

House File 397 - Introduced

HOUSE FILE 397

BY STAED

A BILL FOR

1 An Act prohibiting the construction of confinement feeding
2 operation structures that are part of confinement feeding
3 operations located in certain subwatersheds, making
4 penalties applicable, and including effective date
5 provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 459.104 Moratorium — confinement
2 feeding operations — impaired waters.

3 1. As used in this section, unless the context otherwise
4 requires:

5 a. "Section 303(d) list" means the same as defined in
6 section 455B.171.

7 b. "Subwatershed" means the same as defined in section
8 466B.2.

9 2. a. A person shall not construct, including expand, a
10 confinement feeding operation structure, if the confinement
11 feeding operation structure would be located in a subwatershed
12 that drains into a water body or water segment that has been
13 placed on the department's section 303(d) list, regardless of
14 whether a total maximum daily load for that water body or water
15 segment has been developed.

16 b. The department shall not file or approve an application
17 for a permit to construct, including expand, a confinement
18 feeding operation structure, if the person could not construct
19 the confinement feeding operation structure under paragraph
20 "a".

21 3. Subsection 2 does not apply to prevent a person from
22 constructing, including expanding, a confinement feeding
23 operation structure as otherwise provided in this subchapter,
24 if the confinement feeding operation structure is located in a
25 subwatershed that drains into a water body or water segment,
26 and the department does all of the following:

27 a. Removes the water body or water segment from the section
28 303(d) list.

29 b. Determines that the water body or water segment is
30 classified for a primary contact recreational use as provided
31 in 567 IAC 61.3.

32 4. Nothing in this section shall prohibit a person from
33 completing construction, including expansion, of a confinement
34 feeding operation structure, if prior to the effective date
35 of this Act, the person has begun construction, including

1 expansion, of the confinement feeding operation structure as
2 otherwise allowed under this chapter.

3 Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
4 immediate importance, takes effect upon enactment.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8 BILL'S PROVISIONS — GENERAL. This bill amends the "Animal
9 Agriculture Compliance Act" (Code chapter 459) which in
10 large part provides for the regulation of confinement feeding
11 operations (operations) including associated confinement
12 feeding operation structures (structures) such as buildings or
13 manure storage structures. The Code chapter is regulated and
14 enforced by the department of natural resources (DNR) which
15 also enforces provisions of other environmental regulations
16 such as the federal Clean Water Act under the supervision of
17 the United States environmental protection agency (EPA).

18 BILL'S PROVISIONS — MORATORIUM. The bill prohibits the
19 construction of a structure, if the structure's operation is
20 located in a subwatershed that includes a water body or water
21 segment that has been placed on a list of impaired waters. The
22 prohibition would no longer apply once the water was removed
23 from the list and DNR determined that the water meets the state
24 surface water classification for primary contact recreational
25 use.

26 BACKGROUND. DNR's list of impaired waters is approved by EPA
27 according to federal and state requirements (33 U.S.C. §1313
28 and Code sections 455B.194 and 455B.195). DNR is also required
29 to develop a plan for restoring the impaired waters, including
30 by identifying its total maximum daily loads; commonly
31 referred to as TMDL that calculates the amount of contaminants
32 that a water body may receive and still meet federal water
33 quality standards (40 C.F.R. §130.7(b)(4)). Based on these
34 measurements, the department classifies surface waters
35 for a number of designated uses including primary contact

1 recreational use which means that the water is considered safe
2 for uses that may result in a person's prolonged and direct
3 contact with the water, including by ingestion while swimming
4 (33 U.S.C. §1251(a)(2) and 567 IAC 61.3).

5 APPLICABLE PENALTIES. Under Code chapter 459, different
6 civil penalties apply to violations involving water quality.
7 A person who violates a provision regulating water quality is
8 subject to an administratively assessed civil penalty of not
9 more than \$10,000, or a judicially assessed amount of not more
10 than \$5,000 per each day of the violation (Code section 459.603
11 referring to Code sections 455B.109 and 455B.191).

12 EFFECTIVE DATE. The bill, if enacted, would take effect upon
13 enactment.