



HANDBOOK

Ohio County Commissioners

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CHAPTER 93

AGRICULTURAL DISTRICTS

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93.01 GENERAL INFORMATION

The purpose of agricultural districts is to promote and encourage the preservation of agricultural land and agricultural production. It is commonly referred to as Ohio's Farmland Preservation Act. After consideration of the issue for a number of years, the General Assembly in 1982 enacted SB 78 (effective June 29, 1982) which allowed for the establishment of agricultural districts as a vehicle to save agricultural land. It should be noted that these districts have no direct relationship to zoning districts. The establishment of agricultural districts are initiated by landowners who have a right to such a district if certain eligibility criteria are met. The basic agricultural districts law was modified in 1983 with the enactment of HB 35 and other changes were made in 1984 with the passage of HB 551 and in 1986 in HB 363.

Ohio had approximately 15.8 million acres of farmland in 1989. During 1991, 2.2 million acres, or 14% of Ohio's farmland, was enrolled in the agricultural district program. Since 1985 the number of districts has increased from 11,544 to 16,109. During this same period, the number of acres in agricultural districts has increased from 1.3 million to 2.2 million. In 1991 agricultural districts had been established in all but seven counties. In Wood County, 77% of its farmland is in agricultural districts.

93.02 MAJOR PROVISIONS OF THE LAW

In addition to the ability to establish agricultural districts, the law, which is contained in Chapter 929 of the Revised Code, includes the following major provisions to encourage the preservation of agricultural land:

1. Places restrictions on county and township zoning regulations affecting farm markets. For more information refer to chapter 86 of this handbook.
2. Prohibits political subdivisions from collecting special assessments for water, sewer, or electrical service if the land is located within an agricultural district.

3. Places restrictions on any public entity from distributing public funds within an agricultural district in the form of a grant, loan, interest subsidy or other source of public funds for the construction of housing, commercial or industrial facilities to serve non-agricultural land uses.
4. Places additional restrictions on the taking of land by eminent domain if the land is located in an agricultural district.
5. Provides farmers protection from nuisance suits relating to dust, noise and odors.
6. Requires the Ohio Power Siting Board to consider the impact of major utility facilities on the viability of agricultural districts in its deliberations.

93.03 ESTABLISHMENT OF DISTRICTS IN THE UNINCORPORATED AREA

Agricultural districts are established by filing an application with the county auditor. Applications are for a period of five years. The auditor reviews the application to determine if the request complies with the following basic eligibility criteria:

1. The land in question must have been either devoted exclusively to agricultural production or have been involved in a land retirement or conservation program under a federal agency agreement during the three calendar years before the application is filed.
2. There must be at least 10 acres of land.
3. Parcels of less than 10 acres can qualify if the average yearly gross income during the three years prior to the filing of the application was \$2,500 or the owner has evidence of an anticipated gross income of \$2,500.

These are basically the same criteria to qualify for current agricultural use value (CAUV) property taxation. Agricultural production is very broadly defined to include:

1. Commercial agriculture.
2. Animal or poultry husbandry.
3. The commercial production of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod.
4. The processing, drying, storage, and marketing of agricultural products when such activities are conducted in conjunction with animal husbandry or agricultural production.

If the county auditor determines that the application does not meet the requirements the application is denied and the applicant must be notified within 30 days of the filing of the application by certified mail, return receipt requested. The applicant then has 30 days to appeal the ruling to common pleas court. Applications that meet the requirements must also be approved within 30 days and the applicant must be notified. The effective date of the application is the filing date, not the approval date.

The county auditor must keep a record of all land that is within an agricultural district including any modifications to applications that have been made by cities or villages.

93.04 ESTABLISHMENT OF DISTRICTS AFFECTING MUNICIPALITIES

Although the same basic eligibility criteria and procedures apply as specified above, where land is located within any city or village or if an annexation petition has been filed with the county commissioners for any of the land in the application, additional restrictions apply to the application.

Where the land is within a municipality, a copy of the application must also be filed with the clerk of the legislative authority of the municipality. Within 30 days the municipality must hold a public hearing and a notice in a newspaper must be published at least seven days prior to the hearing. The applicant must also be notified at least 10 days in advance.

Within 30 days after the hearing the municipality must either approve, modify or reject the application. Prior to rejecting an application the municipality must make every effort to modify the application. In addition, if the municipality rejects or modifies the application it must show that placing the land in an agricultural district will have a "substantial or adverse effect" on

1. The provision of municipal services,
2. The efficient use of land,
3. The orderly growth and development, or
4. The public health, safety, or welfare of the municipality.

Within five days of the decision by the city or village, the applicant, and county auditor must be notified by certified mail, return receipt requested. The applicant can then, within 30 days, appeal the rejection or modification to common pleas court. If the municipality does not hold the required hearing the application is automatically approved. The effective date of the district is the filing date unless the modification of an application by a municipality provides otherwise. An applicant who disapproves of municipal modifications may withdraw the entire application.

In cases where an application includes land for which an annexation is pending, hearings by the annexing municipality must commence within 30 days after the annexation petition is granted by the county commissioners. If a pending annexation petition is denied by the county, the application is deemed approved if it meets the basic criteria as determined by the county auditor.

93.05 RENEWAL OF DISTRICTS

Approved agricultural districts are for a period of five years. An owner may file a renewal application after the first Monday in January but before the first Monday in March of the year when the district terminates. The renewal application may include all or any part of the original district. A renewal application is generally for a five year period ending the first Monday in April of the fifth year following the renewal application.

The county auditor must notify owners of land in agricultural districts of the renewal application requirement before the first Monday in February or on the date he notifies owners classified as current agricultural use value (CAUV) of their renewal requirement under this program. The auditor must also check to see if renewal applications have been filed on or before the second Tuesday after the first Monday in March. In cases where such

renewal applications have not been filed, notice must be sent by certified mail stating that unless a renewal application is filed before the first Monday in April that the land will be removed from the district, however, a new application may be filed at any time.

If any of the land included in a district has been annexed since the original establishment of a district, the annexed land cannot be precluded from being in a district by the municipality if any of the following applies:

1. The owner did not sign the annexation petition.
2. The owner voted against the annexation if it were initiated by the municipality.

The municipality can act on the renewal application only if :

1. The owner signed the annexation petition.
2. An owner that opposed annexation has sold or transferred the land to another person.

93.06 REMOVAL OF LAND FROM DISTRICT

The owner included within an agricultural district may withdraw from the district before the end of five years by paying a withdrawal penalty. The penalty is equal to 50 percent of the CAUV penalty under Section 5713.34 of the Revised Code. Withdrawal from the district not only includes an explicit withdrawal by the owner, but it also includes:

1. Conversion of the land to a use for purposes other than agricultural production.
2. Withdrawal of land from a land retirement or conservation program and the use of land for purposes other than agricultural production.

In addition, if land in an agricultural district is transferred, the new owner may, within 60 days, elect to discontinue the district and is then subject to the penalty. Unless the new owner elects to discontinue, however, the district continues to be in effect.

93.07 ASSESSMENT PROHIBITION PROVISIONS

Political subdivisions are prohibited from collecting special assessments for water, sewer, or electrical service on land located within an agricultural district without permission of the owner. An assessment may be collected for a lot on which a dwelling or other structure not used in agricultural production exists, if it does not exceed one acre or the minimum size required by zoning or subdivision regulations if greater than one acre.

For county water or sewer projects, counties should proceed as required by law. All required notices should be sent to the owners even though they are in an agricultural district. In order to be exempt from the collection of an assessment, the owner must establish the agricultural district prior to the adoption of the resolution of necessity by the county. In this regard, however, a county must notify those who have not established an agricultural district of the fact that the county is considering the adoption of a resolution of necessity. For additional information refer to chapter 28 of this handbook.

93.08 COLLECTION OF ASSESSMENTS UPON WITHDRAWAL FROM DISTRICT

Generally, the public authority can not collect the special assessment until the land is withdrawn from the district. If any of the land in an agricultural district is withdrawn, the owner must pay the full amount of the special assessment on all the land that had been previously exempted from the collection. The only exemption is:

1. For a lot sold or transferred to a son, daughter, brother, sister, mother, or father to construct a dwelling.
2. The relative must live in the dwelling for at least three years.
3. The owner otherwise uses the utility service.

The amount that must be paid is equal to the amount of the assessment plus interest attributable to the assessment at the rate bonds or notes were issued for the project. The total assessment and interest must be paid unless any of the situations noted above apply. In other cases, only the appropriate portions of the assessment and charges on the removed land, not on all of the land within the district shall be collected. The public authority may, at its option, allow for an extended repayment schedule instead of requiring immediate payment upon withdrawal. Finally, in cases where land in an agricultural district is taken by eminent domain only that part of the assessment that applies to the appropriated portion of the district may be collected.

Finally, where the county has previously received a loan to defer the assessment from the Ohio Water and Sewer Rotary Commission and the term of the loan expires, if the owner requests the further deferral of the assessment, the county must extend the deferment. The deferment must be for as long as the land could qualify as an agricultural district even if the owner has not established an agricultural district (ORC 6103.052, 6117.062). In such a situation, the Water and Sewer Rotary Commission must defer the repayment of the earlier, time limited loan given the commissioners to defer the original assessment (ORC 1525.12(H)).

93.09 NUISANCE SUITS

Farmers often complain that when people move to the country, that these "city dwellers" complain of odor, dust, and noise problems that are a needed part of most agricultural operations. Some farmers have been put out of business because of nuisance court actions taken by such property owners. The law provides that if such actions are filed relating to agricultural activities, a "complete defense" of the case includes:

1. Proof that such activities were conducted within an agricultural district.
2. Proof that such activities were established in the district before the person bringing the action came to the area.
3. Proof that the activities were not in conflict with federal, state, or local laws or rules relating to the alleged nuisance or were conducted in accordance with generally accepted agricultural practices.
4. The person bringing the action was not involved in agricultural production.

93.10 RELAXATION OF AIR POLLUTION STANDARDS

The definition of air contaminant is changed to exempt emissions from agricultural production activities if:

1. The emission is from agricultural production activities that are consistent with generally accepted agricultural practices.
2. The emission has no substantial adverse affect on the public health, safety, or welfare.
3. The emission was established before the adjacent nonagricultural practices.
4. The emission does not result from negligent or improper operation of the agricultural activity.

Off farm agricultural activities for the storage or processing of agricultural products, such as dehydrating facilities, rendering plants, and grain elevators are not protected from these provisions, however. In addition, there is no requirement that the individual be located within an agricultural district to qualify for this protection.

93.11 GENERAL NUISANCE PROTECTION

The law also gives farmers similar protections from general nuisance laws established pursuant to Section 3767.13 of the Revised Code. Specifically, Divisions A and B of this section prohibit, for example, "the keeping of an animal" where "offensive smells become injurious to the health, comfort, or property of individuals or property." Another provision prohibits "offal, filth, or noisome substances to remain in any place to damage or prejudice of others or the public." Both of these provisions of existing law no longer apply to the agricultural activities if:

1. They are conducted outside of a municipal corporation.
2. They are conducted in accordance with generally accepted agricultural practices.
3. They are conducted in such a manner, so as not to have a substantial, adverse affect on the public health, safety, or welfare.

In cases where these standards are not met the board of health may order abatement of the nuisance or the Attorney General or county prosecutor can file a civil action to abate the nuisance (OAG 87-097).

These same provisions also relate to noise which evidently is not explicitly regulated by existing state law. These protections are not contingent upon the establishment of an agricultural district.

93.12 EMINENT DOMAIN RESTRICTIONS

The legislation places additional restrictions upon eminent domain actions taken under Chapter 163 of the Revised Code. The additional requirements apply to eminent domain actions of more than 10 acres or 10 percent (whichever is greater) of any property under one ownership and located in an agricultural district. These provisions also apply to grants, loans, interest subsidies or other distributions of public funds within an agricultural district

for the construction of housing, commercial, or industrial facilities to serve nonagricultural uses (OAG 87-004). The following procedures apply to these situations:

1. Notice of intent must be given to the Director of Agriculture at least 30 days before initiating eminent domain proceedings.
2. The notice is not required if the agency has received approval of an environmental document that includes the consideration of the impact of the action on agricultural land, and the Ohio Department of Agriculture is involved in the coordination of the environmental document.
3. If no environmental document is involved, the notice to the Director of Agriculture must include a report that justifies the action and evaluates alternatives outside of the agricultural district.
4. The Director reviews the proposed action to assess its effect on agricultural production or on the plans or policies of state or local agencies.
5. If the Director believes that the proposed action would have an adverse affect on agricultural production or on the plans or policies of state or local agencies that outweigh the public health, safety, or welfare, he shall notify the Governor no later than 30 days after receiving the written notice of intent.
6. The Governor must then issue an order that the action not be taken for 60 days.
7. The Director then publishes a notice of public hearing in a newspaper, in the district. The hearing is to be held as near as possible to the district not sooner than 20 nor more than 30 days after the notice.
8. The Director must send a certified mail notice to any municipal corporation whose territory includes any part of the district and to the organization attempting to appropriate any land or make the distribution of funds.
9. Within 60 days after the hearing, the Director must make final findings and recommendations to the organization attempting to appropriate the land or make the distribution of public funds.
10. These findings and recommendations must also be published so that the public is informed of the findings and recommendations.
11. A public agency must use these findings and recommendations in reaching its final determination relative to the land appropriation or financial distribution.

Finally, the Director may seek an injunction if these procedures are not followed. These provisions, however, do not apply to the following types of facilities:

1. Electric transmission or distribution facilities.
2. Gas or oil pipelines, production facilities, storage areas, and transmission to distribution facilities.
3. Telephone lines.

4. Any activity under the jurisdiction of the Ohio Power Siting Board.