultural operation." In doing so, its passage would automatically nullify the laws of a dozen Township governments who currently regulate and control corporate factory farming through Ordinances focused on regulating and controlling non-family corporate ownership and control of farms. Those Ordinances are currently law in Townships within several Counties, including Indiana, Fulton, Cumberland, Tioga, and Bedford Counties. They are under review by other Township governments. The Amendment, and existing House Bill 1646 would therefore create new law that would be enforced under the new Attorney General framework;
- (2) apply retroactively to Ordinances adopted over the past several years by Township governments, which are currently in place and being enforced; and may impact land use Ordinances that come into conflict with some interpretations of Pennsylvania's Right to Farm law;
- (3) circumvent the County Courts of Common Pleas, and creates an appeal process directly to the Commonwealth Court – and then, only through "masters" who are not Commonwealth Court judges, with one "master" making a decision to be confirmed by one judge;
- (4) does not exempt the land application of sludge from the purview of the legislation, because it declares only that the State's "regulation, control, or permitting procedures for the land application of Class A or B biosolids" is not affected by the Bill. It does not clarify that the Township's authority under the Second Class Township Code – to protect the health, safety, and welfare of residents by regulating the land application of sewage sludge - is not impacted by the legislation. It thus does not even codify the ruling in the

Pennsylvania Supreme Court's *Hydropress* decision, in which the decision of the Court upheld the authority of local governments to regulate and control the land application of sludge;

- (5) give another tool to agribusiness interests to wield against local governments considering the passage of Ordinances aimed at regulating and controlling corporate farming operations. This Amendment would now introduce the authority of the State Attorney General, to be used directly against the Township and its Solicitor. In essence, it establishes a direct conflict between the State and a local government.

Position of Pennsylvania Family Farm Coalition on Amendment: Against the Amendment. The Family Farm Coalition is now urging members of the House Ag Committee to vote “no” on referring House Bill 1646 to the House floor, and to vote “no” on this Amendment.

II. An Analysis of Representative Sheila Miller's Amendment:

The Amendment solely addresses the Odor Management portion of House Bill 1646 (pages 14 to 31). It would eliminate the original House Bill's *requirement* for odor management plans for concentrated animal feeding operations, and instead, would make the preparation of odor management plans *voluntary*, not a requirement under the law. In addition, the Amendment restricts the ability of the State Conservation Commission to consider odor impacts on any other parties except for landowners living adjacent to a concentrated animal feeding operation.

Finally, the Amendment excludes the land application of biosolids from the promulgation of regulations by the State Conservation Commission dealing with odors, thus exempting the land application of sludge from regulations to be adopted by the Commission dealing with control of odors.

Position of Pennsylvania Family Farm Coalition on Amendment: Against the Amendment. The Family Farm Coalition is now urging members of the House Ag Committee to vote “no” on referring House Bill 1646 to the House floor, and to vote “no” on this Amendment.