



ACRE LEGISLATION - A THREAT TO RURAL COMMUNITIES

The ACRE legislation sweepingly eviscerates local governments' abilities to protect local property owners from even the most menacing threats created by industrial farming facilities, while putting municipalities at risk of expensive and unnecessary legal bills to defend their already established zoning, subdivision, land development ordinances and even laws enacted under local governments' police powers.

ACRE prohibits local governments from enacting any ordinances that "limit" agricultural operations. It also creates a legal minefield that would deter almost any local government from adopting even the most needed ordinances for fear of being subject to costly litigation. The legislation outlaws the ability of local governments to adopt reasonable ordinances that limit the siting of industrial farming facilities next to houses of worship, schools, hospitals, nursing homes, playgrounds, and parks.

Gone from the draft legislation is any pretense that ACRE would create a way to mediate conflicts between local property owners and industrial farming operations. Instead, the legislation creates a new, expensive bureaucracy that will be a forum for litigation and for lawyers to do battle. This new bureaucracy duplicates the court system and is a typical example of government growing without need. Following are some of the key elements of ACRE:

- **Blanket Prohibition on Ordinances that "Limit" Agriculture** – Includes zoning, subdivision, land development ordinances and those enacted under local governments' police powers – zoning ordinances that protect **houses of worship, schools, hospitals, nursing homes, parks, playgrounds** would be subject to challenge;
- **All Ordinances – not just new ones – Subject to Challenge** – All existing ordinances would be able to be challenged. There are no limits on challenging existing ordinances no matter how long they have been in effect. The original ACRE proposal limited review to those ordinances potentially in conflict with Nutrient Management Act and Right to Farm Act;
- **No Conflict Mediation** - Mediation process, the core of the original ACRE proposal, has been removed;
- **Creation of New Legal Bureaucracy** - ACRE creates a quasi-judicial process complete with subpoena powers, sworn testimony and exposure to cross-examination. This new bureaucracy unnecessarily duplicates the existing court system. Anyone participating in the legal system set up by ACRE would need to retain legal counsel;
- **Office of Ordinance Review Lacks Expertise** – The Office of Ordinance Review would be housed at the State Conservation Commission (SCC), which currently administers the Nutrient Management Act. The SCC, currently a very small administrative agency without access to its own independent legal staff, does not have expertise in reviewing ordinances to determine their legality. As a

result, decisions of the Office will essentially be made by attorneys for the Department of Agriculture.

- **Agricultural Review Board Composition is Biased** – Decisions of the Office of Ordinance Review would be appealed to the Agricultural Review Board which consists of the Secretaries of Agriculture, Environmental Protection, Community and Economic Development, and two members appointed by the Governor and confirmed by the Senate, one of whom must be a dean or faculty member of a college of agriculture at a state-related university. The appointee from a college of agricultural science at a state-related university would likely lack impartiality since colleges of agricultural science are heavily funded by agribusiness, which has a direct, vested interest in the litigation before the Board.
- **Agricultural Review Board Lacks Expertise** - The Board will be made up of political appointees, most of whom will not be familiar with the issues of public health, environment, and property values surrounding industrial farming. Many of these officials may not be well versed in constitutional or municipal law. As a result, decisions of the Board will essentially be made by attorneys for the Department of Agriculture.
- **Inadequate Control of Odor** - ACRE requires only new or expanding livestock facilities to develop and implement odor control plans. However, these plans cover only construction of new barns and manure storage structures. The proposed law does not require existing facilities to develop odor control plans, nor does it require odor control plans for spreading and disposal of manure, activities that generate the most complaints about odor from the community.
- **Existing Odor Ordinances Pre-empted** - ACRE would pre-empt all existing local odor control ordinances and prohibit local governments from adopting new ones. A municipality that is currently home to existing industrial scale livestock operations would be barred from adopting odor control ordinances even if none of the operations had odor control plans.

It is regrettable and insulting that this legislation was drafted behind closed doors. There was no meaningful, good faith consultation with conservation groups, local governments, the Farmers Union, the Pennsylvania Association for Sustainable Agriculture and many others that have raised legitimate concerns about industrial farming. PennFuture has consistently indicated for that it was a willing partner in a serious dialogue on this matter. That dialogue now cannot proceed, if it ever will, until this disastrous, flawed legislation is withdrawn and a commitment is made to equal inclusion of all concerned parties in a future process.

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