

House Amendment 4145

Amendment Text

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1 1 Amend the Senate amendment, [H-4033](#), to House File
1 2 519, as amended, passed, and reprinted by the House,
1 3 as follows:
1 4 #1. Page 1, by striking lines 10 through 31 and
1 5 inserting the following: "in chapters 654A

~~and~~

~~654B,~~

1 6 and 654C.

~~The contract shall be awarded to the~~

~~1 7~~

~~organization by July 1, 1990.~~

~~The contract may be~~

1 8 terminated by the coordinator upon written notice and
1 9 for good cause. The organization awarded the contract
1 10 is designated as the farm mediation service for the
1 11 duration of the contract. The organization may,"
1 12 #2. By striking page 1, line 36, through page 2,
1 13 line 35, and inserting the following:
1 14 "Sec. ____ Section [13.15](#), unnumbered paragraph 1,
1 15 Code 1995, is amended to read as follows:
1 16 The farm mediation service shall recommend rules to
1 17 the farm assistance program coordinator. The
1 18 coordinator shall adopt rules pursuant to chapter 17A
1 19 to set the compensation of mediators and to implement
1 20 this subchapter and chapters 654A,

~~and~~

~~654B, and~~

1 21 654C."

1 22 #3. Page 2, line 49, by striking the word "pond,"
1 23 and inserting the following: "pond".

1 24 #4. Page 3, line 1, by striking the word "outlet"
1 25 and inserting the following: "inlet".

1 26 #5. Page 3, by inserting after line 10 the
1 27 following:

1 28 "#____. Page 2, line 8, by inserting after the word
1 29 "of" the following: "a manure storage structure,
1 30 or"."

1 31 #6. Page 3, by striking lines 11 through 18 and
1 32 inserting the following:

1 33 "#____. Page 2, by striking lines 25 through 30 and
1 34 inserting the following: "to chapter 455B, against
1 35 permittees; moneys paid as a settlement involving an
1 36 enforcement action for a civil penalty subject to
1 37 assessment and collection against permittees by the
1 38 department of natural resources pursuant to chapter
1 39 455B; interest, property, and securities"."

1 40 #7. Page 3, by striking lines 22 and 23 and
1 41 inserting the following:

1 42 "#____. Page 3, by striking lines 4 and 5 and
1 43 inserting the following: "fiscal year, the department
1 44 shall not use more than one percent of the total
1 45 amount which is available in the fund or ten thousand

1 46 dollars, whichever is less, to pay".

1 47 #8. Page 3, line 30, by striking the words "animal
1 48 feeding" and inserting the following: "confinement
1 49 feeding".

1 50 #9. Page 3, line 39, by striking the words "animal
2 1 feeding" and inserting the following: "confinement
2 2 feeding".

2 3 #10. Page 3, line 50, by striking the words
2 4 "animal feeding" and inserting the following:
2 5 "confinement feeding".

2 6 #11. Page 4, by inserting after line 18 the
2 7 following:
2 8 "#____. Page 5, line 25, by inserting after the
2 9 word "fund" the following: "to pay the claim by the
2 10 county"."

2 11 #12. Page 4, line 21, by striking the words
2 12 "MANURE REMOVAL" and inserting the following: "SITE
2 13 CLEANUP".

2 14 #13. Page 4, by striking lines 25 and 26 and
2 15 inserting the following: "pursuant to section 446.19,
2 16 may cleanup the site, including removing and disposing
2 17 of manure at any time. The county may seek
2 18 reimbursement including by bringing an action for
2 19 the".

2 20 #14. Page 4, by striking line 28 and inserting the
2 21 following: "abandoning the real estate.
2 22 A person cleaning up a site located on real estate
2 23 acquired by a county may dispose of any building or
2 24 equipment used in the confinement feeding operation
2 25 located on the land according to rules adopted by the
2 26 department of natural resources pursuant to chapter
2 27 17A, which apply to the disposal of farm buildings or
2 28 equipment by an individual or business organization."

2 29 #15. By striking page 4, line 38, through page 6,
2 30 line 46.

2 31 #16. Page 7, by striking lines 3 through 5 and
2 32 inserting the following: "penalties, arising out of
2 33 violations committed by animal feeding operations
2 34 under division II.".

2 35 #17. Page 7, by striking lines 9 through 11 and
2 36 inserting the following: "the penalties arising out
2 37 of violations committed by animal feeding operations
2 38 under division III, which may be".

2 39 #18. Page 7, line 23, by inserting after the word
2 40 "shall" the following: "not apply to an enforcement
2 41 action in which the department enforces a civil
2 42 penalty of three thousand dollars or less. This
2 43 section shall also".

2 44 #19. Page 7, by striking lines 41 and 42 and
2 45 inserting the following: "and which is connected to
2 46 electric, water, and sewer systems. A".

2 47 #20. Page 7, by inserting before line 45 the
2 48 following:
2 49 "#____. Page 8, by inserting after line 17 the
2 50 following:
3 1 "____. "Covered" means organic or inorganic
3 2 material placed upon an animal feeding operation
3 3 structure used to store manure as provided by rules
3 4 adopted by the department after receiving
3 5 recommendations which shall be submitted to the
3 6 department by the college of agriculture at Iowa state
3 7 university.""

3 8 #21. Page 8, by striking lines 10 through 14 and
3 9 inserting the following:
3 10 "____. "Public use area" means that portion of
3 11 land owned by the United States, the state, or a
3 12 political subdivision with facilities which attract

3 13 the public to congregate and remain in the area for
3 14 significant periods of time, as provided by rules
3 15 which shall be adopted by the department pursuant to
3 16 chapter 17A."

3 17 #22. Page 8, line 25, by striking the words "beef
3 18 cattle" and inserting the following: "bovine".

3 19 #23. Page 8, by striking line 26 and inserting the
3 20 following: "thousand pounds or less for bovine.

3 21 _____. "Swine farrow-to-finish operation" means a
3 22 confinement feeding operation in which porcine are
3 23 produced and in which a primary portion of the phases
3 24 of the production cycle are conducted at one
3 25 confinement feeding operation. Phases of the
3 26 production cycle include, but are not limited to,
3 27 gestation, farrowing, growing, and finishing."

3 28 #24. Page 9, by striking lines 1 through 13 and
3 29 inserting the following:

3 30	"pounds	pounds	pounds
3 31	for	for ani-	for
3 32	animals	mals other	ani-
3 33	other	than	mals
3 34	than	bovine, or	other
3 35	bovine,	1,600,000	than
3 36	or	or more	bovine,
3 37	less	pounds but	or
3 38	than	less than	4,000,000
3 39	1,600,000	4,000,000	or more
3 40	pounds	pounds	pounds
3 41	Type of structure	for bovine	for bovine for bovine".

3 42 #25. Page 10, by striking lines 5 through 17 and
3 43 inserting the following:

3 44	"pounds	pounds	pounds
3 45	for	for ani-	for
3 46	animals	mals other	ani-
3 47	other	than	mals
3 48	than	bovine, or	other
3 49	bovine,	1,600,000	than
3 50	or	or more	bovine,
4 1	less	pounds but	or
4 2	than	less than	4,000,000
4 3	1,600,000	4,000,000	or more
4 4	pounds	pounds	pounds
4 5	Type of structure	for bovine	for bovine for bovine".

4 6 #26. Page 10, by striking lines 22 through 46 and
4 7 inserting the following:

4 8 "2. a. As used in this subsection, a "qualified
4 9 confinement feeding operation" means a confinement
4 10 feeding operation having an animal weight capacity of
4 11 two million or more pounds for animals other than
4 12 animals kept in a swine farrow-to-finish operation or
4 13 bovine kept in a confinement feeding operation; a
4 14 swine farrow-to-finish operation having an animal
4 15 weight capacity of two million five hundred thousand
4 16 or more pounds; or a confinement feeding operation
4 17 having an animal weight capacity of four million or
4 18 more pounds for bovine.

4 19 b. A qualified confinement feeding operation shall
4 20 only use an animal feeding operation structure which
4 21 employs bacterial action which is maintained by the
4 22 utilization of air or oxygen, and which shall include
4 23 aeration equipment. The type and degree of treatment
4 24 technology required to be installed shall be based on
4 25 the size of the confinement feeding operation,
4 26 according to rules adopted by the department. The
4 27 equipment shall be installed, operated, and maintained
4 28 in accordance with the manufacturer's instructions and
4 29 requirements of rules adopted pursuant to this

4 30 subsection.

4 31 c. This subsection shall not apply to a
4 32 confinement feeding operation which stores manure as
4 33 dry matter, or to an egg washwater storage structure.
4 34 This subsection shall not apply to a confinement
4 35 feeding operation, if the operation was constructed
4 36 prior to the effective date of this Act, or the
4 37 department issued a permit prior to the effective date
4 38 of this Act for the construction of an animal feeding
4 39 operation structure connected to a confinement feeding
4 40 operation and the construction began prior to the
4 41 effective date of this Act."

4 42 #27. Page 10, by inserting before line 47 the
4 43 following:

4 44 "#____. Page 11, line 23, by striking the words
4 45 "beef cattle" and inserting the following: "bovine".

4 46 #____. Page 11, line 25, by striking the words
4 47 "beef cattle" and inserting the following: "bovine".

4 48 #28. Page 11, by inserting after line 3 the
4 49 following:

4 50 "#____. Page 12, line 26, by inserting after the
5 1 word "residences" the following: ", educational
5 2 institutions, commercial enterprises, bona fide
5 3 religious institutions, or public use areas,."

5 4 #29. Page 11, by striking lines 14 through 28.

5 5 #30. Page 11, by striking lines 42 and 43.

5 6 #31. Page 13, by striking lines 8 through 30 and
5 7 inserting the following:

5 8 "#____. Page 15, by striking lines 30 through 33
5 9 and inserting the following: "penalty upon a habitual
5 10 violator which shall not exceed twenty-five thousand
5 11 dollars for each day the violation continues. The
5 12 increased penalty may be assessed for each violation
5 13 committed subsequent to the violation which results in
5 14 classifying the person as a habitual violator. A
5 15 person shall be classified as a habitual violator, if
5 16 the person has committed three or more violations".

5 17 #32. Page 13, by striking lines 35 through 39 and
5 18 inserting the following: "violation must have been
5 19 committed on or after January 1, 1995. In addition,
5 20 each violation must have been referred to the attorney
5 21 general for legal action under this chapter, and
5 22 each".

5 23 #33. Page 14, by inserting after line 13 the
5 24 following:

5 25 "#____. Page 17, line 2, by striking the word "the"
5 26 and inserting the following: "a".

5 27 #34. Page 14, by striking lines 16 through 18 and
5 28 inserting the following:

5 29 "#____. Page 17, by striking lines 17 through 19
5 30 and inserting the following: "penalties and interest
5 31 earned on civil penalties, arising out of a violation
5 32 involving an animal feeding operation shall be
5 33 deposited in the manure".

5 34 #35. Page 14, line 31, by striking the words "of
5 35 natural resources".

5 36 #36. Page 14, by striking lines 36 through 39 and
5 37 inserting the following:

5 38 "____. A person shall not apply manure by spray
5 39 irrigation equipment, except as provided by rules
5 40 which shall be adopted by the department pursuant to
5 41 chapter 17A."

5 42 #37. Page 14, line 42, by striking the figure
5 43 "455B.202" and inserting the following: "455B.203".

5 44 #38. Page 15, by striking lines 8 and 9 and
5 45 inserting the following: "animal agriculture
5 46 consulting organization provided for in this Act."

5 47 #39. Page 15, line 21, by striking the word
5 48 "livestock" and inserting the following: "animal".
5 49 #40. Page 15, by striking lines 37 through 42.
5 50 #41. Page 15, by inserting after line 44 the
6 1 following:
6 2 "#___. Page 20, line 22, by inserting after the
6 3 word "operation." the following: "The department
6 4 shall comply with section 455B.103 in conducting an
6 5 investigation of the premises where the animals are
6 6 kept.""
6 7 #42. By striking page 15, line 48, through page
6 8 16, line 3, and inserting the following:
6 9 "#___. Page 21, by striking lines 8 through 11 and
6 10 inserting the following: "designated area than
6 11 provided in section 159.27.""
6 12 #43. Page 16, lines 10 and 11, by striking the
6 13 words "a permittee" and inserting the following: "an
6 14 owner".
6 15 #44. Page 16, by inserting after line 23, the
6 16 following:
6 17 "___." "Owner" means the owner of an animal feeding
6 18 operation, as defined in section 455B.161, which
6 19 utilizes an animal feeding operation structure."
6 20 #45. Page 16, by striking lines 28 through 30.
6 21 #46. Page 16, lines 31 and 32, by striking the
6 22 words "a permittee" and inserting the following: "an
6 23 owner".
6 24 #47. Page 16, line 36, by striking the words "a
6 25 permittee" and inserting the following: "an owner".
6 26 #48. Page 17, line 28, by striking the word
6 27 "release" and inserting the following: "agreement".
6 28 #49. Page 17, line 34, by inserting after the word
6 29 "parties" the following: "agreeing to mediation".
6 30 #50. Page 18, line 7, by striking the figures and
6 31 word "654B.2 or 654B.4" and inserting the following:
6 32 "654C.2 or 654C.4".
6 33 #51. By striking page 18, line 13, through page
6 34 20, line 1, and inserting the following:
6 35 "#___. By striking page 21, line 12, through page
6 36 22, line 30, and inserting the following:
6 37 "Sec. ___. Section [657.1](#), Code 1995, is amended to
6 38 read as follows:
6 39 657.1 NUISANCE – WHAT CONSTITUTES – ACTION TO
6 40 ABATE.
6 41 Whatever is injurious to health, indecent, or
6 42 unreasonably offensive to the senses, or an
6 43 obstruction to the free use of property, so as
6 44 essentially to unreasonably interfere with the
6 45 comfortable enjoyment of life or property, is a
6 46 nuisance, and a civil action by ordinary proceedings
6 47 may be brought to enjoin and abate the same and to
6 48 recover damages sustained on account thereof.
6 49 Sec. ___. Section [657.2](#), subsection 1, Code 1995,
6 50 is amended to read as follows:
7 1 1. The erecting, continuing, or using any building
7 2 or other place for the exercise of any trade,
7 3 employment, or manufacture, which, by occasioning
7 4 noxious exhalations, unreasonably offensive smells, or
7 5 other annoyances, becomes injurious and dangerous to
7 6 the health, comfort, or property of individuals or the
7 7 public.
7 8 Sec. ___. NEW SECTION. 657.11 ANIMAL FEEDING
7 9 OPERATIONS.
7 10 1. The purpose of this section is to protect
7 11 animal agricultural producers who manage their
7 12 operations according to state and federal requirements
7 13 from the costs of defending nuisance suits, which

7 14 negatively impact upon Iowa's competitive economic
7 15 position and discourage persons from entering into
7 16 animal agricultural production. This section is
7 17 intended to promote the expansion of animal
7 18 agriculture in this state by protecting persons
7 19 engaged in the care and feeding of animals. The
7 20 general assembly has balanced all competing interests
7 21 and declares its intent to protect and preserve animal
7 22 agricultural production operations.

7 23 2. If a person has received all permits required
7 24 pursuant to chapter 455B for an animal feeding
7 25 operation, as defined in section 455B.161, there shall
7 26 be a rebuttable presumption that an animal feeding
7 27 operation is not a public or private nuisance under
7 28 this chapter or under principles of common law, and
7 29 that the animal feeding operation does not
7 30 unreasonably interfere with another person's
7 31 comfortable use and enjoyment of the person's life or
7 32 property under any other cause of action. The
7 33 rebuttable presumption also applies to persons who are
7 34 not required to obtain a permit pursuant to chapter
7 35 455B for an animal feeding operation as defined in
7 36 section 455B.161. The rebuttable presumption shall
7 37 not apply if the injury to a person or damage to
7 38 property is proximately caused by a failure to comply
7 39 with a federal statute or regulation or a state
7 40 statute or rule which applies to the animal feeding
7 41 operation.

7 42 3. The rebuttable presumption may be overcome by
7 43 clear and convincing evidence of both of the
7 44 following:

7 45 a. The animal feeding operation unreasonably and
7 46 continuously interferes with an adjoining landowner's
7 47 comfortable use and enjoyment of the landowner's life
7 48 or property.

7 49 b. The injury or damage is proximately caused by
7 50 the negligent operation of the animal feeding
8 1 operation.

8 2 For purposes of this section, "continuously" means
8 3 more than a majority of the time.

8 4 4. The rebuttable presumption created by this
8 5 section shall apply regardless of the established date
8 6 of operation or expansion of the animal feeding
8 7 operation. The rebuttable presumption includes, but
8 8 is not limited to, a defense for actions arising out
8 9 of the care and feeding of animals; the handling or
8 10 transportation of animals; the treatment or disposal
8 11 of manure resulting from animals; the transportation
8 12 and application of animal manure; and the creation of
8 13 noise, odor, dust, or fumes arising from an animal
8 14 feeding operation.

8 15 5. An animal feeding operation that complies with
8 16 the requirements in chapter 455B for animal feeding
8 17 operations shall be deemed to meet any common law
8 18 requirements regarding the standard of a normal person
8 19 living in the locality of the operation.

8 20 6. A person who brings a losing cause of action
8 21 against a person for whom the rebuttable presumption
8 22 created under this section is not rebutted, shall be
8 23 liable to the person against whom the action was
8 24 brought for all costs and expenses incurred in the
8 25 defense of the action, if the court determines that a
8 26 claim is frivolous.

8 27 7. The rebuttable presumption created in this
8 28 section does not apply to an injury to a person or
8 29 damages to property caused by the animal feeding
8 30 operation before the effective date of this Act. "

8 31 #52. Page 20, by striking lines 2 through 4.
8 32 #53. Page 20, by inserting before line 5 the
8 33 following:
8 34 "#____. Page 22, line 31, by striking the words
8 35 "CONSULTATION WITH INTERESTED ORGANIZATIONS." and
8 36 inserting the following: "ANIMAL AGRICULTURE
8 37 CONSULTING ORGANIZATION."
8 38 #____. Page 22, line 35, by inserting after the
8 39 word "association," the following: "an organization
8 40 representing agricultural producers generally,".
8 41 #____. Page 22, line 35, by inserting after the
8 42 word "university," the following: "the soil
8 43 conservation division of the department of agriculture
8 44 and land stewardship,".
8 45 #____. Page 23, by striking lines 4 through 8 and
8 46 inserting the following: "Act, and the Act's
8 47 implementation. The department shall consult with"."
8 48 #54. By renumbering as necessary.
8 49
8 50
9 1 _____
9 2 [EDDIE](#) of Buena Vista
9 3 [HF 519](#).541 76
9 4 da/jw