

Rev. Ag. 5/20, Pass per 5568 3/5

Senate File 367
Agriculture
Scheelhaase, Chair
Bennett
Hutchins *Jan 76*

SENATE FILE 367

By COMMITTEE ON AGRICULTURE

Failed
Passed Senate, Date 5-2-75 (1193) Passed House, Date 5-14-76 (p. 2777)
Vote: Ayes 20 Nays 23 Vote: Ayes 76 Nays 14

Approved June 28, 1976
2 Motions to reconsider filed 5-2 (1174) 1- prevailed (1352) Motion to reconsider (p. 2812) w. d 5/16
Passed Senate 5-12-75 (1352) 1-w. r. (1353) 5/12

A BILL FOR

2 Motions to reconsider filed 5-12 (1353) 1- prevailed (1399)
1- passed by order 5-15 (1400)
1 An Act relating to the location and operation of livestock
2 feedlots, and defining nuisance as the term relates
3 thereto.

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

5
6 *Repassed Senate per House amendment*
5-26-76 (2307)
7 36-11

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1 Section 1. NEW SECTION. DEFINITIONS. As used in this
2 Act, unless the context otherwise requires:

3 1. "City" means a municipal corporation including a town,
4 but not including a county, township, school district, or
5 any special-purpose district or authority.

6 2. "Department" means the department of environmental
7 quality and includes any officer or agency within that
8 department.

9 3. "Established date of operation" means the date of the
10 issuance by the department of an appropriate construction
11 or operating permit for a confined feedlot. With respect
12 to the issuance of a subsequent permit authorizing the
13 expansion of a confined feedlot with a previously established
14 date of operation, the established date of operation for each
15 expansion shall be the date of the issuance of the permit
16 for the expansion. The issuance of a permit for expansion
17 shall not divest the permittee of a previously established
18 date of operation.

19 4. "Established date of ownership" means the date of the
20 recording of an appropriate muniment of title establishing
21 the ownership of realty.

22 5. "Rule of the department" means a rule as defined in
23 section seventeen A point two (17A.2) of the Code which
24 materially affects the operation of a feedlot and which has
25 been adopted by the department. The term includes a rule
26 which was in effect prior to the effective date of chapter
27 one thousand ninety (1090), Acts of the Sixty-fifth General
28 Assembly, 1974 Session. Nothing in this Act shall be deemed
29 to empower the department to make any rule.

30 6. "Feedlot" means a lot, yard, corral, or other area
31 in which livestock are confined, primarily for the purposes
32 of feeding and growth prior to slaughter. The term does not
33 include areas which are used for the raising of crops or other
34 vegetation and upon which livestock are allowed to graze or
35 feed.

1 7. "Livestock" means cattle, sheep, swine, poultry, and
2 other animals or fowl, which are being produced primarily
3 for use as food or food products for human consumption.

4 8. "Materially affects" means prohibits or regulates with
5 respect to the location, or the emission of noise, effluent,
6 odors, sewage, waste, or similar products resulting from the
7 operation or the location or use of buildings, machinery,
8 vehicles, equipment, or other real or personal property used
9 in the operation, of a livestock feedlot.

10 9. "Nuisance" means and includes public or private nuisance
11 as defined either by statute or by the common law.

12 10. "Nuisance action or proceeding" means and includes
13 every action, claim or proceeding, whether brought at law,
14 in equity, or as an administrative proceeding, which is based
15 on nuisance.

16 11. "Owner" shall mean the person holding record title
17 to real estate to include both legal and equitable interests
18 under recorded real estate contracts.

19 12. "Zoning requirement" means a regulation or ordinance,
20 which has been adopted by a city, county, township, school
21 district, or any special-purpose district or authority, and
22 which materially affects the operation of a feedlot. Nothing
23 in this Act shall be deemed to empower any agency described
24 in this subsection to make any regulation or ordinance.

25 Sec. 2. NEW SECTION. NUISANCE ACTIONS LIMITED. No person
26 whose date of ownership of realty is subsequent to the
27 established date of operation of a feedlot shall maintain
28 a nuisance action or proceeding except upon the pleading and
29 proof of a specific violation either of section three (3)
30 or section four (4) of this Act.

31 Sec. 3. NEW SECTION. COMPLIANCE WITH RULES OF THE
32 DEPARTMENT.

33 1. REQUIREMENT. A person who operates a feedlot shall
34 comply with applicable rules of the department. The
35 applicability of a rule of the department shall be as provided

1 in subsection two (2) of this section. A person complies
2 with this section as a matter of law where no rule of the
3 department exists.

4 2. APPLICABILITY.

5 a. A rule of the department shall apply to a feedlot with
6 an established date of operation subsequent to the effective
7 date of the rule.

8 b. A rule of the department shall not apply to a feedlot
9 with an established date of operation prior to the effective
10 date of the rule, for a period of ten years from the effective
11 date of that rule.

12 c. A rule of the department in effect on the effective
13 date of this Act shall apply to a feedlot with an established
14 date of operation prior to effective date of this Act.

15 Sec. 4. NEW SECTION. COMPLIANCE WITH ZONING REQUIREMENTS.

16 1. REQUIREMENT. A person who operates a feedlot shall
17 comply with applicable zoning requirements. The applicability
18 of a zoning requirement shall be as provided in subsection
19 two (2) of this section. A person complies with this section
20 as a matter of law where no zoning requirement exists.

21 2. APPLICABILITY.

22 a. A zoning requirement shall apply to a feedlot with
23 an established date of operation subsequent to the effective
24 date of the zoning requirement.

25 b. A zoning requirement, other than one adopted by a city
26 respecting real property located within the corporate limits
27 of the city, shall not apply to a feedlot with an established
28 date of operation prior to the effective date of the zoning
29 requirement, for a period of ten years from the effective
30 date of that zoning requirement.

31 c. A zoning requirement, other than one adopted by a city
32 respecting real property located within the corporate limits
33 of the city, which is in effect on the effective date of this
34 Act, shall apply to a feedlot with an established date of
35 operation prior to the effective date of this Act.

1 d. A zoning requirement adopted by a city shall apply
2 to a feedlot which is located within the corporate limits
3 of that city as those corporate limits exist on the effective
4 date of this Act, regardless of the established date of
5 operation of the feedlot.

6 e. A zoning requirement adopted by a city shall not apply
7 to a feedlot which is located outside the corporate limits
8 of that city for a period of ten years from the effective
9 date of the zoning requirement.

10 f. A zoning requirement adopted by a city shall not apply
11 to a feedlot located within the corporate limits of that city
12 by virtue of an annexation or incorporation which takes effect
13 after the effective date of this Act for a period of ten years
14 from the effective date of the annexation or incorporation.

15 Sec. 5. NEW SECTION. SEVERABILITY. If any provision
16 of this Act, or the application thereof to any person or
17 circumstances, is held to be invalid, the invalidity does
18 not affect other provisions or applications of this Act which
19 can be given effect without the invalid provision or
20 application, and to this end the provisions of the Act are
21 severable.

22 Sec. 6. Chapter six hundred fifty-seven (657), Code 1975,
23 is amended by adding the following new section:

24 NEW SECTION. FEEDLOTS. This chapter shall apply to the
25 operation of a livestock feedlot, only as provided in sections
26 one (1) through five (5) of this Act.

27 Sec. 7. The code editor is directed to codify sections
28 one (1) through five (5) of this Act as a new chapter of the
29 Code.

30 EXPLANATION

31 This bill provides that nuisance actions or proceedings
32 shall not be maintained against the operator of a livestock
33 feedlot by persons owning real estate whose established date
34 of ownership is subsequent to the established date of operation
35 of the feedlot, provided the feedlot operator complies with

1 applicable zoning restrictions and applicable rules of the
2 department of environmental quality.

3 In summary, this restriction applies as follows:

4 1. A feedlot within the corporate limits of a city must
5 comply with all ordinances.

6 2. A feedlot with an established date of operation
7 subsequent to the effective date of a departmental rule must
8 comply with that rule.

9 3. A departmental rule, or a city zoning ordinance which
10 becomes applicable to a feedlot because of an annexation or
11 incorporation, which takes effect subsequent to the established
12 date of operation of the feedlot shall not apply to that
13 feedlot for a period of ten years after the effective date
14 of the rule or the annexation or incorporation.

15 4. A zoning requirement adopted by a governmental unit
16 other than the state or a city shall not apply to feedlots
17 with an established date of operation prior to the effective
18 date of the zoning requirement for a period of ten years after
19 the effective date of the requirement, but shall apply to
20 feedlot operations with an established date of operation
21 subsequent to the effective date.

22 The effect and intent of the bill is to protect feedlot
23 operators from nuisance actions commenced by private parties
24 whose established date of ownership is subsequent to the
25 established date of operation of the feedlot and to insulate
26 the operator from the effects of new departmental rules or
27 zoning restrictions for a period of ten years, so that the
28 feedlot operator has a period of time in which to recoup his
29 investment.

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S-3577

1 Amend Senate File 367 as follows:
2 1. Page 3, by striking line 26.
3 2. Page 3, line 27, by striking the words "of
4 the city".
5 3. Page 3, by striking lines 31 through 33, and
6 inserting in lieu thereof the following:
7 "c. A zoning requirement which is in effect on
8 the effective date of this".
9 4. Page 4, by striking lines 1 through 14, and
10 inserting in lieu thereof the following:
11 "d. A zoning requirement adopted by a city
12 shall apply to a feedlot located within an incorpo-
13 rated or unincorporated area which is subject to
14 regulation by that city as of the effective date
15 of this Act, regardless of the established date of
16 operation of the feedlot.
17 e. A zoning requirement adopted by a city shall
18 not apply to a feedlot which becomes located within
19 an incorporated or unincorporated area subject to
20 regulation by that city by virtue of an incorpora-
21 tion or annexation which takes effect after the
22 effective date of this Act for a period of ten
23 years from the effective date of the incorporation
24 or annexation."

S-3577 FILED - *Adopted 5/2* BY ROGER J. SHAFF
APRIL 21, 1975 (*1192*)

S-3591

1 Amend Senate File 367 as follows:
2 1. Page 4, by inserting after line 26 the
3 following:
4 "Sec. ____ . NEW SECTION. APPLICABILITY. The pro-
5 visions of this Act shall not apply within the
6 jurisdiction of a city or a county which adopts a
7 comprehensive plan and applicable ordinances or
8 regulations for land use in compliance with a state
9 land use policy or state land use policy guidelines
10 enacted by the general assembly."
11 2. By renumbering sections to conform to this
12 amendment.

S-3591 FILED - *Last 5/2 (1193)* BY JAMES V. GALLAGHER
APRIL 22, 1975

S-3790

1 Amend Senate File 367, page 1, by striking lines 30
2 through 35 and inserting in lieu thereof the following:
3 "6. "Feedlot" means any parcel of land or premises
4 on which the principal use is concentrated feeding
5 within a confined area of 500 head of cattle, hogs or
6 sheep or 5,000 fowl."

S-3790 FILED NOT CONSIDERED BY JAMES V. GALLAGHER
May 12, 1975 INTRODUCED AFTER FINAL READING

SENATE FILE 367

S-5906

1 Amend House amendment S-5872 to Senate File
2 367 as follows:

3 1. Page 2, line 45 by striking the word
4 "ownership" and inserting in lieu thereof the
5 word "possession".

S-5906 FILED - *Withdrawn 5/26 (2306)*
MAY 24, 1976

BY LUCAS J. DE KOSTER

SENATE FILE 367

S-3610

1 Amend Senate File 367, page 1, by striking lines 9
2 through 18 and inserting in lieu thereof the follow-
3 ing:

4 "3. "Established date of operation:"

5 (a) DEQ Permitees: "Established date of
6 operation" means the date of the issuance of an
7 appropriate department construction or operation
8 permit for a confined feed lot. With respect to the
9 issuance of a subsequent permit or permits authoriz-
10 ing the expansion of a confined feedlot with a
11 previously established date of operation, the
12 established date of operation for each expansion
13 is deemed to be a separate and independent date of
14 operation established as of the date of the issuance
15 of the permit for the expansion and shall not divest
16 the permittee of a previously established date of
17 operation.

18 (b) Non-DEQ Permitees: "Established date of
19 operation" means the date on which a feedlot
20 exempt from DEQ permit requirements actually commenced
21 operating as a feedlot with not more livestock than
22 reasonably could be maintained by the physical
23 facilities existing as of that date. If such a
24 feedlot subsequently expands but still remains
25 exempt from the DEQ permit requirements, the
26 established date of operation for each expansion
27 is deemed to be a separate and independent date
28 of operation established as of the date of commence-
29 ment of the expanded operations."

S-3610 FILED - *Adopted 5/2*
APRIL 24, 1975 *(1191)*

BY BASS VAN GILST
KARL NOLIN

S-3571

1 Amend Senate File 367 as follows:

2 1. Page 2, line 28, by inserting after the
3 word "proceeding", the words "against a feedlot".
4 2. Page 4, by striking lines 15 through 21.

S-3571 FILED - *Adopted 5/2 (1191)* BY ROGER J. SHAFF
APRIL 21, 1975

S-5872

1 Amend Senate File 367, as amended and passed by
2 the Senate, by striking everything after the enact-
3 ing clause and inserting in lieu thereof the fol-
4 lowing:

5 "Section 1. NEW SECTION. DEFINITIONS. As used
6 in this Act, unless the context otherwise requires:

7 1. "City" means a municipal corporation including
8 a town, but not including a county, township, school
9 district, or any special-purpose district or authority.

10 2. "Department" means the department of
11 environmental quality and includes any officer or
12 agency within that department.

13 3. "Established date of operation" means the date
14 on which a feedlot commenced operating with not more
15 livestock than reasonably could be maintained by the
16 physical facilities existing as of that date. If
17 the physical facilities of the feedlot are subsequently
18 expanded, the established date of operation for each
19 expansion is deemed to be a separate and independent
20 "established date of operation" established as of
21 this date of commencement of the expanded operations,
22 and the commencement of expanded operations shall
23 not divest the feedlot of a previously established
24 date of operation.

25 4. "Established date of ownership" means the date
26 of the recording of an appropriate muniment of title
27 establishing the ownership of realty.

28 5. "Rule of the department" means a rule as defined
29 in section seventeen A point two (17A.2) of the Code
30 which materially affects the operation of a feedlot
31 and which has been adopted by the department. The
32 term includes a rule which was in effect prior to
33 the effective date of chapter one thousand ninety
34 (1090), Acts of the Sixty-fifth General Assembly,
35 1974 Session. Except as specifically provided in
36 subparagraph five (5) of paragraph b and subparagraph
37 five (5) of paragraph c of subsection two (2) of
38 section three (3) of this Act, nothing in this Act
39 shall be deemed to empower the department to make
40 any rule.

41 6. "Feedlot" means a lot, yard, corral, or other
42 area in which livestock are confined, primarily for
43 the purposes of feeding and growth prior to slaughter.
44 The term does not include areas which are used for
45 the raising of crops or other vegetation and upon
46 which livestock are allowed to graze or feed.

47 7. "Livestock" means cattle, sheep, swine, poultry,
48 and other animals or fowl, which are being produced
49 primarily for use as food or food products for human
50 consumption.

1 8. "Materially affects" means prohibits or
2 regulates with respect to the location, or the emission
3 of noise, effluent, odors, sewage, waste, or similar
4 products resulting from the operation or the location
5 or use of buildings, machinery, vehicles, equipment,
6 or other real or personal property used in the
7 operation, of a livestock feedlot.

8 9. "Nuisance" means and includes public or private
9 nuisance as defined either by statute or by the common
10 law.

11 10. "Nuisance action or proceeding" means and
12 includes every action, claim or proceeding, whether
13 brought at law, in equity, or as an administrative
14 proceeding, which is based on nuisance.

15 11. "Owner" shall mean the person holding record
16 title to real estate to include both legal and
17 equitable interests under recorded real estate
18 contracts.

19 12. "Zoning requirement" means a regulation or
20 ordinance, which has been adopted by a city, county,
21 township, school district, or any special-purpose
22 district or authority, and which materially affects
23 the operation of a feedlot. Nothing in this Act shall
24 be deemed to empower any agency described in this
25 subsection to make any regulation or ordinance.

26 13. A rule pertaining to "feedlot management
27 standards" means a rule, the implementation of which,
28 or the compliance with which, requires the expendi-
29 ture of funds not in excess of two percent of the
30 establishment cost of the feedlot.

31 14. A rule pertaining to "feedlot design stan-
32 dards" means a rule, the implementation of which,
33 or the compliance with which, requires the expenditure
34 of funds in excess of two percent of the establish-
35 ment cost of the feedlot.

36 15. "Establishment cost of a feedlot" means the
37 cost or value of the feedlot on its established date
38 of operation and includes the cost or value of the
39 building, machinery, vehicles, equipment or other
40 real or personal property used in the operation of
41 the feedlot.

42 Sec. 2. NEW SECTION. COMPLIANCE -- A DEFENSE
43 TO NUISANCE ACTIONS. In any nuisance action or
44 proceeding against a feedlot brought by or on behalf
45 of a person whose date of ownership of realty is
46 subsequent to the established date of operation of
47 that feedlot, proof of compliance with sections three
48 (3) and four (4) of this Act shall be an absolute
49 defense, provided that the conditions or circumstances
50 alleged to constitute a nuisance are subject to

1 regulatory jurisdiction in accordance with either
2 section three (3) or four (4) of this Act.

3 Sec. 3. NEW SECTION. COMPLIANCE WITH RULES OF
4 THE DEPARTMENT.

5 1. REQUIREMENT. A person who operates a feedlot
6 shall comply with applicable rules of the department.
7 The applicability of a rule of the department shall
8 be as provided in subsection two (2) of this section.
9 A person complies with this section as a matter of
10 law where no rule of the department exists.

11 2. APPLICABILITY OF RULES.

12 a. Exclusion for federally mandated requirements.
13 This section shall apply to the department's rules
14 except for rules required for delegation of the
15 national pollutant discharge elimination system permit
16 program pursuant to the Federal Water Pollution Control
17 Act, Title thirty-three (33), United States Code,
18 chapter one hundred twenty-six (126), as amended,
19 and forty (40) Code of Federal Regulations, Part one
20 hundred twenty-four (124).

21 b. Applicability of rules of the department other
22 than those issued by the air quality commission.

23 (1) A rule of the department in effect on the
24 effective date of this Act shall apply to a feedlot
25 with an established date of operation prior to the
26 effective date of this Act.

27 (2) A rule of the department shall apply to a
28 feedlot with an established date of operation sub-
29 sequent to the effective date of the rule.

30 (3) A rule of the department adopted after the
31 effective date of this Act shall not apply to a feed-
32 lot holding any DEQ permit and having an established
33 date of operation prior to the effective date of the
34 rule until either the expiration of the term of the
35 permit in effect on the effective date of the rule,
36 or ten years from the established date of operation
37 of the feedlot, whichever time period is greater.

38 (4) A rule of the department adopted after the
39 effective date of this Act shall not apply to a feed-
40 lot not previously required to hold a DEQ permit and
41 having an established date of operation prior to the
42 effective date of the rule for either a period of
43 ten years from the established date of operation of
44 the feedlot or five years from the effective date
45 of the rule, whichever time period is greater.

46 (5) To achieve compliance with applicable rules
47 the department shall issue an appropriate compliance
48 schedule.

49 c. Applicability of rules of the air quality com-
50 mission.

1 (1) A rule of the air quality commission in ef-
2 fect on the effective date of this Act shall apply
3 to a feedlot with an established date of operation
4 prior to the effective date of this Act.

5 (2) A rule of the air quality commission shall
6 apply to a feedlot with an established date of opera-
7 tion subsequent to the effective date of the rule.

8 (3) A rule of the air quality commission pertain-
9 ing to feedlot management standards adopted after
10 the effective date of this Act shall not apply to
11 any feedlot having an established date of operation
12 prior to the effective date of the rule until one
13 year after the effective date of the rule.

14 (4) A rule of the air quality commission per-
15 taining to feedlot design standards adopted after
16 the effective date of this Act shall not apply to
17 any feedlot having an established date of operation
18 prior to the effective date of the rule for either
19 a period of ten years from the established date of
20 operation of the feedlot or two years from the ef-
21 fective date of the rule, whichever time period is
22 greater. However, any design standard rule pertain-
23 ing to the siting of any feedlot shall apply only
24 to a feedlot with an established date of operation
25 subsequent to the effective date of the rule.

26 (5) To achieve compliance with applicable rules
27 the department shall issue an appropriate compliance
28 schedule.

29 Sec. 4. NEW SECTION. COMPLIANCE WITH ZONING
30 REQUIREMENTS.

31 1. REQUIREMENT. A person who operates a feedlot
32 shall comply with applicable zoning requirements.
33 The applicability of a zoning requirement shall be
34 as provided in subsection two (2) of this section.
35 A person complies with this section as a matter of
36 law where no zoning requirement exists.

37 2. APPLICABILITY.

38 a. A zoning requirement shall apply to a feedlot
39 with an established date of operation subsequent to
40 the effective date of the zoning requirement.

41 b. A zoning requirement, other than one adopted
42 by a city, shall not apply to a feedlot with an
43 established date of operation prior to the effective
44 date of the zoning requirement for a period of ten
45 years from the effective date of that zoning
46 requirement.

47 c. A zoning requirement which is in effect on
48 the effective date of this Act, shall apply to a
49 feedlot with an established date of operation prior
50 to the effective date of this Act.

1 d. A zoning requirement adopted by a city shall
2 apply to a feedlot located within an incorporated
3 or unincorporated area which is subject to regulation
4 by that city as of the effective date of this Act,
5 regardless of the established date of operation of
6 the feedlot.

7 e. A zoning requirement adopted by a city shall
8 not apply to a feedlot which becomes located within
9 an incorporated or unincorporated area subject to
10 regulation by that city by virtue of an incorpora-
11 tion or annexation which takes effect after the
12 effective date of this Act for a period of ten years
13 from the effective date of the incorporation or
14 annexation.

15 Sec. 6. Chapter six hundred fifty-seven (657),
16 Code 1975, is amended by adding the following new
17 section:

18 NEW SECTION. FEEDLOTS. This chapter shall apply
19 to the operation of a livestock feedlot, only as
20 provided in sections one (1) through five (5) of this
21 Act.

22 Sec. 7. The code editor is directed to codify
23 sections one (1) through five (5) of this Act as a
24 new chapter of the Code.

25 Sec. 8. This Act shall take effect on November
26 1, 1976."

S-5872 FILED
MAY 20, 1976

RECEIVED FROM THE HOUSE

Senate concurred 5/26/76 (p. 2307)

S-3791

- 1 Amend Senate File 367, page 2, by striking lines
2 25 through 30.

S-3791 FILED NOT CONSIDERED BY JAMES M. REDMOND
May 12, 1975 INTRODUCED AFTER FINAL READING

SENATE FILE 367

S-3792

- 1 Amend Senate File 367 as follows:
2 1. Page 1, by striking lines 3 through 5.
3 2. Page 2, by striking lines 19 through 24.
4 3. Page 3, by striking lines 15 through 35.
5 4. Page 4, by striking lines 1 through 14.
6 5. By renumbering the remaining sections to
7 conform with this amendment.

S-3792 FILED NOT CONSIDERED BY EARL M. WILLITS
May 12, 1975 INTRODUCED AFTER FINAL READING.

SENATE FILE 367

S-3793

- 1 Amend Senate File 367, page 2, line 30, by
2 adding after the word "Act," the following:
3 "or upon pleading and proof that the number
4 of livestock in a feedlot exceeds the number of
5 livestock in the feedlot on the established date
6 of operation".

S-3793 FILED NOT CONSIDERED BY EARL M. WILLITS
May 12, 1975 INTRODUCED AFTER FINAL READING

S-3794

- 1 Amend Senate File 367 as follows:
2 1. Page 1, by striking lines 6 through 8
3 and 22 through 29.
4 2. Page 2, by striking lines 4 through 9 and
5 31 through 35.
6 3. Page 3, by striking lines 1 through 14.
7 4. By renumbering the remaining sections to
8 conform with this amendment.

S-3794 FILED NOT CONSIDERED BY EARL M. WILLITS
May 12, 1975 INTRODUCED AFTER FINAL READING.

S-3795

- 1 Amend Senate File 367 as follows:
2 1. Page 3, line 10 by striking the word
3 "ten" and inserting in lieu thereof the word "five".
4 2. Page 3, line 29, by striking the word
5 "ten" and inserting in lieu thereof the word "five".
6 3. Page 4, line 8, by striking the word
7 "ten" and inserting in lieu thereof the word "five".
8 4. Page 4, line 13, by striking the word
9 "ten" and inserting in lieu thereof the word "five".

S-3795 FILED NOT CONSIDERED BY EARL M. WILLITS
May 12, 1975 INTRODUCED AFTER FINAL READING

H-6666

1 Amend Senate File 367, as amended and passed by
2 the Senate, by striking everything after the enact-
3 ing clause and inserting in lieu thereof the fol-
4 lowing:

5 "Section 1. NEW SECTION. DEFINITIONS. As used
6 in this Act, unless the context otherwise requires:

7 1. "City" means a municipal corporation including
8 a town, but not including a county, township, school
9 district, or any special-purpose district or authority.

10 2. "Department" means the department of
11 environmental quality and includes any officer or
12 agency within that department.

13 3. "Established date of operation" means the date
14 on which a feedlot commenced operating with not more
15 livestock than reasonably could be maintained by the
16 physical facilities existing as of that date. If
17 the physical facilities of the feedlot are subsequently
18 expanded, the established date of operation for each
19 expansion is deemed to be a separate and independent
20 "established date of operation" established as of
21 this date of commencement of the expanded operations,
22 and the commencement of expanded operations shall
23 not divest the feedlot of a previously established
24 date of operation.

25 4. "Established date of ownership" means the date
26 of the recording of an appropriate muniment of title
27 establishing the ownership of realty.

28 5. "Rule of the department" means a rule as defined
29 in section seventeen A point two (17A.2) of the Code
30 which materially affects the operation of a feedlot
31 and which has been adopted by the department. The
32 term includes a rule which was in effect prior to
33 the effective date of chapter one thousand ninety
34 (1090), Acts of the Sixty-fifth General Assembly,
35 1974 Session. Nothing in this Act shall be deemed
36 to empower the department to make any rule.

37 6. "Feedlot" means a lot, yard, corral, or other
38 area in which livestock are confined, primarily for
39 the purposes of feeding and growth prior to slaughter.
40 The term does not include areas which are used for
41 the raising of crops or other vegetation and upon
42 which livestock are allowed to graze or feed.

43 7. "Livestock" means cattle, sheep, swine, poultry,
44 and other animals or fowl, which are being produced
45 primarily for use as food or food products for human
46 consumption.

47 8. "Materially affects" means prohibits or
48 regulates with respect to the location, or the emission
49 of noise, effluent, odors, sewage, waste, or similar
50 products resulting from the operation or the location

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1 or use of buildings, machinery, vehicles, equipment,
2 or other real or personal property used in the
3 operation, of a livestock feedlot.

4 9. "Nuisance" means and includes public or private
5 nuisance as defined either by statute or by the common
6 law.

7 10. "Nuisance action or proceeding" means and
8 includes every action, claim or proceeding, whether
9 brought at law, in equity, or as an administrative
10 proceeding, which is based on nuisance.

11 11. "Owner" shall mean the person holding record
12 title to real estate to include both legal and
13 equitable interests under recorded real estate
14 contracts.

15 12. "Zoning requirement" means a regulation or
16 ordinance, which has been adopted by a city, county,
17 township, school district, or any special-purpose
18 district or authority, and which materially affects
19 the operation of a feedlot. Nothing in this Act shall
20 be deemed to empower any agency described in this
21 subsection to make any regulation or ordinance.

22 13. A rule pertaining to "feedlot management
23 standards" means a rule, the implementation of which,
24 or the compliance with which, requires the expendi-
25 ture of funds not in excess of two percent of the
26 establishment cost of the feedlot.

27 14. A rule pertaining to "feedlot design stan-
28 dards" means a rule, the implementation of which,
29 or the compliance with which, requires the expenditure
30 of funds in excess of two percent of the establish-
31 ment cost of the feedlot.

32 15. "Establishment cost of a feedlot" means the
33 cost or value of the feedlot on its established date
34 of operation and includes the cost or value of the
35 building, machinery, vehicles, equipment or other
36 real or personal property used in the operation of
37 the feedlot.

38 Sec. 2. NEW SECTION. NUISANCE ACTIONS LIMITED.
39 No person whose date of ownership of realty is
40 subsequent to the established date of operation of
41 a feedlot shall maintain a nuisance action or
42 proceeding against a feedlot except upon the pleading
43 and proof of a specific violation either of section
44 three (3) or section four (4) of this Act.

45 Sec. 3. NEW SECTION. COMPLIANCE WITH RULES OF
46 THE DEPARTMENT.

47 1. REQUIREMENT. A person who operates a feedlot
48 shall comply with applicable rules of the department.
49 The applicability of a rule of the department shall
50 be as provided in subsection two (2) of this section.

L

1 A person complies with this section as a matter of
2 law where no rule of the department exists.

3 2. APPLICABILITY OF RULES.

4 a. Exclusion for federally mandated requirements.

5 This section shall apply to the department's rules
6 except for rules required for delegation of the
7 national pollutant discharge elimination system permit
8 program pursuant to the Federal Water Pollution Control
9 Act, Title thirty-three (33), United States Code,
10 chapter one hundred twenty-six (126), as amended,
11 and forty (40) Code of Federal Regulations, Part one
12 hundred twenty-four (124).

13 b. Applicability of rules of the department other
14 than those issued by the air quality commission.

15 (1) A rule of the department in effect on the
16 effective date of this Act shall apply to a feedlot
17 with an established date of operation prior to the
18 effective date of this Act.

19 (2) A rule of the department shall apply to a
20 feedlot with an established date of operation sub-
21 sequent to the effective date of the rule.

22 (3) A rule of the department adopted after the
23 effective date of this Act shall not apply to a feed-
24 lot holding any DEQ permit and having an established
25 date of operation prior to the effective date of the
26 rule until either the expiration of the term of the
27 permit in effect on the effective date of the rule,
28 or ten years from the established date of operation
29 of the feedlot, whichever time period is greater.

30 (4) A rule of the department adopted after the
31 effective date of this Act shall not apply to a feed-
32 lot not previously required to hold a DEQ permit and
33 having an established date of operation prior to the
34 effective date of the rule for either a period of
35 ten years from the established date of operation of
36 the feedlot or five years from the effective date
37 of the rule, whichever time period is greater.

38 (5) To achieve compliance with applicable rules
39 the department shall issue an appropriate compliance
40 schedule.

41 c. Applicability of rules of the air quality com-
42 mission.

43 (1) A rule of the air quality commission in ef-
44 fect on the effective date of this Act shall apply
45 to a feedlot with an established date of operation
46 prior to the effective date of this Act.

47 (2) A rule of the air quality commission shall
48 apply to a feedlot with an established date of opera-
49 tion subsequent to the effective date of the rule.

50 (3) A rule of the air quality commission pertain-

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1 ing to feedlot management standards adopted after
2 the effective date of this Act shall not apply to
3 any feedlot having an established date of operation
4 prior to the effective date of the rule until one
5 year after the effective date of the rule.

6 (4) A rule of the air quality commission per-
7 taining to feedlot design standards adopted after
8 the effective date of this Act shall not apply to
9 any feedlot having an established date of operation
10 prior to the effective date of the rule for either
11 a period of ten years from the established date of
12 operation of the feedlot or two years from the ef-
13 fective date of the rule, whichever time period is
14 greater. However, any design standard rule pertain-
15 ing to the siting of any feedlot shall apply only
16 to a feedlot with an established date of operation
17 subsequent to the effective date of the rule.

18 (5) To achieve compliance with applicable rules
19 the department shall issue an appropriate compliance
20 schedule.

21 Sec. 4. NEW SECTION. COMPLIANCE WITH ZONING
22 REQUIREMENTS.

23 1. REQUIREMENT. A person who operates a feedlot
24 shall comply with applicable zoning requirements.
25 The applicability of a zoning requirement shall be
26 as provided in subsection two (2) of this section.
27 A person complies with this section as a matter of
28 law where no zoning requirement exists.

29 2. APPLICABILITY.

30 a. A zoning requirement shall apply to a feedlot
31 with an established date of operation subsequent to
32 the effective date of the zoning requirement.

33 b. A zoning requirement, other than one adopted
34 by a city, shall not apply to a feedlot with an
35 established date of operation prior to the effective
36 date of the zoning requirement, for a period of ten
37 years from the effective date of that zoning
38 requirement.

39 c. A zoning requirement which is in effect on
40 the effective date of this Act, shall apply to a
41 feedlot with an established date of operation prior
42 to the effective date of this Act.

43 d. A zoning requirement adopted by a city shall
44 apply to a feedlot located within an incorporated
45 or unincorporated area which is subject to regulation
46 by that city as of the effective date of this Act,
47 regardless of the established date of operation of
48 the feedlot.

49 e. A zoning requirement adopted by a city shall
50 not apply to a feedlot which becomes located within

1 an incorporated or unincorporated area subject to
2 regulation by that city by virtue of an incorpora-
3 tion or annexation which takes effect after the
4 effective date of this Act for a period of ten years
5 from the effective date of the incorporation or
6 annexation.

7 Sec. 6. Chapter six hundred fifty-seven (657),
8 Code 1975, is amended by adding the following new
9 section:

10 NEW SECTION. FEEDLOTS. This chapter shall apply
11 to the operation of a livestock feedlot, only as
12 provided in sections one (1) through five (5) of this
13 Act.

14 Sec. 7. The code editor is directed to codify
15 sections one (1) through five (5) of this Act as a
16 new chapter of the Code.

17 Sec. 8. This Act shall take effect on November
18 1, 1976."

H-6666 FILED - *Adopted as amended by* BY SCHEELHAASE of Woodbury
MAY 13, 1976 *6688 5/14 (2777)* PELLETT of Cass

- HUSAK of Tama
- LAGESCHULTE of Bremer
- HUTCHINS of Guthrie
- CRABB of Crawford
- SPRADLING of Sioux
- LINDEEN of Henry
- SVOBODA of Iowa
- KOOGLER of Mahaska
- HINKHOUSE of Cedar
- BENNETT of Ida
- HOWELL of Floyd
- DANKER of Pottawattamie
- HARPER of Davis
- MILLER of Calhoun
- MILLER of Cerro Gordo

H-6684

1 Amend the amendment H-6666 to Senate File 367,
2 as amended and passed by the Senate, page 2, by
3 striking lines 38 through 44 and inserting in lieu
4 thereof the following section:
5 "Sec. 2. NEW SECTION. COMPLIANCE -- A DEFENSE
6 TO NUISANCE ACTIONS. In any nuisance action or
7 proceeding against a feedlot brought by or on behalf
8 of a person whose date of ownership of realty is
9 subsequent to the established date of operation of
10 that feedlot, proof of compliance with sections three
11 (3) and four (4) of this Act shall be an absolute
12 defense, provided that the conditions or circumstances
13 alleged to constitute a nuisance are subject to
14 regulatory jurisdiction in accordance with either
15 section three (3) or four (4) of this Act."

H-6684 FILED - *Adopted 5/14 (2774)* BY VARLEY of Adair
MAY 14, 1976 HUSAK of Tama
SCHEELHAASE of Woodbury
PELLETT of Cass

H-6686

1 Amend Amendment H-6666 to Senate File 367
2 as follows:
3 1. Page 4, by striking lines 49 and 50.
4 2. Page 5, by striking lines 1 through 6.

H-6686 FILED - *Last 5/14 (2775)* BY LIPSKY of Linn
MAY 14, 1976

H-6688

1 Amend the Scheelhaase, et al amendment, H-6666,
2 to Senate File 367 as amended and passed by the
3 Senate as follows:
4 1. Page 1, line 35, by striking the word
5 "Nothing" and inserting in lieu thereof the words
6 "Except as specifically provided in subparagraph
7 five (5) of paragraph b and subparagraph five (5)
8 of paragraph c of subsection two (2) of section
9 three (3) of this Act, nothing".

H-6688 FILED - *Adopted 5/14* BY SCHEELHAASE of Woodbury
MAY 14, 1976

SENATE FILE 367

H-6689

1 Amend H-6666 to Senate File 367 as follows:
2 1. Page 2, line 18 by adding after "authority,"
3 "except a local board of health,".

H-6689 FILED - *Last 5/14 (2776)* BY TAUKE of Dubuque
MAY 14, 1976

Senate File 367

H-4030

1 Amend Senate File 367 as follows:
2 1. Page 3, line 10 by striking the word
3 "ten" and inserting in lieu thereof the word "two".
4 2. Page 3, line 29, by striking the word
5 "ten" and inserting in lieu thereof the word "two".
6 3. Page 4, line OL, by striking the word
7 "ten" and inserting in lieu thereof the word "two".

H-4030 FILED - *Out of order with* BY GENTLEMAN of Polk
JUNE 3, 1975 *adoption of 6666*

1 Amend Senate File 367 as amended and passed by
2 the Senate as follows:

3 1. Page 1, by inserting after line 5 the following
4 new subsection:

5 " 1. "Certificated feedlot" means a feedlot which
6 has been issued a certificate of compliance by the
7 department."

8 2. Page 1, by striking lines 8A through 8Z and
9 inserting in lieu thereof the following:

10 "3. "Established date of operation" means the
11 date of issuance by the department of a certificate
12 of compliance for the operation of a feedlot. With
13 respect to an expansion of a feedlot with a prior
14 established date of operation, the established date
15 of operation for each expansion is deemed to be a
16 separate and independent date established as of the
17 date of issuance of a certificate of compliance for
18 the expanded operation, and a subsequent established
19 date of operation shall not divest the certificate
20 holder of a prior established date of operation.
21 An established date of operation shall be forfeited
22 by operation of law upon either the cessation of
23 operation of the feedlot or any transfer of owner-
24 ship of the feedlot other than by devise or in-
25 heritance."

26 3. Page 1, line 30, by inserting after the word
27 "corral," the word "building,".

28 4. Page 1, line 32, by inserting after the word
29 "slaughter" the words "or for the production of food
30 products".

31 5. Page 2, by inserting after line 24 the following
32 new section:

33 "Sec. 2. NEW SECTION. CERTIFICATION OF FEEDLOT.
34 A feedlot shall not acquire an established date of
35 operation for the purposes of this Act until the
36 department has issued a certificate of compliance
37 with respect to that feedlot. A certificate of
38 compliance shall not be issued to any feedlot unless
39 the operator establishes that the feedlot complies,
40 or when operational will comply, with departmental
41 rules which are in effect on the date of issuance
42 of the certificate of compliance. The department
43 shall not commence the issuance of certificates of
44 compliance until the department has adopted, pursuant
45 to sections four hundred fifty-five B point twelve
46 (455B.12) and four hundred fifty-five B point thirty-
47 two (455B.32) of the Code, air and water quality
48 standards respecting all of the following:

49 1. The emission, abatement, control or prevention
50 of those air contaminants which result in noxious

1 or objectionable odors.

2 2. The emission, abatement, control or prevention
3 of other air contaminants common but not necessarily
4 unique to the operation of livestock feedlots.

5 3. The systems of disposal or dispersal of waste
6 originating from the operation of a feedlot.

7 4. The emission or control of feedlot-originated
8 waste from a sewer system outlet or other point of
9 ultimate disposal.

10 A certificate of compliance shall not be issued
11 for any feedlot which pursuant to rule is exempt from
12 or otherwise not subject to regulation by the
13 department."

14 6. Page 2, by striking lines 25 through 30 and
15 inserting in lieu thereof the following:

16 "Sec. 3. NEW SECTION. NUISANCE ACTION'S LIMITED.

17 1. In any nuisance action or proceeding against
18 a certificated feedlot brought by a person whose date
19 of ownership of realty is subsequent to the established
20 date of operation of that feedlot the defendant may
21 establish a defense as provided in this section.

22 2. If any claim alleges acts, omissions or condi-
23 tions which are the subject of rules of the department,
24 it shall be a defense to that claim that the feedlot
25 possesses a current certificate of compliance with
26 respect to rules of the department.

27 3. If any claim alleges acts, omissions or
28 conditions which are the subject of a zoning
29 requirement, it shall be a defense to that claim that
30 the feedlot complies with applicable zoning
31 requirements."

32 7. Page 3, line 1, by striking the words "A person
33 complies".

34 8. Page 3, by striking lines 2 and 3.

35 9. Page 3, by striking lines 8 through 11 and
36 inserting in lieu thereof the following:

37 "b. A rule of the department shall not apply to
38 a certificated feedlot which possesses a current
39 certificate of compliance issued prior to the effective
40 date of that rule for a period of ten years from the
41 effective date of that rule."

42 10. Page 3, by striking lines 12 through 14.

43 11. Page 3, line 19, by striking the words "A
44 person complies with this section".

45 12. Page 3, by striking line 20.

46 13. Page 3, by striking lines 30A through 35.

47 14. Page 4, line OH, by inserting after the word
48 "a" the word "certificated".

49 15. Page 4, line 25, by inserting after the word
50 "a" the word "certificated".

1 16. By renumbering sections and correcting internal
2 references in conformity with this amendment.

H-4155 FILED - *Copy of order with*
JUNE 10, 1975 *caption of ...*

BY MONROE of Des Moines
O'HALLORAN of Black Hawk

1 Amend Senate File 367 as amended and passed by
2 the Senate as follows:

3 1. Page 1, line 8 E, by striking the words
4 "confined feed lot" and inserting in lieu thereof
5 the word "feedlot".

6 2. Page 1, by striking all after the period
7 in line 8E and all of lines 8F through 8N and insert-
8 ing in lieu thereof the following:

9 "With respect to an expansion of a feedlot
10 with a previously established date of operation, the
11 department shall not issue a subsequent operating
12 permit until the feedlot meets rules of the depart-
13 ment. The issuance of a subsequent operating permit
14 shall not divest the permittee of a previously
15 established date of operation."

16 3. Page 1, line 8Z, by adding after the period
17 the following:

18 "An established date of operation for a non-
19 permittee does not exempt the feedlot from being
20 required to meet subsequent rules of the department
21 if such rules apply to the feedlot."

22 4. Page 1, line 30, by adding after the word
23 "corral," the word "building,".

24 5. Page 1, line 32, by adding after the word
25 "slaughter" the words "or for the production of food
26 products".

27 6. Page 2, line 30, by adding after the word
28 "Act" the words "or if the action or proceeding is
29 based on conditions which are not regulated by rules
30 of the department".

31 7. Page 3, by striking all after the period in
32 line 1 and all of lines 2 and 3.

33 8. Page 3, by striking from lines 10 and 11
34 the words "effective date of that rule" and inserting
35 in lieu thereof the words "established date of
36 operation".

37 9. Page 4, by adding after line 26 the follow-
38 ing new section:

39 "NEW SECTION. The provisions of this Act shall
40 not apply to a nuisance action or proceeding concern-
41 ing feedlot odors until rules of the department are
42 established to control odor. A feedlot with an
43 established date of operation prior to the adoption
44 of rules of the department for odor control may
45 obtain an established date of operation for odor
46 control if the feedlot meets rules for odor control."

47 10. Renumber remaining provisions to conform
48 with this amendment.

H-4150 FILED - *Out of order with*
JUNE 10, 1975 *adoption of 6666*

BY VARLEY of Adair
O'HALLORAN of Black Hawk
MONROE of Des Moines
MIDDLESWART of Warren

H-4324

1 Amend the Varley amendment H-4150 to Senate
2 File 367 as amended and passed by the Senate as
3 follows:

4 1. Line 13, by striking all after "ment" and
5 all of lines 14 and 15 and inserting in lieu
6 thereof the following: "in effect at the time of
7 the expansion. The date of the issuance of a sub-
8 sequent operating permit for an expanded feedlot
9 shall constitute the established date of operation
10 for the entire feedlot."

11 2. Line 42, by striking the word "control"
12 and inserting in lieu thereof the word "regulate".

13 3. Line 44, by striking the words "for odor
14 control" and inserting in lieu thereof the words
15 "to regulate odor".

16 4. By striking line 46 and inserting in lieu
17 thereof "if the feedlot meets rules of the depart-
18 ment which regulate odor."

H-4324 FILED - *Out of order* BY VARLEY of Adair
JUNE 17, 1975 *with adoption*
of 6666

1 Amend Senate File 367, as amended and passed by
2 the Senate as follows:

3 1. Page 1, by striking lines 8A through 8Z and
4 inserting in lieu thereof the following:

5 "3. "Established date of operation" means the
6 date on which a feedlot commenced operating with not
7 more livestock than reasonably could be maintained
8 by the physical facilities existing as of that date.
9 If the physical facilities of the feedlot are
10 subsequently expanded, the established date of
11 operation for each expansion is deemed to be a separate
12 and independent "established date of operation"
13 established as of this date of commencement of the
14 expanded operations, and the commencement of expanded
15 operations shall not divest the feedlot of a previously
16 established date of operation."

17 2. Page 2, by inserting after line 24 the follow-
18 ing new subsections:

19 "___". A rule pertaining to "feedlot management
20 standards" means a rule, the implementation of which,
21 or the compliance with which, requires the expendi-
22 ture of funds not in excess of two percent of the
23 establishment cost of the feedlot.

24 "___". A rule pertaining to "feedlot design stan-
25 dards" means a rule, the implementation of which,
26 or the compliance with which, requires the expenditure
27 of funds in excess of two percent of the establish-
28 ment cost of the feedlot.

29 "___". "Establishment cost of a feedlot" means the
30 cost or value of the feedlot on its established date
31 of operation and includes the cost or value of the
32 building, machinery, vehicles, equipment or other
33 real or personal property used in the operation of
34 the feedlot."

35 3. Page 3, by striking lines 4 through 14 and
36 inserting in lieu thereof the following new subsection:

37 "___". APPLICABILITY OF RULES.

38 a. Exclusion for federally mandated requirements.
39 This section shall apply to the department's rules
40 except for rules required for delegation of the
41 national pollutant discharge elimination system permit
42 program pursuant to the Federal Water Pollution Control
43 Act, Title thirty-three (33), United States Code,
44 chapter one hundred twenty-six (126), as amended,
45 and forty (40) Code of Federal Regulations, Part one
46 hundred twenty-four (124).

47 b. Applicability of rules of the department other
48 than those issued by the air quality commission.

49 (1) A rule of the department in effect on the
50 effective date of this Act shall apply to a feedlot

1 with an established date of operation prior to the
2 effective date of this Act.

3 (2) A rule of the department shall apply to a
4 feedlot with an established date of operation sub-
5 sequent to the effective date of the rule.

6 (3) A rule of the department adopted after the
7 effective date of this Act shall not apply to a feed-
8 lot holding any DEQ permit and having an established
9 date of operation prior to the effective date of the
10 rule until either the expiration of the term of the
11 permit in effect on the effective date of the rule,
12 or ten years from the established date of operation
13 of the feedlot, whichever time period is greater.

14 (4) A rule of the department adopted after the
15 effective date of this Act shall not apply to a feed-
16 lot not previously required to hold a DEQ permit and
17 having an established date of operation prior to the
18 effective date of the rule for either a period of
19 ten years from the established date of operation of
20 the feedlot or five years from the effective date
21 of the rule, whichever time period is greater.

22 (5) To achieve compliance with applicable rules
23 the department shall issue an appropriate compliance
24 schedule.

25 c. Applicability of rules of the air quality com-
26 mission.

27 (1) A rule of the air quality commission in ef-
28 fect on the effective date of this Act shall apply
29 to a feedlot with an established date of operation
30 prior to the effective date of this Act.

31 (2) A rule of the air quality commission shall
32 apply to a feedlot with an established date of opera-
33 tion subsequent to the effective date of the rule.

34 (3) A rule of the air quality commission pertain-
35 ing to feedlot management standards adopted after
36 the effective date of this Act shall not apply to
37 any feedlot having an established date of operation
38 prior to the effective date of the rule until one
39 year after the effective date of the rule.

40 (4) A rule of the air quality commission per-
41 taining to feedlot design standards adopted after
42 the effective date of this Act shall not apply to
43 any feedlot having an established date of operation
44 prior to the effective date of the rule for either
45 a period of ten years from the established date of
46 operation of the feedlot or two years from the ef-
47 fective date of the rule, whichever time period is
48 greater. However, any design standard rule pertain-
49 ing to the siting of any feedlot shall apply only
50 to a feedlot with an established date of operation

Page 3

1 subsequent to the effective date of the rule.

2 (5) To achieve compliance with applicable rules
3 the department shall issue an appropriate compliance
4 schedule."

5 4. Page 4, by inserting after line 29 the follow-
6 ing new section:

7 "Sec. _____. This Act shall take effect on November
8 1, 1976."

9 5. By renumbering sections as necessary.



Rep. Schellhaase
Seat #29

RICHARD C. TURNER
ATTORNEY GENERAL
CLIFFORD E. PETERSON
ASSISTANT ATTORNEY GENERAL
JAMES C. DAVIS
ASSISTANT ATTORNEY GENERAL
JOHN I. ADAMS
ASSISTANT ATTORNEY GENERAL
JOHN R. DENT
ASSISTANT ATTORNEY GENERAL
JAMES N. SCURBEER
ASSISTANT ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
ENVIRONMENTAL PROTECTION DIVISION
EXECUTIVE HILLS, EAST
1223 EAST COURT, ROOM 203
DES MOINES, IOWA 50319
(515) 281-5351

February 10, 1976

Honorable James V. Gallagher
State Senator
Sixteenth District
State Capitol
Des Moines, Iowa 50319

Dear Senator Gallagher:

Reference is made to your letter of May 8, 1975, concerning the constitutionality of Senate File 367, 66th G.A.

Portions of Senate File 367 are quoted as follows:

Sec. 2. New Section. Nuisance actions Limited. No person whose date of ownership of realty is subsequent to the established date of operation of a feedlot shall maintain a nuisance action or proceeding except upon the pleading and proof of a specific violation either of section three (3) or section four (4) of this act.

Sec. 3. New Section. Compliance with Rules of the Department.

1. Requirement. A person who operates a feedlot shall comply with applicable rules of the department. The applicability of a rule of the department shall be as provided in subsection two (2) of this section. A person complies with this section as a matter of law where no rule of the department exists.

2. Applicability.

a. A rule of the department shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

b. A rule of the department shall not apply to a feedlot with an established date of operation prior to the effective date of the rule, for a period of ten years from the effective date of that rule.

c. A rule of the department in effect on the effective date of this act shall apply to a feedlot with an established date of operation prior to effective date of this act.

Sec. 4. New Section. Compliance with Zoning Requirements.

1. Requirement. A person who operates a feedlot shall comply with applicable zoning requirements. The applicability of a zoning requirement shall be as provided in subsection two (2) of this section. A person complies with this section as a matter of law where no zoning requirement exists.

2. Applicability.

a. A zoning requirement shall apply to a feedlot with an established date of operation subsequent to the effective date of the zoning requirement.

b. A zoning requirement, other than one adopted by a city respecting real property located within the corporate limits of the city, shall not apply to a feedlot with an established date of operation prior to the effective date of the zoning requirement for a period of ten years from the effective date of that zoning requirement.

c. A zoning requirement, other than one adopted by a city respecting real property located within the corporate limits of the city, which is in effect on the effective date of this act shall apply to a feedlot with an established date of operation prior to the effective date of this act.

d. A zoning requirement adopted by a city shall apply to a feedlot which is located within the corporate limits of that city as those corporate limits exist on the effective date of this act. Regardless of the established date of operation of the feedlot.

e. A zoning requirement adopted by a city shall not apply to a feedlot which is located outside the corporate limits of that city for a period of ten years from the effective date of the zoning requirement.

f. A zoning requirement adopted by a city shall not apply to a feedlot located within the corporate limits of that city by virtue of an annexation or incorporation which takes effect after the effective date of this act for a period of ten years from the effective date of annexation or incorporation.

Section 1. New Section. Definitions.

As used in this act, unless the context otherwise requires?

* * *

10. 'Nuisance action or proceeding' means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

* * *

9. 'Nuisance' means and includes public or private nuisance as defined either by statute or common law.

It would appear that the above cited provisions are discriminatory in that it would deny to individuals whose date of ownership of real estate is subsequent to the established date of operation of a feedlot the right to maintain a nuisance action for a period of ten years unless said individuals could plead and prove a specific violation of a departmental rule or a zoning ordinance; therefor where a rule or zoning ordinance is non-existent, there would be no specific violation on which to base a nuisance action.

It could in effect remove from a portion of the public the availability of an impartial tribunal to protect their rights to

the free use and enjoyment of their property for a period of ten years, while conditions surrounding the operation of said feedlot could deteriorate considerably in that time.

The right of an individual to the free use and enjoyment of his property, and the right to protect said property is a basic inviolable right guaranteed by both the Federal and State Constitutions.

The pertinent parts of the 5th and 14th Amendments to the Constitution of the United States provide as follows:

"Amendment 5 No person . . . shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

"Amendment 14 . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The term "nuisance" has been defined many times. Literally nuisance means annoyance. In legal phraseology, the term "nuisance" is applied to that class of wrongs that arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property, real or personal or from his own improper, indecent or unlawful personal conduct working an obstruction or injury to a right of another, or of the public, and producing material annoyance, inconvenience, discomfort.

Also the term "nuisance" is used to designate the wrongful invasion of a legal right or interest and it comprehends not only the wrongful invasion of the use and enjoyment of property, but also the wrongful invasion of personal legal rights and privileges generally. 66 C.J.S. Nuisances §1 pp.726 and 729.

Section 657.1, Code of Iowa 1975, provides as follows:

"Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property so as to essentially interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may

be brought to enjoin and abate the same and to recover damages sustained on account thereof."

This section serves to define a "nuisance" as contemplated by the common law, and to prescribe a remedy for the wrong.

The above definitions are cited to illustrate that common law nuisances are by definition an infringement upon personal rights which are protected by both Federal and State Constitutions.

These rights are protected by affording individuals the right to due process of law, and equal protection of the laws. The term "due process of law" is not susceptible, or does not admit, of exact, precise, or comprehensive definition, its meaning necessarily varying with the dissimilarity in the proceedings in which it is required and any definition must depend upon the relation which the particular law bears to the fundamental law which limits the legislative power.

"A widely accepted definition is that of Judge Cooley, to the effect that due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one question belongs." 16A C.J.S. Constitutional Law §567 p.538.

Of similar import are Sections 1, 6 and 9, respectively, of Article I of the Constitution of Iowa. The pertinent parts provide as follows:

Sec. 1. All men are, by nature, free and independent, and have certain unalienable rights--among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

Sec. 6. All Laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Sec. 9 . . . but no person shall be deprived of life, liberty, or property, without due process of law.

The legislative power of the state is not plenary but is limited by the Constitution of the United States and by the Constitution of the State.

The Supreme Court of Iowa, in the case of Al Pierce v. Incorporated Town of Laporte City, 1966, 259 Iowa 1120, 146 N.W.2d 907, which was an appeal from a declaratory judgment action to determine the constitutional validity of ordinance giving council complete discretion to approve a trailer park site, held the ordinance unconstitutional. The court at page 1123, quoting from a previous opinion in Central Theatre Corporation v. Sar, 245 Iowa 1254, 66 N.W.2d 450, stated:

"Arbitrary and unreasonable restrictions upon the use, and enjoyment of property, . . . or deprivation of property without due process of law cannot be sustained"

"A statute empowering a municipal corporation to prohibit or unreasonably restrict the operation of a legitimate business would transgress the Constitutional requirements of due process Power to violate the due process clauses is lacking in the legislative body no matter how it attempts to exercise it"

We believe these cases to be analagous to, and an indication of the Supreme Court's position when considering the Constitutionality of a statute which would restrict the right of individuals to resort to a tribunal of some form to adjudicate the complaint of said individuals who feel they have been or are being denied the right to the free use and enjoyment of their property.

The Iowa Supreme Court has stated as recently as January of 1974 in Helmkamp v. Clark Ready Mix Company, 214 N.W.2d 126, Iowa 1974.

Although our statute does not abrogate the common law on nuisance, the starting point is this portion of §657.1, Code of Iowa 1973: "Whatever is . . . offensive to the senses . . . so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance"

Section 657.2(1) is pertinent in declaring as a nuisance: "The erecting, continuing or using any building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to health, comfort, or property of individuals or the public." The court stated in Bates v. Quality Ready-Mix Co., 1967, 261 Iowa at 703-704, 154 N.W.2d at 857: "The above statutory enumerations do not modify the common-law application to nuisances. The term 'private nuisance' refers to an actionable interference with a persons interest in the private use and enjoyment of his land One must use his own property so that his neighbors comfortable and reasonable use and enjoyment of his estate will not be unreasonably interfered with or disturbed"

The Court cited additional decisions supporting this position: Riter v. Keokuk Electro-Metals Co., 1957, 248 Iowa 710, 82 N.W.2d 151; Kellerhals v. Kallenberger, 1960, 251 Iowa 974, 103 N.W.2d 691; Schlotfeldt v. Vinton Farmer's Supply Co., 1961, 252 Iowa 1102, 109 N.W.2d 695; Claude v. Weaver Construction Co., 1968, 261 Iowa 1225, 158 N.W.2d 139; Patz v. Farmegg Products Inc., 196 N.W.2d 557 (Iowa 1972); Kriener v. Turkey Valley Community School Dist., 212 N.W.2d 526 (Iowa 1973); Larsen v. McDonald, 212 N.W.2d 505 (Iowa 1973).

Black's Law Dictionary, p.51 (4th Ed. 1951), defines "actionable" as follows: "That for which an action will lie, furnishing legal ground for action." Also this reference work defines the term "actionable nuisance" as follows: "Anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights." While we are not unmindful that the legislature may enact any law desired, provided it is not clearly prohibited by some provision of the Federal or State Constitutions, and may enumerate or delete that which it considers to be or not to be a nuisance, and may also define the powers and duties of administrative agencies which are of their own creation, we feel the provisions of Senate File 367 could be construed as an attempt to abrogate the common law on nuisance and deprive certain portions of society of their constitutional rights of due process of law.

Honorable James V. Gallagher

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The reading of Senate File 367 indicates a vulnerability to Constitutional challenge, should it be enacted into law.

Respectfully yours,

John I. Adams
JOHN I. ADAMS
Assistant Attorney General

JIA:mr

AN ACT

RELATING TO THE LOCATION AND OPERATION OF LIVESTOCK FEEDLOTS,
AND DEFINING NUISANCE AS THE TERM RELATES THERETO.

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

Section 1. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "City" means a municipal corporation including a town, but not including a county, township, school district, or any special-purpose district or authority.
2. "Department" means the department of environmental quality and includes any officer or agency within that department.
3. "Established date of operation" means the date on which a feedlot commenced operating with not more livestock than reasonably could be maintained by the physical facilities existing as of that date. If the physical facilities of the feedlot are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot of a previously established date of operation.
4. "Established date of ownership" means the date of the recording of an appropriate muniment of title establishing the ownership of realty.
5. "Rule of the department" means a rule as defined in section seventeen A point two (17A.2) of the Code which materially affects the operation of a feedlot and which has

been adopted by the department. The term includes a rule which was in effect prior to the effective date of chapter one thousand ninety (1090), Acts of the Sixty-fifth General Assembly, 1974 Session. Except as specifically provided in subparagraph five (5) of paragraph b and subparagraph five (5) of paragraph c of subsection two (2) of section three (3) of this Act, nothing in this Act shall be deemed to empower the department to make any rule.

6. "Feedlot" means a lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

7. "Livestock" means cattle, sheep, swine, poultry, and other animals or fowl, which are being produced primarily for use as food or food products for human consumption.

8. "Materially affects" means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste, or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment, or other real or personal property used in the operation, of a livestock feedlot.

9. "Nuisance" means and includes public or private nuisance as defined either by statute or by the common law.

10. "Nuisance action or proceeding" means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

11. "Owner" shall mean the person holding record title to real estate to include both legal and equitable interests

under recorded real estate contracts.

12. "Zoning requirement" means a regulation or ordinance, which has been adopted by a city, county, township, school district, or any special-purpose district or authority, and which materially affects the operation of a feedlot. Nothing in this Act shall be deemed to empower any agency described in this subsection to make any regulation or ordinance.

13. A rule pertaining to "feedlot management standards" means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds not in excess of two percent of the establishment cost of the feedlot.

14. A rule pertaining to "feedlot design standards" means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds in excess of two percent of the establishment cost of the feedlot.

15. "Establishment cost of a feedlot" means the cost or value of the feedlot on its established date of operation and includes the cost or value of the building, machinery, vehicles, equipment or other real or personal property used in the operation of the feedlot.

Sec. 2. NEW SECTION. COMPLIANCE -- A DEFENSE TO NUISANCE ACTIONS. In any nuisance action or proceeding against a feedlot brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of that feedlot, proof of compliance with sections three (3) and four (4) of this Act shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section three (3) or four (4) of this Act.

Sec. 3. NEW SECTION. COMPLIANCE WITH RULES OF THE

DEPARTMENT.

1. REQUIREMENT. A person who operates a feedlot shall comply with applicable rules of the department. The applicability of a rule of the department shall be as provided in subsection two (2) of this section. A person complies with this section as a matter of law where no rule of the department exists.

2. APPLICABILITY OF RULES.

a. Exclusion for federally mandated requirements. This section shall apply to the department's rules except for rules required for delegation of the national pollutant discharge elimination system permit program pursuant to the Federal Water Pollution Control Act, Title thirty-three (33), United States Code, chapter one hundred twenty-six (126), as amended, and forty (40) Code of Federal Regulations, Part one hundred twenty-four (124).

b. Applicability of rules of the department other than those issued by the air quality commission.

(1) A rule of the department in effect on the effective date of this Act shall apply to a feedlot with an established date of operation prior to the effective date of this Act.

(2) A rule of the department shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department adopted after the effective date of this Act shall not apply to a feedlot holding any DEQ permit and having an established date of operation prior to the effective date of the rule until either the expiration of the term of the permit in effect on the effective date of the rule, or ten years from the established date of operation of the feedlot, whichever time period is greater.

(4) A rule of the department adopted after the effective date of this Act shall not apply to a feedlot not previously required to hold a DEQ permit and having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or five years from the effective date of the rule, whichever time period is greater.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

c. Applicability of rules of the air quality commission.

(1) A rule of the air quality commission in effect on the effective date of this Act shall apply to a feedlot with an established date of operation prior to the effective date of this Act.

(2) A rule of the air quality commission shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the air quality commission pertaining to feedlot management standards adopted after the effective date of this Act shall not apply to any feedlot having an established date of operation prior to the effective date of the rule until one year after the effective date of the rule.

(4) A rule of the air quality commission pertaining to feedlot design standards adopted after the effective date of this Act shall not apply to any feedlot having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or two years from the effective date of the rule, whichever time period is greater. However, any design standard rule pertaining

to the siting of any feedlot shall apply only to a feedlot with an established date of operation subsequent to the effective date of the rule.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

Sec. 4. NEW SECTION. COMPLIANCE WITH ZONING REQUIREMENTS.

1. REQUIREMENT. A person who operates a feedlot shall comply with applicable zoning requirements. The applicability of a zoning requirement shall be as provided in subsection two (2) of this section. A person complies with this section as a matter of law where no zoning requirement exists.

2. APPLICABILITY.

a. A zoning requirement shall apply to a feedlot with an established date of operation subsequent to the effective date of the zoning requirement.

b. A zoning requirement, other than one adopted by a city, shall not apply to a feedlot with an established date of operation prior to the effective date of the zoning requirement for a period of ten years from the effective date of that zoning requirement.

c. A zoning requirement which is in effect on the effective date of this Act, shall apply to a feedlot with an established date of operation prior to the effective date of this Act.

d. A zoning requirement adopted by a city shall apply to a feedlot located within an incorporated or unincorporated area which is subject to regulation by that city as of the effective date of this Act, regardless of the established date of operation of the feedlot.

e. A zoning requirement adopted by a city shall not apply to a feedlot which becomes located within an incorporated or unincorporated area subject to regulation by that city

by virtue of an incorporation or annexation which takes effect after the effective date of this Act for a period of ten years from the effective date of the incorporation or annexation.

Sec. 5. Chapter six hundred fifty-seven (657), Code 1975, is amended by adding the following new section:

NEW SECTION. FEEDLOTS. This chapter shall apply to the operation of a livestock feedlot, only as provided in sections one (1) through five (5) of this Act.

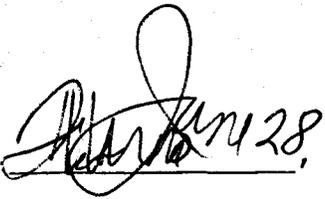
Sec. 6. The code editor is directed to codify sections one (1) through five (5) of this Act as a new chapter of the Code.

Sec. 7. This Act shall take effect on November 1, 1976.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 367, Sixty-sixth General Assembly.

Approved  1976

STEVEN C. CROSS
Secretary of the Senate

ROBERT D. RAY
Governor