



March 24, 2023

SUMMARY OF BILL: Designates concentrated animal feeding operations (CAFOs) as an industrial land use and prohibits a person from constructing or expanding a CAFO on land that is not zoned for industrial use.

FISCAL IMPACT:

Increase Local Revenue – \$10,200/FY24-25/Weakley County

Other Fiscal Impact – Due to multiple unknown factors, the extent of any recurring increase to local revenue cannot be estimated.

Assumptions:

- Pursuant to 40 CFR 122.23:
 - An animal feeding operation (AFO) is a lot or facility (other than an aquatic animal production facility) where animals are stabled, confined, fed or maintained for a total of 45 days or more in any 12-month period and that does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the lot or facility;
 - An AFO becomes a CAFO when it meets certain size thresholds or when it has been designated as such by the appropriate authority; and
 - CAFOs are subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements.
- Tennessee Code Annotated §§ 5-1-118(b), 6-54-126, 13-7-114(a) and 13-7-208(b) provide that:
 - Counties may not prohibit or regulate normal agricultural activities;
 - Municipalities may not use zoning power to interfere in any way with the use of any land that is used for agricultural purposes;
 - Counties may not require building permits or regulate the erection, construction, or reconstruction of any building or structure on lands devoted to agricultural uses and which may be used for agricultural purposes; and
 - In the event that a zoning change occurs, municipalities may not prohibit an establishment that was previously permitted to operate from continuing in operation.
- In Opinion No. 18-30, dated July 6, 2018, the Attorney General and Reporter opined that Tennessee's zoning statutes do not authorize counties to regulate CAFOs.

- The proposed legislation would, notwithstanding a provision of law to the contrary, authorize local governments to regulate CAFOs by designating CAFOs as an industrial land use and furthermore, would prohibit a person from constructing or expanding a CAFO on land that is not zoned for industrial use.
- Pursuant to Tenn. Code Ann. §§ 67-5-501, 67-5-504, and 67-5-801, for purposes of classification and taxation:
 - Industrial property shall be assessed at 40 percent of its value;
 - Farm property shall be assessed at 25 percent of its value and includes all real property that is used in agriculture; and
 - Property assessments, including classification, are to reflect the status of the property as of January 1 of the tax year.
- Since industrial property is taxed at a higher percentage than agricultural property, designating a CAFO as industrial use would result in an increase to local property tax revenue for any county with a CAFO.
- The proposed legislation goes into effect upon becoming law, which is assumed to be FY23-24. The assessment date of the first tax year after the act becomes effective is January 1, 2024.
- Given that property tax notices will be sent to taxpayers in late 2024 and paid by February 2025, the first fiscal year impact will be FY24-25.
- There are four CAFOs in the state with active permits in the following counties: Bedford, Franklin, Henry, and Weakley.
- Of the four CAFOs, only the CAFO in Weakley County will have a permit in effect on January 1, 2024 and therefore, would be assessed as an industrial use.
- Based on information provided by the Comptroller of the Treasury, in FY21-22 the Weakley County CAFO was assessed \$11,879 in property taxes as an agricultural use and would have been assessed \$22,088 as an industrial use.
- The estimated increase in property tax revenue to Weakley County is \$10,209 (\$22,088 industrial use - \$11,879 agricultural use) in FY24-25.
- The Weakley County CAFO's permit expires December 31, 2024. Upon renewal of this permit, Weakley County would see a recurring increase in property tax revenue of \$10,209.
- Additionally, if the other three CAFOs renew their permits, then Bedford, Franklin, and Henry County could also expect an increase in property tax revenue.
- Due to multiple unknown factors, such as which CAFOs will renew their permits, how many new CAFOs will obtain permits before January 1, 2024, and each jurisdiction's property tax rate, the extent of any recurring increase to local property tax revenue cannot be estimated.
- Given that there are only four CAFOs in the state, it is not expected that authorizing local governments to regulate CAFOs would result in a significant increase to local revenues as a result of any future building permit requirements.
- Prohibiting a person from constructing or expanding a CAFO on land that is not zoned for industrial use will not result in any significant fiscal impact to local government; owners of CAFOs will ensure that the CAFO is on land zoned for industrial use.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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