

FEB 20 1996
Agriculture

HOUSE FILE 2263
BY TEIG

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to permitting and fee requirements for
2 confinement feeding operations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2263

1 Section 1. NEW SECTION. 455A.6A CONFINEMENT FEEDING
2 OPERATION APPEAL BOARD.

3 1. A confinement feeding operation appeal board is
4 established within the department. The members shall be
5 electors of the state and have knowledge of confinement
6 feeding operations as provided in chapter 455B and relevant
7 regulations affecting confinement feeding operations. The
8 appointments shall be based upon the training, experience, and
9 capacity of the appointees, and not based upon political
10 considerations, other than as provided in section 69.16. The
11 board shall be composed of the following:

12 a. The chairperson of the environmental protection
13 commission.

14 b. Four persons appointed by the governor, subject to
15 confirmation by the senate, who shall include all of the
16 following:

17 (1) A person actively engaged in a confinement feeding
18 operation.

19 (2) A person actively engaged in an agricultural business.

20 (3) Two persons who are interested in animal agriculture
21 and its relationship with environmental quality.

22 2. The board shall be staffed by departmental personnel.

23 3. The members appointed by the governor shall serve
24 three-year terms beginning and ending as provided in section
25 69.19. However, the governor shall provide that initial
26 members serve for less than three years to ensure that members
27 serve staggered terms. A member is eligible for
28 reappointment. A vacancy on the board shall be filled for the
29 unexpired portion of the regular term in the same manner as
30 regular appointments are made.

31 4. The board shall meet on a regular basis and at the call
32 of the chairperson or upon the written request to the
33 chairperson of two or more members.

34 5. The members are entitled to receive compensation as
35 provided in section 7E.6.

1 6. Three members constitute a quorum and the affirmative
2 vote of a majority of the members present is necessary for any
3 substantive action to be taken by the board. The majority
4 shall not include any member who has a conflict of interest
5 and a statement by a member that the member has a conflict of
6 interest is conclusive for this purpose. A vacancy in the
7 membership does not impair the duties of the board.

8 7. The board shall consider appeals involving construction
9 permits regarding confinement feeding operations, including
10 related animal feeding operation structures, as provided in
11 section 455B.173A.

12 Sec. 2. Section 455B.171, Code Supplement 1995, is amended
13 by adding the following new subsections:

14 NEW SUBSECTION. 10A. "Local authority" means a county or
15 city.

16 NEW SUBSECTION. 10B. "Local review ordinance" means a
17 confinement feeding operation review ordinance adopted by a
18 county or city pursuant to section 455B.173A.

19 Sec. 3. Section 455B.173, subsection 13, Code Supplement
20 1995, is amended to read as follows:

21 13. a. Adopt, modify, or repeal rules relating to the
22 construction or operation of animal feeding operations. The
23 rules shall include, but are not limited to, minimum manure
24 control requirements, requirements for obtaining permits, and
25 departmental evaluations of animal feeding operations. The A
26 person must obtain a construction permit for the construction
27 or expansion of a confinement feeding operation structure,
28 including a confinement building and a related animal feeding
29 operation structure. However, the department shall not
30 require that a person obtain a permit for the construction of
31 an animal feeding operation structure, if the structure is
32 part of a small animal feeding operation.

33 b. The department shall collect an indemnity fee as
34 provided in section 204.3 prior to the issuance of a
35 construction permit. The department shall deposit moneys

1 collected in indemnity fees in the manure storage indemnity
2 fund created in section 204.2.

3 c. The department shall not approve a permit for the
4 construction of three or more animal feeding operation
5 structures unless the applicant files a statement approved by
6 a professional engineer registered pursuant to chapter 542B
7 certifying that the construction of the animal feeding
8 operation structure will not impede the drainage through
9 established drainage tile lines which cross property boundary
10 lines unless measures are taken to reestablish the drainage
11 prior to completion of construction. ~~The department shall~~
12 ~~deposit moneys collected in indemnity fees in the manure~~
13 ~~storage indemnity fund created in section 204.2.~~

14 d. The department shall issue a permit for an animal
15 feeding operation, if an application is submitted according to
16 procedures required by the department according to this
17 section, and the application meets standards established by
18 the department, regardless of whether the animal feeding
19 operation is required to obtain such a permit. An applicant
20 for a construction permit shall not begin construction at the
21 location of a site planned for the construction of an animal
22 feeding operation structure, until the person has been granted
23 a permit for the construction of the structure by the
24 department.

25 e. The department shall make a determination regarding the
26 approval or denial of a permit within sixty days from the date
27 that the department receives a completed application for a the
28 approval of the permit, as provided in this paragraph.

29 However, the sixty-day requirement shall not apply to an
30 application, if the applicant is not required to obtain a
31 permit in order to construct an animal feeding operation
32 structure or to operate an animal feeding operation. The
33 department shall deliver a copy or require the applicant to
34 deliver a copy of the application for a construction permit to
35 the county-board-of-supervisors local authority in the county

1 jurisdiction where the confinement feeding operation or
2 confinement related animal feeding operation structure subject
3 to the permit is to be located. The Upon receipt of an
4 application for departmental approval under this section, the
5 department shall determine if the application complies with
6 all permit requirements. The process of approving or
7 disapproving a permit shall be as follows:

8 (1) If a county or city has not adopted a local review
9 ordinance, the department shall not approve the application or
10 issue a construction permit until thirty days following
11 delivery of the application to the county board of supervisors
12 or the city council where the animal feeding operation
13 structure is located. The department shall consider comments
14 from the county board of supervisors or city council,
15 regarding compliance by the applicant with the legal
16 requirements for the construction of the confinement feeding
17 operation structure as provided in this chapter, and rules
18 adopted by the department pursuant to this chapter, if the
19 comments are delivered to the department within fourteen days
20 after receipt of the application by the county board of
21 supervisors or city council.

22 (2) If a local authority has adopted a local review
23 ordinance, the department shall not approve the application
24 until the department receives the application's approval from
25 the local authority pursuant to the ordinance or from the
26 confinement feeding operation appeal board as provided in
27 section 455B.173B.

28 f. Prior to granting a permit to a person for the
29 construction of an animal feeding operation, the department
30 may require the installation and operation of a hydrological
31 monitoring system for an exclusively earthen manure storage
32 structure, if, after an on-site inspection, the department
33 determines that the site presents an extraordinary potential
34 for groundwater pollution.

35 g. A person shall not obtain a permit for the construction

1 of a confinement feeding operation, unless the person develops
2 a manure management plan as provided in section 455B.203.

3 h. The department shall not issue a permit to a person
4 under this subsection if an enforcement action by the
5 department, relating to a violation of this chapter concerning
6 a confinement feeding operation in which the person has an
7 interest, is pending. The department shall not issue a permit
8 to a person under this subsection for five years after the
9 date of the last violation committed by a person or
10 confinement feeding operation in which the person holds a
11 controlling interest during which the person or operation was
12 classified as a habitual violator under section 455B.191. The
13 department shall conduct an annual review of each confinement
14 feeding operation which is a habitual violator and each
15 confinement feeding operation in which a habitual violator
16 holds a controlling interest. The department shall notify
17 persons classified as habitual violators of their
18 classification, additional restrictions imposed upon the
19 persons pursuant to the classification, and special civil
20 penalties that may be imposed upon the persons. The notice
21 shall be sent to the persons by certified mail.

22 Sec. 4. NEW SECTION. 455B.173A CONFINEMENT FEEDING
23 OPERATION REVIEW ORDINANCE.

24 1. A local authority may adopt a confinement feeding
25 operation review ordinance. A city ordinance shall be adopted
26 pursuant to chapter 380 and a county ordinance adopted
27 pursuant to section 331.302. The ordinance shall require that
28 an application for the construction of an animal feeding
29 operation structure which is part of a confinement feeding
30 operation be reviewed by a city, if the land subject to the
31 permit is located within the corporate limits of a city, or by
32 a county, if the land subject to the permit is located outside
33 the corporate limits of a city.

34 2. The local authority shall receive an application
35 required to be approved by the department pursuant to section

1 455B.173, from the applicant or the department as required by
2 the department. The application shall be filed in a manner
3 prescribed by the local authority. The local authority may
4 require the applicant to submit a filing fee.

5 3. Within sixty days from the filing of the application,
6 the local authority shall either approve or disapprove the
7 permit application; endorse its approval or disapproval on the
8 application; and forward the application to the department, as
9 required by the department. An application which is not
10 received by the department in a timely manner shall be deemed
11 to be approved by the local authority. A disapproval must be
12 based on requirements or standards adopted pursuant to this
13 chapter or rules adopted by the department pursuant to this
14 chapter which regulate confinement feeding operations. If the
15 local authority disapproves an application, the application
16 forwarded to the department shall include a written
17 explanation justifying all grounds for the disapproval. A
18 local authority may approve or disapprove any number of
19 applications.

20 4. Upon receipt of an application having been disapproved
21 by the local authority, the department shall notify the
22 applicant that the applicant may appeal the disapproval of the
23 application to the confinement feeding operation appeal board.
24 The applicant shall be notified by certified mail.

25 Sec. 5. NEW SECTION. 455B.173B APPEAL OF APPLICATIONS
26 FOR CONFINEMENT FEEDING OPERATIONS.

27 1. The confinement feeding operation appeal board shall
28 hear appeals involving applications which have been
29 disapproved by a local authority as provided in section
30 455B.173A. The board shall consider an appeal if an applicant
31 submits a petition to the board on forms and according to
32 procedures required by the department.

33 2. a. Upon receipt of a petition by the applicant, the
34 board shall consider the appeal. The board shall make an
35 investigation as the board deems necessary to determine if the

1 application complies with all requirements of this chapter and
2 rules adopted by the department. The board may require the
3 applicant to appear in order to be examined under oath. If
4 the board requires the applicant to appear and to testify
5 under oath, a transcript shall be made of the testimony.

6 b. The board may appoint a member of the department or may
7 request an administrative law judge to receive evidence which
8 may include testimony under oath, and to issue a proposed
9 decision to approve or disapprove an application for a permit.
10 The board may affirm, reverse, or modify the proposed decision
11 to approve or disapprove the application for the permit.

12 3. The board or a person appointed by the board to
13 consider the appeal shall compile a record of the appeal which
14 shall include any evidence received or considered; the
15 application endorsed with the local authority's disapproval,
16 and the local authority's explanation of grounds for
17 disapproving the application; records or transcripts of
18 testimony; all submissions and findings of fact; a decision by
19 the board or a person appointed by the board; and any decision
20 of the board affirming, reversing, or modifying a proposed
21 decision by a person appointed by the board. Findings of fact
22 shall be based solely on the evidence in the record and on
23 matters officially noticed in the record. Upon final action
24 of the appeal by the board, the record shall be forwarded to
25 the department, and the applicant shall be notified of the
26 decision by certified mail. The notice shall include the
27 decision and any decision of the board affirming, reversing,
28 or modifying a proposed decision by a person appointed by the
29 board. If the application is approved by the board, the
30 department shall approve or disapprove the application as
31 provided in section 455B.173. A proceeding under this chapter
32 is not a contested case proceeding as provided in chapter 17A.
33 If the board affirms the local authority's disapproval, the
34 board's decision shall be considered final agency action
35 pursuant to chapter 17A.

1 4. The applicant or the local authority may seek judicial
2 review of the action of the board in accordance with the terms
3 of chapter 17A. Notwithstanding chapter 17A, petitions for
4 judicial review may be filed in the district court of the
5 county where the land subject to the permit is located.

6 EXPLANATION

7 This bill provides for the issuance of construction permits
8 regarding confinement feeding operations. The bill requires a
9 person to obtain a construction permit for the construction or
10 expansion of a confinement feeding operation structure,
11 including a confinement building, and a related manure storage
12 structure, unless the confinement feeding operation is a small
13 animal feeding operation.

14 The bill provides that a local authority that is a city or
15 a county may adopt a confinement feeding operation review
16 ordinance. The ordinance requires that an application for a
17 confinement feeding operation structure, including a
18 confinement building or related manure storage structure, be
19 reviewed by a city, if the land subject to the permit is
20 located within the corporate limits of a city, or by a county,
21 if the land subject to the permit is located outside the
22 corporate limits of a city. Within 60 days from the filing of
23 the application, the local authority must either approve or
24 disapprove the permit application. If the application is
25 approved, it must be approved by the department. If the
26 application is disapproved, it cannot be approved by the
27 department, unless the applicant appeals to the confinement
28 feeding operation appeal board established within the
29 department.

30 The board is composed of the chairperson of the
31 environmental protection commission and four persons appointed
32 by the governor, subject to confirmation by the senate. If
33 the board approves the application, the application must still
34 be approved by the department. If the board disapproves the
35 application, the applicant may appeal to a district court.

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