

The National Agricultural
Law Center



An Agricultural Law Research Project

States' Right-To-Farm Statutes

State of Ohio

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States' Right-to-Farm Statutes

STATE OF OHIO

Ohio Rev. Code Ann. §§ 929.01 to 929.05

Ohio Rev. Code Ann § 3767.13

Current through 2010 Files 1 to 42, and 44, 46, 48 to 51, 53 and 54 of the 128th GA (2009-2010), apv. 6/12/10, and filed with the Secretary of State by 6/13/10.

929.01 Definitions

As used in this chapter:

(A) "Agricultural production" means commercial aquaculture, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.

"Agricultural production" includes conservation practices, provided that the tracts, lots, or parcels of land or portions thereof that are used for conservation practices comprise not more than twenty-five per cent of tracts, lots, or parcels of land that are otherwise devoted exclusively to agricultural use and for which an application is filed under section 929.02 of the Revised Code.

(B) "Withdrawal from an agricultural district" includes the explicit removal of land from an agricultural district, conversion of land in an agricultural district to use for purposes other than agricultural production, and withdrawal of land from a land retirement or conservation program to use for purposes other than agricultural production.

Withdrawal from an agricultural district does not include land described in division (A)(4) of section 5713.30 of the Revised Code.

(C) "Conservation practice" has the same meaning as in section 5713.30 of the Revised Code.

929.02 Agricultural district; placing land into district; withdrawal; effects; procedures

(A) Any person who owns agricultural land may file an application with the county auditor to place the land in an agricultural district for five years if, during the three calendar years prior to the year in which that person files the application, the land has been devoted exclusively to agricultural production or devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government and if:

(1) The land is composed of tracts, lots, or parcels that total not less than ten acres; or

(2) The activities conducted on the land produced an average yearly gross income of at least twenty-five hundred dollars during that three-year period or the owner has evidence of an anticipated gross income of that amount from those activities. The owner shall submit with the application proof that the owner's land meets the requirements established under this division. If the county auditor determines that the application does not meet the requirements of this section, the county auditor shall deny the application and notify the applicant by certified mail, return receipt requested, within thirty days of the filing of the application. The applicant may appeal the denial of the application to the court of common pleas of the county in which the application was filed within thirty days of the receipt of the notice. If the county auditor determines that the application meets the requirements of this section, the county auditor shall approve the application and notify the applicant within thirty days of the filing of the application. An application that is not denied shall be deemed to be approved. The county auditor shall provide an applicant with a copy of an approved application within thirty days of the filing of the application. An application that is approved is effective upon the date of the filing of the application.

The county auditor shall keep a record of all land in the county that is within an agricultural district, including a copy of the final action taken by a legislative body regarding applications modified by a legislative body pursuant to division (B) of this section.

(B) If the land of a person who files an application under division (A) of this section is within a municipal corporation or if an annexation petition that includes the land has been filed with the board of county commissioners under section 709.02 of the Revised Code at the time of the filing, the owner also shall file a copy of the application for inclusion in an agricultural district with the clerk of the legislative body of the municipal corporation. No later than thirty days after the filing of an application or, in the case of an annexation petition filed pursuant to section 709.02 of the Revised Code, no later than thirty days after the petition has been granted, the legislative body shall conduct a public hearing on the application. The clerk of the legislative body shall cause a notice containing the substance of the application and the time and place where it will be heard to be published in a newspaper of general circulation in the county in which the application or annexation petition is filed no later than seven days prior to the time fixed for the hearing. The clerk of the legislative body also shall notify the applicant of the time and place of the hearing by certified mail sent no later than ten days prior to the hearing. Any interested person or representative of an interested person may appear in support of or to contest the granting of the application. Affidavits presented in support of or against the application shall be considered by the legislative body. Within thirty days of the hearing, the legislative body may approve the application, modify the application and approve the application as modified, or reject the application. An application that is not modified or rejected by a majority vote of the members of the legislative body shall be deemed to be approved. Prior to rejecting an application, the legislative body shall make every effort to modify the application. Modifications may include the length of time during which land is considered to be within an agricultural district, size of the agricultural district, and any provisions of sections 929.03 to 929.05 of the Revised Code. If the applicant disapproves of the modifications made by the legislative body, the applicant may withdraw the application to place the land in an agricultural district. In rejecting or modifying an application to place land in an agricultural district, the legislative body shall demonstrate that the rejection or modification is necessary to prevent a substantial, adverse effect on the provision of municipal services within the municipal corporation, efficient use of land within the municipal corporation, the orderly growth and development of the municipal corporation, or the public health, safety, or welfare. If an annexation petition is denied under section 709.033 of the Revised Code, if a legislative body fails to conduct a hearing in the time prescribed by this section, or if an application is approved, the application shall be deemed to have been approved and shall become effective as of the date the application was filed. An application approved with modifications shall become effective as of the date the application was filed unless the modification provides

otherwise.

The clerk of the legislative body shall notify the applicant by certified mail, return receipt requested, sent within five days of the decision to approve, modify, or reject an application for inclusion of land in an agricultural district. The clerk of the legislative body shall also transmit a copy of the decision to approve, modify, or reject an application to the county auditor. An applicant may appeal a decision to modify or reject an application to the court of common pleas of the county in which the application was filed within thirty days of the receipt of the notice of modification or rejection.

(C) At any time after the first Monday in January and prior to the first Monday in March of the year during which an agricultural district terminates, the owner of land in the agricultural district may file a renewal application to continue the inclusion of all or part of the owner's land in an agricultural district for a period of time ending on the first Monday in April of the fifth year following the renewal application. The requirements for continued inclusion in the agricultural district and the renewal application procedure shall be the same as those required for the original application for placing land in an agricultural district. The county auditor shall notify owners of land in agricultural districts eligible to file a renewal application for continued inclusion in an agricultural district on or prior to the first Monday in February or the date upon which the county auditor notifies owners of land valued at agricultural use value for real property tax purposes of the necessity of filing a renewal application to continue valuing the land at agricultural use value. On or before the second Tuesday after the first Monday in March, the county auditor shall determine whether the owner of any land in an agricultural district eligible to file a renewal application failed to file a renewal application with respect to that land and shall forthwith notify each owner of the land by certified mail that unless a renewal application is filed prior to the first Monday in April, the land will be removed from the agricultural district upon its termination date. An approved renewal application is effective on the termination date of the preceding agricultural district. Failure of an owner to file a renewal application prior to the first Monday in April of the year during which the owner's agricultural district terminates shall not prevent the owner from filing an application to include the owner's land in an agricultural district.

Land that is transferred to a new owner during the period in which the land is an agricultural district shall continue in the agricultural district under the terms of the existing district unless the new owner elects to discontinue inclusion in the agricultural district and files the election with the county auditor within sixty days after the transfer. Failure of the new owner to continue inclusion in the agricultural district for the duration of the period in which the land is in the agricultural district is withdrawal from an agricultural district subject to penalty.

(D) If, at any time during which land is in an agricultural district, the owner withdraws the land from the district, the owner shall notify the county auditor of the withdrawal and shall pay to the county auditor a withdrawal penalty calculated as follows:

(1) If the owner's action also disqualifies the owner's land for any tax savings that it had been receiving under sections 5713.30 to 5713.38 of the Revised Code, the owner shall pay a percentage of the amount charged under section 5713.34 of the Revised Code that is equal to the average bank prime rate at the time the amount charged under that section is required to be paid. The withdrawal penalty shall be in addition to the amount charged under that section.

(2) If the land had not been receiving any tax savings under those sections, or if the owner's action does not disqualify the land for tax savings under them, the owner shall pay a percentage of the amount that would have been charged under section 5713.34 of the Revised Code if the owner's land had been receiving tax savings and became disqualified for them in an amount that is equal to the average bank prime rate at the time the amount that would have been charged under that section would have been required to be paid.

For the purposes of divisions (D)(1) and (2) of this section, the county auditor shall determine the average bank prime rate using statistical release H.15, "selected interest rates," a weekly publication of the federal reserve board, or any successor publication. If the statistical release H.15, or its successor, ceases to contain the bank prime rate information or ceases to be published, the county auditor shall request a written statement of the average bank prime rate from the federal reserve bank of Cleveland or the federal reserve board.

The county auditor shall calculate the amount of the withdrawal penalty that is due and shall notify the owner of it. The auditor also shall note the withdrawal in the auditor's records.

The county auditor shall distribute the moneys collected under division (D) of this section in the manner provided in section 5713.35 of the Revised Code for moneys that the county auditor collects under that section.

(E) Land that is included in an agricultural district under this section and that is subsequently annexed by a municipal corporation shall not be subject to division (B) of this section either at the time of annexation or at the time of any subsequent application or renewal application for inclusion in the district if, at the time of annexation, its owner did not sign a petition favoring annexation under section 709.02 of the Revised Code. If its owner did sign a petition favoring annexation, as provided in that section, or if the owner who opposed annexation has sold or transferred the land to another person who is keeping the land in the agricultural district, the land shall be subject to division (B) of this section at the time of any subsequent application or renewal application for inclusion in the district.

(F) The director of agriculture shall prescribe the application and renewal forms required under this section and shall furnish them to county auditors. In prescribing the forms, the director shall consult with the tax commissioner to determine if a single form can be developed for the purposes of this section and section 5713.31 of the Revised Code.

929.03 Special assessments; exemptions; procedures

(A)(1) No public entity with authority to levy special assessments on real property shall collect an assessment for purposes of sewer, water, or electrical service on real property that is within an agricultural district as described in division (A)(2) of this section without the permission of the owner, except that any assessment may be collected on a lot surrounding a dwelling or other structure not used in agricultural production that does not exceed one acre or the minimum area required by local zoning or subdivision rules, whichever is the greater area.

(2) For purposes of division (A)(1) of this section, an agricultural district is such a district that is established:

(a) In the case of counties, prior to the adoption of a resolution of necessity by a board of county commissioners, pursuant to section 6103.05 or 6117.06 of the Revised Code;

(b) In the case of municipal corporations, prior to whichever of the following occurs first:

(i) The adoption of the resolution of necessity by the municipal legislative authority, pursuant to section 727.12 or 729.02 of the Revised Code.

(ii) The service of notice on all or some of the owners to be assessed pursuant to section 729.06 of the Revised Code;

(iii) The adoption of the resolution or ordinance by the municipal legislative authority declaring the necessity for the improvement, the costs of which are to be assessed under procedures authorized by a municipal charter adopted pursuant to Section 7 of Article XVIII, Ohio Constitution, or, if no such ordinance or resolution is required under the charter, the service of the first notice on all or some of the owners of lands to be assessed, or the adoption of the first ordinance or resolution by the municipal legislative authority pertaining to the assessment proceedings under the charter.

(c) In the case of a regional water and sewer district established pursuant to Chapter 6119. of the Revised Code, prior to the adoption of a resolution of necessity by the board of trustees of the district under section 6119.25 of the Revised Code.

(B) For each special assessment levied by a public entity on real property within an agricultural district for purposes of sewer, water, or electrical service, the county auditor shall make and maintain a list showing:

- (1) The name of the owner of each lot, tract, or parcel of land that is exempt from the collection of the special assessment under this section;
- (2) A description of the exempt land;
- (3) The purpose of the special assessment;
- (4) The amount of the uncollected assessment on the exempt land.

In the case of a county project constructed under Chapter 6103. or 6117. of the Revised Code, the county auditor may use a list provided for in those chapters in lieu of the list required by division (B) of this section. The auditor shall also record in the water works record required by section 6103.16 of the Revised Code or the sewer improvement record required by section 6117.33 of the Revised Code those assessments not collected under this section. The recording of the assessments does not permit the collection of the assessments until such time as exempt lands are withdrawn from agricultural districts or converted to nonagricultural use.

(C) If at any time any of the owner's exempt land, other than a lot sold or transferred to a son, daughter, brother, sister, mother, or father for the purpose of constructing a dwelling in which the relative will reside for at least three years, is withdrawn from an agricultural district or if the owner of the exempt land uses on that land the service for which the special assessment was assessed, the public entity may collect the entire uncollected assessment, except as otherwise provided in this division, in addition to an amount equal to the rate of interest that any bonds or notes issued for the project for which the assessment was made did bear for the number of years the land was exempted, not to exceed twenty-five or the number of years for which the bonds or notes were issued, whichever is the lesser number. The owner shall notify the county auditor of any withdrawal from a district or use of the service within ninety days following the withdrawal or use of the service. The charge shall constitute a lien of the public entity upon the land and shall continue until discharged. All liens shall be recorded in the appropriate county recorder's office. Moneys collected as a result of the charge shall be deposited in the appropriate fund of the public entity that levied the special assessment. If the owner of exempt land sells or transfers a lot to his son, daughter, brother, sister, mother, or father for the purpose of constructing a dwelling in which the relative will reside for at least three years, and if the owner or the buyer of the lot uses the service for which the special assessment was assessed only to provide service to that lot, the owner of the lot shall pay only that portion of the uncollected assessment and interest that applies to the lot. If at any time any part of an owner's exempt land is appropriated, the owner shall pay only that portion of the uncollected assessment and interest that applies to the appropriated parcel of land.

In lieu of immediate payment of the uncollected assessment and interest, the board of county commissioners, legislative authority of a municipal corporation, or other governing board of any other public entity may, upon the request of the owner, establish an extended repayment schedule for the owner. If the board, legislative authority, or other governing board establishes such a schedule, it shall notify the county auditor of the schedule.

(D) A board of county commissioners, legislative authority of a municipal corporation, or other governing board of any other public entity may apply to the water and sewer commission, created by division (C) of section 1525.11 of the Revised Code, for an advance of moneys from the water and sewer fund, created by division (A) of section 1525.11 of the Revised Code, in an amount equal to that portion of the costs of a water or sewer improvement authorized by law that is to be financed by assessments whose collection is prohibited under division (A) of this section. The application for such an advance of moneys shall be made in the manner prescribed by rules of the commission. Upon collection of any assessment whose collection was prohibited under division (A) of this section, the board of county commissioners, legislative authority, or other governing board shall repay the commission the amount of any moneys advanced by it in regard to the assessments.

929.04 Civil action for nuisance; defense

In a civil action for nuisances involving agricultural activities, it is a complete defense if:

- (A) the agricultural activities were conducted within an agricultural district;
- (B) agricultural activities were established within the agricultural district prior to the plaintiff's activities or interest on which the action is based;
- (C) the plaintiff was not involved in agricultural production; and
- (D) the agricultural activities were not in conflict with federal, state, and local laws and rules relating to the alleged nuisance or were conducted in accordance with generally accepted agriculture practices.

The plaintiff may offer proof of a violation independently of proof of a violation or conviction by any public official.

929.05 Eminent domain; subsidies for nonagricultural uses; limitations

(A) No public or private agency, as defined in section 163.01 of the Revised Code, shall appropriate more than ten acres or ten per cent of an individual property under one ownership and currently used in agricultural production in an agricultural district, whichever is greater, except as provided in this section. No state agency, municipal corporation, county, township, or other political subdivision or taxing authority, or any other public entity, and no person shall advance a grant, loan, interest subsidy, or other distribution of public funds within an agricultural district for the construction of housing, or commercial or industrial facilities to serve nonagricultural uses of land, except as provided in this section.

(B) A public or private agency desiring to appropriate land in an agricultural district and a public entity or person desiring to make a distribution of public funds as provided in division (A) of this section shall, not fewer than thirty days before commencing proceedings or taking the action, give written notice of the intent to the department of agriculture unless the agency, public entity, or person has received the approval of an environmental document that includes consideration of the impact on agricultural land from an appropriate federal agency and the department of agriculture is listed among the agencies for coordination of the document. The notice shall be accompanied by a report justifying the proposed action, including an evaluation of alternatives that would not require the action within the agricultural district. The department shall review the proposed action to determine its effect on agricultural production in the district and on the policies, plans, objectives, and programs of other state or local government agencies. After considering the need for the proposed action and its necessity to protect,

promote, or enhance the public health, safety, peace, or welfare of some or all inhabitants of the state, if the director of agriculture has reason to believe that the proposed action would have an unreasonably adverse effect on the district or on the policies, plans, objectives, or programs that would outweigh the protection, promotion, or enhancement of the public health, safety, peace, or welfare, he shall inform the governor within thirty days after having received the written notice. The governor shall issue an order that the proposed action shall not be taken for sixty days. During the sixty-day period the director shall immediately publish, in a newspaper of general circulation in the district, one notice of a public hearing to be held on the matter at a convenient location in or as near as possible to the district on a specified date from twenty to thirty days after publication of the notice and send personal notice by certified mail to any municipal corporation whose territory includes any part of the district and to any public or private agency, public entity, or person seeking to appropriate the land or make the distribution of funds. After the hearing and before the end of the sixty-day period, the director shall make final findings and recommendations in the matter in writing and deliver copies of the findings and recommendations to the agency, entity, or person seeking to appropriate the land or make the distribution, to any public agency having authority to review or approve the appropriation or distribution, and by publication in a manner conducive to the wide dissemination of the findings and recommendations to the public. A public agency having authority to review or approve the appropriation or distribution shall use the findings and recommendations to reach its final determination.

(C) The director of agriculture may institute a civil action to enjoin any prohibited appropriation within an agricultural district until the department makes its final findings and recommendations under division (B) of this section. It is not necessary to the granting of such an injunction that the director prove that the injury threatened is irreparable.

(D) This section does not apply to any lines or other facilities used to transmit or distribute electricity, to any gas or oil pipeline or other facilities used for exploration, production, storage, transmission, or distribution of natural gas, synthetic gas, or oil, to any telephone lines, or to any activity or facility under the jurisdiction of the Ohio power siting board.

(E) This section does not apply to any emergency project immediately necessary for the preservation of the public health, safety, or general welfare.

(F) This section does not apply to a lot in an agricultural district that the owner sells or transfer [sic.] to his son, daughter, brother, sister, mother, or father for the purpose of constructing a dwelling in which the relative will reside for at least three years.

3767.13 Prohibitions; exemption

(A) No person shall erect, continue, use, or maintain a building, structure, or place for the exercise of a trade, employment, or business, or for the keeping or feeding of an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort, or property of individuals or of the public.

(B) No person shall cause or allow offal, filth, or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public.

(C) No person shall unlawfully obstruct or impede the passage of a navigable river, harbor, or collection of water, or corrupt or render unwholesome or impure, a watercourse, stream, or water, or unlawfully divert such watercourse from its natural course or state to the injury or prejudice of others.

(D) Persons who are engaged in agriculture-related activities, as "agriculture" is defined in section 519.01 of the Revised Code, and who are conducting those activities outside a municipal corporation, in accordance with generally accepted agricultural practices, and in such

a manner so as not to have a substantial, adverse effect on the public health, safety, or welfare are exempt from divisions (A) and (B) of this section, from any similar ordinances, resolutions, rules, or other enactments of a state agency or political subdivision, and from any ordinances, resolutions, rules, or other enactments of a state agency or political subdivision that prohibit excessive noise.