



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6142

Introduced 2/11/2010, by Rep. Richard P. Myers

SYNOPSIS AS INTRODUCED:

415 ILCS 5/31.3 new

Amends the Environmental Protection Act. Prohibits any person from bringing a civil suit based on potential nuisance with respect to a proposed livestock facility until all federal, State, and local permits and approvals required for the proposed facility have been granted. Provides that a prevailing defendant in any action in which a proposed livestock management facility is alleged to be a nuisance shall recover certain costs and fees. Defines "prevailing defendant". Effective immediately.

LRB096 17614 JDS 32972 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 adding Section 31.3 as follows:

6 (415 ILCS 5/31.3 new)

7 Sec. 31.3. Nuisance; livestock management facilities.

8 (a) The General Assembly finds and declares that the
9 federal, State, and local governmental entities that have been
10 empowered to regulate siting, design, construction, and
11 operation of a proposed livestock management facility are, with
12 respect to the matters subject to their respective authorities,
13 in the best possible position to determine whether a proposed
14 facility is likely to create an actual or potential nuisance
15 when sited, designed, constructed, and operated as authorized.

16 (b) A person may not bring a civil suit based on potential
17 nuisance with respect to a proposed livestock management
18 facility until all required federal, State, and local permits
19 and approvals required for the proposed facility, including
20 without limitation any permits or approvals required under this
21 Act or the Livestock Management Facilities Act and any
22 applicable local siting approval, zoning, land use, or other
23 authorizations, have been granted.

1 (c) This Section does not limit (i) the authority of the
2 Agency to consider or determine any matter or question relating
3 to the siting, design, construction, or operation of a proposed
4 livestock management facility, (ii) the right of any person to
5 raise a question about the likelihood of creating an actual or
6 potential nuisance while lawfully participating in a public
7 hearing or permit appeal process, or (iii) the right of any
8 person to bring a civil suit based on actual or potential
9 nuisance with respect to all or any part of a livestock
10 management facility in actual operation.

11 (d) Costs and fees associated with any nuisance action in
12 which a proposed livestock management facility is alleged to be
13 a nuisance, together with a reasonable amount for attorney
14 fees, shall be recovered by a prevailing defendant in any
15 action in which a proposed livestock management facility is
16 alleged to be a nuisance. For the purposes of this subsection
17 (d), a prevailing defendant is a defendant in a lawsuit in
18 whose favor a final court order or judgment is rendered. A
19 defendant shall not be considered to have prevailed if, prior
20 to the entry of a final court order or judgment, he or she
21 enters into a negotiated settlement agreement or takes any
22 corrective or other action that renders unnecessary the entry
23 of a final court order or judgment against the defendant.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.