

2/27/97 agriculture

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SENATE FILE 209
BY BLACK of Kossuth

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

A BILL FOR

1 An Act relating to animal feeding operations, by providing
2 authority to counties and providing for nuisance suit
3 protection.

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

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S.F. 209

1 Section 1. Section 455B.112, Code 1997, is amended to read
2 as follows:

3 455B.112 ACTIONS BY ATTORNEY GENERAL.

4 In addition to the duty to commence legal proceedings at
5 the request of the director or commission under this chapter,
6 the attorney general may institute civil or criminal
7 proceedings, including an action for injunction, to enforce
8 the provisions of this chapter including orders or permits
9 issued or rules adopted under this chapter or to enforce the
10 requirements of an ordinance adopted by a county pursuant to
11 section 455B.167 or 455B.205.

12 Sec. 2. NEW SECTION. 455B.167 AUTHORITY OF COUNTIES.

13 1. A county may adopt an ordinance providing requirements
14 for the construction or expansion of an animal feeding
15 operation structure which are more stringent than required in
16 this part or rules adopted by the department pursuant to this
17 part, including but not limited to providing separation
18 distance requirements greater than provided pursuant to
19 section 455B.161, requiring a separation distance between an
20 animal feeding operation and the limits of a city, providing
21 for more stringent requirements for the expansion of an animal
22 feeding operation than provided in section 455B.162, and not
23 applying an exemption provided pursuant to section 455B.165.

24 2. A person who violates a requirement adopted by a county
25 pursuant to this section shall be subject to a civil penalty
26 not to exceed five thousand dollars for each day of such
27 violation, unless the violation is also a violation of state
28 law. The violator shall be subject to prosecution by the
29 county attorney in the county where the violation occurs. The
30 person in violation may be restrained by an injunction in an
31 action brought by the county attorney. The county board of
32 supervisors may refer the case for prosecution to the attorney
33 general who may initiate and carry out the prosecution in
34 cooperation with the county attorney.

35 Sec. 3. NEW SECTION. 455B.205 AUTHORITY OF COUNTIES.

1 1. A county may adopt an ordinance providing requirements
2 for the storage and disposal of manure produced from an animal
3 feeding operation which are more stringent than required
4 pursuant to section 455B.201, 455B.203, or 455B.204, or rules
5 adopted by the department relating to the storage and disposal
6 of the manure as provided pursuant to this chapter.

7 2. A person who violates a requirement adopted by a county
8 pursuant to this section shall be subject to a civil penalty
9 not to exceed ten thousand dollars for each day of such
10 violation, unless the violation is also a violation of state
11 law. The violator shall be subject to prosecution by the
12 county attorney in the county where the violation occurs. The
13 person in violation may be restrained by an injunction in an
14 action brought by the county attorney. The county board of
15 supervisors may refer the case for prosecution to the attorney
16 general who may initiate and carry out the prosecution in
17 cooperation with the county attorney.

18 Sec. 4. Section 657.11, Code 1997, is repealed.

19 EXPLANATION

20 Code chapter 455B currently regulates air quality in part
21 by providing for distance requirements between animal feeding
22 operations and residences, religious institutions, businesses,
23 and schools. The chapter also provides for water quality by
24 regulating the storage and disposal of manure produced from
25 animal feeding operations.

26 This bill provides that a county may adopt an ordinance
27 providing distance requirements and requirements for the
28 storage and disposal of manure that are more stringent than
29 provided in Code chapter 455B or rules adopted by the
30 department of natural resources under the chapter. The bill
31 provides that a person who violates a requirement is subject
32 to a civil penalty not to exceed \$5,000 for each day that an
33 air quality violation occurs and \$10,000 for each day that a
34 water quality violation occurs, unless the violation is also a
35 violation of state law. The bill authorizes the county

1 attorney to initiate prosecution of the case or to obtain an
2 injunction against the violator. The county board of
3 supervisors may also refer the case for prosecution to the
4 attorney general.

5 Finally, the bill repeals Code section 657.11 which
6 provides that the owner of an animal feeding operation
7 complying with state and federal requirements enjoys a
8 rebuttable presumption that the operation is not a nuisance,
9 unless there is clear and convincing evidence that the animal
10 feeding operation unreasonably and continuously interferes
11 with another person's comfortable use and enjoyment of the
12 person's life or property, and the injury or damage is
13 proximately caused by the negligent operation of the animal
14 feeding operation.

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