

House File 398 - Introduced

HOUSE FILE 398

BY STAED

A BILL FOR

1 An Act requiring that a person submit a bond with a manure
2 management plan associated with a confinement feeding
3 operation, and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 459.303, subsection 3, paragraph b, Code
2 2019, is amended to read as follows:

3 b. A manure management plan as provided in section 459.312
4 ~~and~~, a manure management plan filing fee as provided in section
5 459.400, and evidence that a surety bond has been furnished to
6 the department as provided in section 459.312.

7 Sec. 2. Section 459.303, subsection 7, Code 2019, is amended
8 by adding the following new paragraph:

9 NEW PARAGRAPH. c. The department shall not issue a
10 permit to a person under this section if a surety bond
11 furnished to the department under section 459.312 has
12 expired, been canceled, been suspended, or been revoked.
13 This paragraph applies to a permit for the construction of a
14 confinement feeding operation structure regardless of whether
15 the confinement feeding operation structure is part of a
16 confinement feeding operation described in the bond.

17 Sec. 3. Section 459.312, Code 2019, is amended by adding the
18 following new subsection:

19 NEW SUBSECTION. 6A. The department shall not approve an
20 original manure management plan or an updated manure management
21 plan, unless it is accompanied with evidence that a surety bond
22 has been furnished to the department by a surety. However, the
23 department may approve an original manure management plan on
24 the condition that the bond be furnished prior to the date that
25 manure is stored in the manure storage structure described in
26 the manure management plan.

27 a. The surety must be a business entity organized or formed
28 in this state or otherwise authorized to do business in this
29 state as a surety company and be approved by the department
30 according to criteria established by the department. The bond
31 shall be in the amount of ten million dollars.

32 b. The bond shall run to the state, and guarantee payment
33 to the state of costs directly attributable to a violation of
34 section 459.311 that causes a discharge of manure from a manure
35 storage structure as described in the manure management plan.

1 The costs shall be limited to any of the following:

2 (1) The reimbursement of moneys expended by the state, a
3 political subdivision, or an agent of the state or a political
4 subdivision, for reasonable costs of providing for containment
5 or cleanup. The reimbursement may cover costs associated with
6 cleaning up the confinement feeding operation and remediating
7 contamination which originates from the confinement feeding
8 operation, pursuant to sections 455B.381 through 455B.399.

9 (2) The restoration of wild animal populations or habitat,
10 to the extent that any payment received under the bond is not
11 duplicative of a restitution payment received by the state
12 under section 481A.151.

13 (3) Payment of a judgment award recovered by a person in a
14 civil action for actual property damages, including reasonable
15 attorney's fees. The bond shall be open to successive judgment
16 awards caused by the same violation.

17 *c.* The total and aggregate liability of the surety for all
18 claims by the state arising from the violation shall be limited
19 to the face of the bond.

20 *d.* The bond shall not expire until sixty days after
21 expiration of the manure management plan. The surety shall
22 not cancel the bond without providing for at least forty-five
23 days' notice by certified mail to the department and the
24 owner required to submit the manure management plan. When
25 the department receives a notice of cancellation, and a bond
26 is still required, the department shall automatically suspend
27 the manure management plan if the department does not receive
28 a replacement bond within thirty days of the delivery of the
29 notice of cancellation. If a replacement bond is not furnished
30 to the department within ten days following the suspension, the
31 department shall automatically revoke the manure management
32 plan. In addition, the department shall disapprove all pending
33 permit applications for the construction of a confinement
34 feeding operation structure filed with the department by the
35 owner as provided in section 459.303.

1 Sec. 4. Section 481A.151, subsection 1, Code 2019, is
2 amended to read as follows:

3 1. a. A person who is liable for polluting a water of this
4 state in violation of state law, including **this chapter**, shall
5 also be liable to pay restitution to the department for injury
6 caused to a wild animal by the pollution. The amount of the
7 restitution shall also include the department's administrative
8 costs for investigating the incident.

9 b. The administration of **this section** shall not result in
10 a duplication of damages collected by the department under
11 section 455B.392, subsection 1, paragraph "a", subparagraph (3)
12 or section 459.312, subsection 6A.

13 Sec. 5. EFFECTIVE DATE. This Act, being deemed of immediate
14 importance, takes effect upon enactment.

15

EXPLANATION

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

18 GENERAL. This bill amends Code chapter 459, referred to as
19 the "Animal Agriculture Compliance Act", which is administered
20 and enforced by the department of natural resources (DNR).
21 The Code chapter in part regulates the housing of animals in
22 a building and the storage and application of animal manure
23 originating from a confinement feeding operation (operation),
24 including a manure storage structure (structure). The bill
25 addresses two documents filed by the owner of an operation
26 with DNR when it administers water quality regulations: (1)
27 an application for a construction permit (permit) issued by
28 DNR that authorizes the construction, including expansion, of
29 a structure (Code section 459.303) and a manure management
30 plan (MMP) governing the storage and application of manure
31 originating from the operation (Code section 459.312).

32 BILL'S PROVISIONS. The bill provides that DNR cannot
33 approve an MMP unless the owner furnishes a surety bond for
34 \$10 million for the purpose of paying costs resulting from the
35 discharge of manure from the owner's operation. Moneys payable

1 under the bond must be used in cases in which the discharge
2 has caused property damage. The moneys must be used to: (1)
3 reimburse the state or a political subdivision, or an agent
4 of the state or political subdivision, for costs associated
5 with containment or cleanup; (2) the restoration of wild animal
6 populations or habitat; and (3) the payment of a judgment
7 award recovered by a plaintiff in a civil action. The bill
8 provides for the expiration or cancellation of the bond. DNR
9 is authorized to suspend or revoke an MMP if a replacement bond
10 is not filed. The bill also provides that DNR is prohibited
11 from issuing a permit to the owner authorizing the construction
12 of any structure if a bond covering an operation has expired,
13 been canceled, been suspended, or been revoked.

14 BACKGROUND — OPERATIONS AND MMPS. An operation is a
15 location in which certain confined agricultural animals are
16 housed in one or more buildings for at least 45 days during
17 any 12-month period (Code section 459.102). Generally, an
18 operation must retain manure that is produced at the location
19 until the manure is transported and used according to water
20 quality requirements (e.g., via application on farmland) (see
21 Code section 459.311). An MMP refers to both an original
22 document and a document which updates the original plan.
23 An updated plan must be filed with DNR on an annual basis
24 (Code section 459.312). A permit is required to construct a
25 structure including a confinement building or associated manure
26 storage structure (either formed or unformed) (Code section
27 459.102). As part of the application for a permit, the owner
28 must have filed an MMP.

29 EFFECTIVE DATE. The bill, if enacted, would take effect upon
30 enactment.