Agriculture, Communities and Rural Environments (ACRE) (3 Pa. Cons. Stat. §§ 311-318)

(Current as of May 2009)

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§ 311. Scope

This chapter deals with local regulation of normal agricultural operations.

§ 312. Definitions

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Local government unit." A political subdivision of the Commonwealth.

"Normal agricultural operation." As defined under section 2 of the act of June 10, 1982 (P.L. 454, No. 133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

"Unauthorized local ordinance." An ordinance enacted or enforced by a local government unit which does any of the following:

(1) Prohibits or limits a normal agricultural operation unless the local government unit:

(i) has expressed or implied authority under State law to adopt the ordinance; and

(ii) is not prohibited or preempted under State law from adopting the ordinance.

(2) Restricts or limits the ownership structure of a normal agricultural operation.

§ 313. Certain local government unit actions prohibited

(a) Adoption and enforcement of unauthorized local ordinances.--A local government unit shall not adopt nor enforce an unauthorized local ordinance.

(b) Existing local ordinances.--This chapter shall apply to the enforcement of local ordinances existing on the effective date of this section and to the enactment or enforcement of local ordinances enacted on or after the effective date of this section.

(c) Construction.--Notwithstanding the provisions of this section, nothing in this chapter shall be construed to diminish, expand or otherwise affect the legislative or regulatory authority of local government units under State law, including the following:

(1) Chapter 5 (relating to nutrient management and odor management).

(2) The regulation, control or permitting procedures for the land application of class A or B biosolids.

§ 314. Duties of Attorney General

(a) Request for review.--An owner or operator of a normal agricultural operation may

request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under section 315(a) (relating to right of action).
(b) Discretion.--The Attorney General has the discretion whether to bring an action under section 315(a).
(c) Response.--Within 120 days after receiving a request under subsection (a), the Attorney General shall advise the person that made the request whether or not the Attorney General will bring legal action under section 315(a). If the request under subsection (a) is in writing, the response shall be in writing.
(d) Consultation.--The secretary and the dean of the College of Agricultural Sciences at The Pennsylvania State University shall, upon request of the Attorney General, provide expert consultation regarding the nature of normal agricultural operations in this Commonwealth.

§ 315. Right of action
(a) Attorney General action.--The Attorney General may bring an action against the local government unit in Commonwealth Court to invalidate the unauthorized local ordinance or enjoin the enforcement of the unauthorized local ordinance.
(b) Other party action.--Notwithstanding any provision of 42 Pa.C.S. Ch. 85 Subch. C (relating to actions against local parties), any person who is aggrieved by the enactment or enforcement of an unauthorized local ordinance may bring an action against the local government unit in Commonwealth Court to invalidate the unauthorized local ordinance or enjoin the enforcement of the unauthorized local ordinance.

§ 316. Commonwealth Court masters
(a) General rule.--The Commonwealth Court may promulgate rules for the selection and appointment of masters on a full-time or part-time basis for actions brought under section 315 (relating to right of action). A master shall be a member of the bar of this Commonwealth. The number and compensation of masters shall be fixed by the Commonwealth Court and their compensation shall be paid by the Commonwealth.
(b) Hearings before masters.--The Commonwealth Court may direct that hearings in actions brought under section 315 be conducted in the first instance by the master in the manner provided for in this subchapter.
(c) Recommendations of masters.--Upon the conclusion of a hearing before a master, the master shall transmit written findings and a recommendation for disposition to the president judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding.
(d) Rehearing before president judge.--The findings and recommendations of the master shall become the findings and order of the Commonwealth Court upon written confirmation by the president judge. A rehearing may be ordered by the president judge at any time upon cause shown.

§ 317. Attorney fees and costs
In an action brought under section 315(b) (relating to right of action), the court may do any of the following:
(1) If the court determines that the local government unit enacted or enforced an unauthorized local ordinance with negligent disregard of the limitation of authority established under State law, it may order the local government unit to pay the plaintiff reasonable attorney fees and other litigation costs incurred by the plaintiff in connection

with the action.
(2) If the court determines that the action brought by the plaintiff was frivolous or was brought without substantial justification in claiming that the local ordinance in question was unauthorized, it may order the plaintiff to pay the local government unit reasonable attorney fees and other litigation costs incurred by the local government unit in defending the action.

§ 318. Reports to General Assembly

The Attorney General shall provide to the chairman and the minority chairman of the Senate Committee on Agricultural and Rural Affairs and the chairman and minority chairman of the Agricultural and Rural Affairs Committee of the House of Representatives an annual report to include the following:
(1) Information on how many reviews were requested, the nature of the complaints and the location of the ordinances cited.
(2) Information on how many reviews were conducted.
(3) Information on how many legal actions were brought by the Attorney General.
(4) Information on the outcome of legal actions brought by the Attorney General.