

FEB 19 1997

Agriculture

HOUSE FILE
BY KOENIGS

290

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

A BILL FOR

1 An Act relating to animal feeding operations by providing for
2 distance requirements, county zoning, manure management plan
3 requirements, and nuisance suit protection, and making
4 penalties applicable.

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

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HF 290

1 Section 1. Section 159.27, unnumbered paragraph 1, Code
2 1997, is amended to read as follows:

3 The department shall adopt rules relating to the disposal
4 of manure in close proximity to a designated area. A person
5 shall not dispose of manure on cropland within ~~two~~ four
6 hundred feet from a designated area, unless one of the
7 following applies:

8 Sec. 2. Section 335.2, Code 1997, is amended to read as
9 follows:

10 335.2 FARMS AGRICULTURAL USES EXEMPT.

11 1. As used in this section:

12 a. "Agricultural purpose" means any use connected or
13 related to farming.

14 b. "Animal feeding operation" means the same as defined in
15 section 455B.161.

16 c. "Farm animal feeding operation" means an animal feeding
17 operation in which one of the following applies:

18 (1) The operation contains less than six hundred twenty-
19 five thousand or more pounds animal weight capacity for all
20 animal species other than beef cattle, or less than one
21 million six hundred thousand or more pounds animal weight
22 capacity for beef cattle.

23 (2) If the animal feeding operation is not a business
24 entity, the operation owner of the agricultural land where an
25 animal feeding operation is located is qualified to file for a
26 homestead tax credit as provided in section 425.2 or a family
27 farm tax credit as provided in section 425A.4 in the county
28 where the agricultural land is located.

29 (3) If the animal feeding operation is a business entity,
30 all of the following apply:

31 (a) One of the following persons who holds an interest in
32 the business entity must be eligible to file for one of the
33 following tax credits in the county where the animal feeding
34 operation is located:

35 (i) For a homestead tax credit, an owner of a corporation

1 who is the majority shareholder of a corporation, a partner of
2 a partnership, the person holding the greatest membership
3 interest in a limited liability company, the person
4 contributing the most value to a limited partnership, or the
5 beneficiary having the greatest interest in a trust.

6 (ii) For a family farm tax credit, the majority
7 shareholder of a corporation or a partner of a partnership.

8 (b) At least forty percent of the interest in the business
9 entity must be held by persons related to each other as
10 spouse, parent, grandparent, lineal ascendants of the
11 grandparents or their spouses, or lineal descendants of the
12 grandparents or their spouses, or persons acting in a
13 fiduciary capacity to persons so related.

14 (c) More than fifty percent of the production inputs used
15 to maintain livestock on the agricultural land are purchased
16 within sixty miles from the borders of the agricultural land
17 where the animal feeding operation is located.

18 (d) The operation cannot have benefited from any of the
19 following:

20 (i) The job training partnership program and other
21 programs administered under section 15.108.

22 (ii) The self-employment loan program created in section
23 15.241.

24 (iii) The targeted small business financial assistance
25 program created in section 15.247.

26 (iv) The community economic betterment program created in
27 sections 15.315 through 15.320.

28 (v) An agreement for a supplemental new jobs tax credit as
29 provided in section 15.331.

30 (vi) The industrial new jobs training program as provided
31 in chapter 260E.

32 (vii) The jobs training program as provided in chapter
33 260F.

34 (viii) An economic development area established pursuant
35 to chapter 403.

1 d. "Farming" means the same as defined in section 9H.1.

2 e. "Industrial animal feeding operation" means an animal
3 feeding operation which is not a farm animal feeding
4 operation.

5 f. "Industrial feeding operation structure" means an
6 animal feeding operation structure as defined in section
7 455B.161 which is part of an industrial feeding operation.

8 g. "Production inputs" means feed, supplies, and
9 veterinary medicine used to feed or breed livestock, but does
10 not include labor, construction materials, equipment, or
11 tools.

12 2. Except-to-the-extent-required-to-implement-section
13 335.27, no An ordinance adopted under this chapter applies
14 shall apply to land real estate, farm including houses, farm
15 barns, farm outbuildings, or other buildings or structures
16 located on the real estate, which are is primarily adapted, by
17 reason of nature and area, for-use for an agricultural
18 purposes purpose, while so used, only as provided in this
19 section. However, the ordinances may apply to any An
20 ordinance shall apply to real estate used for an agricultural
21 purpose as follows:

22 a. It shall not apply to a farm animal feeding operation.

23 b. It may apply to an industrial feeding operation.

24 However, the ordinance shall only apply to the site of the
25 industrial feeding operation and not land where other farming
26 operations occur.

27 3. This section shall not apply to either of the
28 following:

29 a. An ordinance required to implement an agricultural
30 preservation ordinance, as provided in section 335.27.

31 b. A structure, building, dam, obstruction, deposit or
32 excavation in or on the flood plains of any a river or stream.

33 Sec. 3. Section 455B.162, subsection 1, paragraphs a and
34 b, Code 1997, are amended to read as follows:

35 a. The following table represents the minimum separation

1 distance in feet required between an animal feeding operation
 2 structure and a residence not owned by the owner of the animal
 3 feeding operation, or a commercial enterprise, bona fide
 4 religious institution, or an educational institution:

	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
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10	Minimum separation distance in feet for operations having an animal weight capacity of	Minimum separation distance in feet for operations having an animal weight capacity of	Minimum separation distance in feet for operations having an animal weight capacity of
11	less than 625,000 pounds for animals other than bovine,	less than 4,000,000 pounds for bovine	less than 1,250,000 or more pounds for animals other than bovine, or
12	or less than 1,600,000 pounds for bovine		4,000,000 or more pounds for bovine
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27	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>
28	Anaerobic lagoon	1,250	1,875
29		2,500	3,750
30	Uncovered earthen		
31	manure storage		
32	basin	1,250	1,875
33		2,500	3,750
34	Uncovered formed		
35	manure storage		

1	structure	±7000	±7500	27000
2		<u>2,000</u>	<u>3,000</u>	<u>4,000</u>
3	Covered earthen			
4	manure storage			
5	basin	750	±7000	±7500
6		<u>1,500</u>	<u>2,000</u>	<u>3,000</u>
7	Covered formed			
8	manure storage			
9	structure	750	±7000	±7500
10		<u>1,500</u>	<u>2,000</u>	<u>3,000</u>
11	Confinement			
12	building	750	±7000	±7500
13		<u>1,500</u>	<u>2,000</u>	<u>3,000</u>
14	Egg washwater			
15	storage			
16	structure	750	±7000	±7500
17		<u>1,500</u>	<u>2,000</u>	<u>3,000</u>

18 b. The following table represents the minimum separation
 19 distance in feet required between animal feeding operation
 20 structures and a public use area or a residence not owned by
 21 the owner of the animal feeding operation, a commercial
 22 enterprise, a bona fide religious institution, or an
 23 educational institution located within the corporate limits of
 24 a city:

25		Minimum	
26		separation	
27		distance in	
28		feet for	
29		operations	
30	Minimum	having an	
31	separation	animal	Minimum
32	distance in	weight	separation
33	feet for	capacity of	distance in
34	operations	625,000 or	feet for
35	having an	more pounds	operations

1	animal	but less than	having an
2	weight	1,250,000	animal
3	capacity of	pounds for	weight
4	less than	animals other	capacity of
5	625,000	than bovine,	1,250,000 or
6	pounds for	or 1,600,000	more pounds
7	animals other	or more	for animals
8	than bovine,	pounds but	other than
9	or less than	less than	bovine, or
10	1,600,000	4,000,000	4,000,000 or
11	pounds for	pounds for	more pounds
12	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>
13	Animal feeding		
14	operation		
15	structure	<u>1,250</u>	<u>2,500</u>
16		<u>2,500</u>	<u>5,000</u>

17 Sec. 4. Section 455B.203, subsection 2, paragraph a, Code
 18 1997, is amended to read as follows:

19 a. Calculations necessary to determine the land area
 20 required for the application of manure from a confinement
 21 feeding operation based on nitrogen phosphorus use levels in
 22 order to obtain optimum crop yields according to a crop
 23 schedule specified in the plan, and according to requirements
 24 adopted by the department after receiving recommendations from
 25 the animal agriculture consulting organization provided for in
 26 1995 Iowa Acts, chapter 195, section 37.

27 Sec. 5. Section 455B.204, subsection 1, Code 1997, is
 28 amended to read as follows:

29 1. An animal feeding operation structure shall not be
 30 ~~located-at-least-five-hundred~~ constructed or expanded less
 31 than one thousand feet away from the surface intake of an
 32 agricultural drainage well or known sinkhole, and at least two
 33 four hundred feet away from a lake, river, or stream located
 34 within the territorial limits of the state, any marginal river
 35 area adjacent to the state, which can support a floating

1 vessel capable of carrying one or more persons during a total
2 of a six-month period in one out of ten years, excluding
3 periods of flooding. However, no distance separation is
4 required between a location or object and a farm pond or
5 privately owned lake, as defined in section 462A.2.

6 Sec. 6. Section 657.1, Code 1997, is amended to read as
7 follows:

8 657.1 NUISANCE -- WHAT CONSTITUTES -- ACTION TO ABATE.

9 Whatever is injurious to health, indecent, or ~~unreasonably~~
10 offensive to the senses, or an obstruction to the free use of
11 property, so as essentially to ~~unreasonably~~ interfere with the
12 comfortable enjoyment of life or property, is a nuisance, and
13 a civil action by ordinary proceedings may be brought to
14 enjoin and abate the same and to recover damages sustained on
15 account thereof.

16 Sec. 7. Section 657.2, subsection 1, Code 1997, is amended
17 to read as follows:

18 1. The erecting, continuing, or using any building or
19 other place for the exercise of any trade, employment, or
20 manufacture, which, by occasioning noxious exhalations,
21 ~~unreasonably~~ offensive smells, or other annoyances, becomes
22 injurious and dangerous to the health, comfort, or property of
23 individuals or the public.

24 Sec. 8. APPLICABILITY. Except as provided in section
25 455B.163, Code 1997, with regard to the continued operation of
26 animal feeding operations constructed prior to May 31, 1995,
27 or the expansion of structures constructed prior to May 31,
28 1995, the provisions of section 455B.162, subsection 1,
29 paragraphs "a" and "b", and section 455B.204, Code 1997, shall
30 continue to apply to animal feeding operation structures
31 constructed on or after May 31, 1995, but prior to the
32 effective date of this Act, and to the expansion of such
33 structures constructed on or after May 31, 1995, but prior to
34 the effective date of this Act.

35 Sec. 9. Section 657.11, Code 1997, is repealed.

1 EXPLANATION

2 This bill amends provisions relating to animal feeding
3 operations, as follows:

4 Code section 159.27 prohibits a person from disposing of
5 manure on cropland within 200 feet of certain water sources.
6 This bill doubles that distance.

7 Code section 335.2 provides that county zoning does not
8 apply to land used for agricultural purposes. The bill amends
9 the section to provide that an "agricultural purpose" means
10 any use connected or related to farming as defined in Iowa's
11 corporate farming law in chapter 9H. The bill also amends the
12 section to provide a county zoning ordinance does not apply to
13 a family animal feeding operation but may apply to an
14 industrial animal feeding operation. In order to be
15 classified as a family animal feeding operation, a number of
16 conditions must be satisfied. The operation must contain less
17 than 625,000 pounds of animal weight capacity for animals
18 other than bovine, and less than 1,600,000 pounds for bovine,
19 or meet a number of criteria set forth in the bill. The
20 criteria include requiring that the owner of agricultural land
21 where an animal feeding operation is located be eligible to
22 file for a homestead tax credit or a family farm tax credit.
23 The bill provides that if the owner is a business entity, the
24 entity must satisfy additional requirements. The person
25 eligible for filing for the tax credit in the county where the
26 operation is located must have a majority or partnership
27 interest in the business entity, at least 40 percent of the
28 interest in the business entity must be held by persons
29 related to each other, more than 50 percent of the production
30 inputs used to maintain animals on the agricultural land must
31 be purchased within 60 miles from the borders of the
32 agricultural land where the animal feeding operation is
33 located, and the operation cannot have benefited from
34 governmental assistance programs primarily designed for
35 nonfarming operations.

1 Code section 455B.162 provides separation distances between
2 animal feeding operation structures such as a manure storage
3 structure, confinement building, or egg washwater storage
4 structure and a residence not owned by the owner of the animal
5 feeding operation, a commercial enterprise, a bona fide
6 religious institution, an educational institution, or a public
7 use area. The bill doubles those separation distances. A
8 person violating the bill's distance requirements is subject
9 to a civil penalty which cannot exceed \$10,000 for each day of
10 a violation.

11 Code section 455B.203 provides that a manure management
12 plan must include calculations necessary to determine the land
13 area required for the application of manure from a confinement
14 feeding operation based on use levels in order to obtain
15 optimum crop yields according to a crop schedule specified in
16 the plan. This bill provides that the calculations must be
17 based on phosphorus use levels rather than nitrogen use
18 levels. Code section 455B.191 subjects a person to a civil
19 penalty of up to \$5,000 for each day of a violation of section
20 455B.203.

21 Code section 455B.204 requires that an animal feeding
22 operation structure must be located at least 500 feet away
23 from the surface intake of an agricultural drainage well or
24 known sinkhole, and at least 200 feet away from certain lakes,
25 rivers, or streams. This bill doubles those distance
26 requirements.

27 Chapter 657 provides for nuisances. Code sections 657.1,
28 657.2, and 657.11 provide that a nuisance must be unreasonably
29 offensive and create a rebuttable presumption that an animal
30 feeding operation is not a public or private nuisance, if the
31 animal feeding operation is not in violation of law and has
32 obtained all required permits. This bill eliminates those
33 provisions.

34 The bill contains an uncodified provision which provides
35 that animal feeding operation structures constructed prior to

1 the effective date of this Act are not required to comply with
2 the separation distance requirements contained in the bill.

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