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SENATE FILE 2375
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 2120)

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

A BILL FOR

1 An Act relating to agricultural production by providing for the
2 regulation of animal feeding operations.

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

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S.F. 2375

1 Section 1. NEW SECTION. 455B.171A ANIMAL FEEDING
2 OPERATIONS.

3 Animal feeding operations shall be regulated to the extent
4 of this and other chapters of the Code.

5 EXPLANATION

6 This bill provides that animal feeding operations must be
7 regulated to the extent of this and other chapters of the
8 Code.

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Kensink
Kibbie
Judge
McHaren
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SSB 2120

Agriculture

Referred By
SF/HF 2375

SENATE/HOUSE FILE _____
BY (PROPOSED GOVERNOR'S BILL)

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

A BILL FOR

1 An Act relating to agricultural production, including animal
2 agriculture, and providing for fees and the appropriation of
3 moneys.

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

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1 Section 1. NEW SECTION. 7D.10A MANURE STORAGE INDEMNITY
2 FUND ALLOCATIONS.

3 If moneys are not sufficient to pay claims against the
4 manure storage indemnity fund as provided in chapter 204, the
5 executive council may allocate from moneys in the general fund
6 of the state not otherwise appropriated, an amount to pay
7 claims against the manure storage indemnity fund created in
8 section 204.2. However, not more than a total of three
9 million dollars shall be allocated by the executive council to
10 the manure storage indemnity fund at any time.

11 Sec. 2. Section 204.2, subsection 5, Code 1997, is amended
12 to read as follows:

13 5. The following shall apply to moneys in the fund:

14 a. On August 31 following the close of each fiscal year,
15 moneys in the fund which are not obligated or encumbered on
16 June 30 of the past fiscal year, less the department's
17 estimate of the cost to the fund for pending or unsettled
18 claims, and which are in excess of one million dollars, shall
19 be deposited in the organic nutrient management fund as
20 created in section 161C.5 for purposes of supporting the
21 organic nutrient management program.

22 b. The executive council may allocate moneys to the fund
23 as provided in section 7D.10A to the extent that moneys in the
24 fund are not sufficient to pay all claims under section 204.4.

25 Sec. 3. Section 204.3, subsections 1 through 3, Code 1997,
26 are amended to read as follows:

27 1. If the confinement feeding operation has an animal
28 weight capacity of less than six hundred twenty-five thousand
29 pounds, the following shall apply:

30 a. For all animals other than poultry, the amount of the
31 fee shall be ~~five~~ ten cents per animal unit of capacity for
32 confinement feeding operations.

33 b. For poultry, the amount of the fee shall be ~~two~~ four
34 cents per animal unit of capacity for confinement feeding
35 operations.

1 2. If the confinement feeding operation has an animal
2 weight capacity of six hundred twenty-five thousand or more
3 pounds but less than one million two hundred fifty thousand
4 pounds, the following shall apply:

5 a. For all animals other than poultry, the amount of the
6 fee shall be ~~seven-and-one-half~~ fifteen cents per animal unit
7 of capacity for confinement feeding operations.

8 b. For poultry, the amount of the fee shall be ~~three~~ six
9 cents per animal unit of capacity for confinement feeding
10 operations.

11 3. If the confinement feeding operation has an animal
12 weight capacity of one million two hundred fifty thousand or
13 more pounds, the following shall apply:

14 a. For all animals other than poultry, the amount of the
15 fee shall be ~~ten~~ twenty cents per animal unit of capacity for
16 confinement feeding operations.

17 b. For poultry, the amount of the fee shall be ~~four~~ eight
18 cents per animal unit of capacity for confinement feeding
19 operations.

20 Sec. 4. NEW SECTION. 331.302A LIMITATIONS ON COUNTY
21 LEGISLATION.

22 1. As used in this section:

23 a. "County legislation" means any ordinance, motion,
24 resolution, or amendment adopted by a county pursuant to
25 section 331.302.

26 b. "Agricultural operation" means a condition or activity
27 which occurs on land used for the production of agricultural
28 commodities, including but not limited to the raising,
29 harvesting, handling, drying, or storage of crops for feed,
30 food, seed, or fiber; the care or feeding of livestock; the
31 handling or transportation of crops or livestock; the storage,
32 treatment, or disposal of livestock manure; and the
33 application of fertilizers, soil conditioners, pesticides, and
34 herbicides on crops.

35 2. A county shall not adopt or enforce county legislation

1 regulating an agricultural operation, unless expressly
2 authorized by a provision of this Code. County legislation
3 adopted in violation of this section is void and unenforceable
4 and any enforcement activity conducted in violation of this
5 section is void.

6 Sec. 5. Section 455B.104, Code 1997, is amended to read as
7 follows:

8 455B.104 DEPARTMENTAL DUTIES -- PERMITS -- REQUIREMENTS
9 AND ASSISTANCE.

10 1. The department shall either approve or deny a permit to
11 a person applying for a permit under this chapter, within six
12 months from the date that the department receives a completed
13 application for the permit. An application which is not
14 approved or denied within the six-month period shall be
15 approved by default. The department shall issue a permit to
16 the applicant within ten days following the date of default
17 approval. However, this ~~section~~ subsection shall not apply to
18 applications for permits which are issued under division II,
19 or division IV, parts 2 through 7.

20 2. The department shall not issue a permit to a person
21 under this chapter for five years after the date of the last
22 violation committed by a person or confinement feeding
23 operation in which the person holds a controlling interest
24 during which the person or operation was classified as a
25 habitual violator under section 455B.191.

26 3. The department shall assist persons applying for
27 assistance to establish and operate renewable fuel production
28 facilities pursuant to the value-added agricultural products
29 and processes financial assistance program established in
30 section 15E.111.

31 Sec. 6. Section 455B.171, Code Supplement 1997, is amended
32 by adding the following new subsections:

33 NEW SUBSECTION. 1A. "Anaerobic lagoon" means the same as
34 defined in section 455B.161.

35 NEW SUBSECTION. 3A. "Commercial manure applicator" means

1 a person who engages in the business of applying manure on the
2 land of another person for compensation.

3 NEW SUBSECTION. 7A. "Earthen manure storage basin" means
4 the same as defined in section 455B.161.

5 NEW SUBSECTION. 9A. "Formed manure storage structure"
6 means the same as defined in section 455B.161.

7 NEW SUBSECTION. 12A. "Manure storage structure" means an
8 animal feeding operation structure used to store manure as
9 part of a confinement feeding operation. A manure storage
10 structure includes, but is not limited to, an anaerobic
11 lagoon, formed manure storage structure, or earthen manure
12 storage basin.

13 Sec. 7. Section 455B.173, subsection 13, Code 1997, is
14 amended to read as follows:

15 13. a. Adopt, modify, or repeal rules relating to the
16 construction or operation of animal feeding operations. The
17 rules shall include, but are not limited to, minimum manure
18 control requirements, requirements for obtaining permits, and
19 departmental evaluations of animal feeding operations. The
20 department shall not require that a person obtain a permit for
21 the construction of an animal feeding operation structure, if
22 the structure is part of a small animal feeding operation.

23 b. The department shall collect an indemnity fee as
24 provided in section 204.3 prior to the issuance of a
25 construction permit. The department shall deposit moneys
26 collected in indemnity fees in the manure storage indemnity
27 fund created in section 204.2.

28 c. The department shall not approve a permit for the
29 construction of three or more animal feeding operation
30 structures unless the applicant files a statement approved by
31 a professional engineer registered pursuant to chapter 542B
32 certifying that the construction of the animal feeding
33 operation structure will not impede the drainage through
34 established drainage tile lines which cross property boundary
35 lines unless measures are taken to reestablish the drainage

1 prior to completion of construction. ~~The department shall~~
2 ~~deposit moneys collected in indemnity fees in the manure~~
3 ~~storage indemnity fund created in section 204-2.~~

4 d. The department shall issue a permit for an animal
5 feeding operation, if an application is submitted according to
6 procedures required by the department, and the application
7 meets standards established by the department, regardless of
8 whether the animal feeding operation is required to obtain
9 such a permit.

10 e. An applicant for a construction permit shall not begin
11 construction at the location of a site planned for the
12 construction of an animal feeding operation structure, until
13 the person has been granted a permit for the construction of
14 the structure by the department. The department shall make a
15 determination regarding the approval or denial of a permit
16 within sixty days from the date that the department receives a
17 completed application for a permit. However, the sixty-day
18 requirement shall not apply to an application, if the
19 applicant is not required to obtain a permit in order to
20 construct an animal feeding operation structure or to operate
21 an animal feeding operation.

22 f. The department shall deliver a copy or require the
23 applicant to deliver a copy of the application for a
24 construction permit to the county board of supervisors in the
25 county where the confinement feeding operation or ~~confinement~~
26 related animal feeding operation structure subject to the
27 permit is to be located. The department shall not approve the
28 application or issue a construction permit until thirty days
29 following delivery of the application to the county board of
30 supervisors. The department shall consider comments from the
31 county board of supervisors, regarding compliance by the
32 applicant with the legal requirements for the construction of
33 the confinement feeding operation structure or related animal
34 feeding operation structure as provided in this chapter, and
35 rules adopted by the department pursuant to this chapter, if

1 the comments are delivered to the department within fourteen
2 days after receipt of the application by the county board of
3 supervisors.

4 g. Prior to granting a permit to a person for the
5 construction of an animal feeding operation structure, the
6 department may require the installation and operation of a
7 hydrological monitoring system for an exclusively earthen
8 manure storage structure, if, after an on-site inspection, the
9 department determines that the site presents an extraordinary
10 potential for groundwater pollution.

11 h. A person shall not obtain a permit for the construction
12 of a confinement feeding operation, unless the person develops
13 does all of the following:

14 (1) Is certified pursuant to section 455B.202A.

15 (2) Develops a manure management plan as provided in
16 section 455B.203. The department shall not issue a permit to
17 a person under this subsection if an enforcement action by the
18 department, relating to a violation of this chapter concerning
19 a confinement feeding operation in which the person has an
20 interest, is pending. The department shall not issue a permit
21 to a person under this subsection for five years after the
22 date of the last violation committed by a person or
23 confinement feeding operation in which the person holds a
24 controlling interest during which the person or operation was
25 classified as a habitual violator ~~under-section-455B-191~~ as
26 provided in section 455B.104. ~~The department shall conduct an~~
27 ~~annual review of each confinement feeding operation which is a~~
28 ~~habitual violator and each confinement feeding operation in~~
29 ~~which a habitual violator holds a controlling interest. The~~
30 ~~department shall notify persons classified as habitual~~
31 ~~violators of their classification, additional restrictions~~
32 ~~imposed upon the persons pursuant to the classification, and~~
33 ~~special civil penalties that may be imposed upon the persons.~~
34 ~~The notice shall be sent to the persons by certified mail.~~

35 Sec. 8. Section 455B.191, subsection 7, unnumbered

1 paragraph 2, Code 1997, is amended to read as follows:

2 This subsection shall not apply unless the department of
3 natural resources has previously notified the person of the
4 person's classification as a habitual violator ~~as provided in~~
5 section-455B-173. The department shall notify persons
6 classified as habitual violators of their classification,
7 additional restrictions imposed upon the persons pursuant to
8 the classification, and special civil penalties that may be
9 imposed upon the persons. The notice shall be sent to the
10 persons by certified mail.

11 Sec. 9. Section 455B.202, Code Supplement 1997, is amended
12 to read as follows:

13 455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING ACTIONS
14 AND HABITUAL VIOLATORS.

15 1. As used in this section, "construction" unless the
16 context otherwise requires:

17 a. "Construction" means the same as defined by rules
18 adopted by the department applicable to the construction of
19 animal feeding operation structures as provided in this part.

20 b. "Habitual violator" means a person classified as a
21 habitual violator pursuant to section 455B.191.

22 c. "Suspect transaction" means a transaction in which a
23 habitual violator does any of the following:

24 (1) Transfers a controlling interest in a confinement
25 feeding operation to any of the following:

26 (a) An employee of the habitual violator or business in
27 which the person holds a controlling interest.

28 (b) A person who holds an interest in a business,
29 including a confinement feeding operation, in which the
30 habitual violator holds a controlling interest.

31 (c) A person related to the habitual violator as spouse,
32 parent, grandparent, lineal ascendant of a grandparent or
33 spouse and any other lineal descendant of the grandparent or
34 spouse, or a person acting in a fiduciary capacity for a
35 related person.

1 (2) Provides financing for the construction or operation
2 of a confinement feeding operation to any person, by providing
3 a contribution or loan to the person, or providing cash or
4 other tangible collateral for a contribution or loan made by a
5 third person.

6 2. a. A person shall not construct or expand an animal
7 feeding operation structure which is part of a confinement
8 feeding operation, if the person is a any of the following:

9 (1) A party to a pending action for a violation of this
10 chapter concerning a confinement feeding operation in which
11 the person has a controlling interest and the action is
12 commenced in district court by the attorney general.

13 (2) A habitual violator.

14 b. A person shall not construct or expand an animal
15 feeding operation structure which is part of a confinement
16 feeding operation for five years after the date of the last
17 violation committed by a person or confinement feeding
18 operation in which the person holds a controlling interest
19 during which the person or operation was classified as a
20 habitual violator ~~under-section-455B-191-~~

21 ~~3-~~ c. This section subsection shall not prohibit a person
22 from completing the construction or expansion of an animal
23 feeding operation structure, if any of the following apply:

24 ~~a-~~ (1) The person has an unexpired permit for the
25 construction or expansion of the animal feeding operation
26 structure.

27 ~~b-~~ (2) The person is not required to obtain a permit for
28 the construction or expansion of the animal feeding operation
29 structure.

30 3. A suspect transaction shall be presumed to be made in
31 order to avoid conditions and enhanced penalties imposed upon
32 a habitual violator pursuant to this chapter. A person
33 receiving control of a confinement feeding operation pursuant
34 to a suspect transaction shall be deemed to be an agent of the
35 habitual violator, unless the habitual violator and the person

1 receiving the controlling interest in the confinement feeding
2 operation because of the suspect transaction, both prove by
3 clear and convincing evidence all of the following:

4 a. That the suspect transaction was for a legitimate
5 business purpose made by parties exercising independent and
6 reasonable judgment.

7 b. That the habitual violator does not exercise a
8 controlling influence over the business affairs of the
9 confinement feeding operation.

10 4. The department shall conduct an annual review of each
11 confinement feeding operation which is a habitual violator and
12 each confinement feeding operation in which a habitual
13 violator holds a controlling interest.

14 Sec. 10. NEW SECTION. 455B.202A MANURE APPLICATION --
15 CERTIFICATION.

16 1. As used in this section, unless the context otherwise
17 requires:

18 a. "Commercial manure applicator" means the same as
19 defined in section 455B.171.

20 b. "Permitted site" means a manure storage structure which
21 is part of a confinement feeding operation, constructed
22 pursuant to a permit issued by the department as provided in
23 section 455B.173.

24 c. "Permitted site manure applicator" means a person who
25 applies manure stored at a permitted site.

26 2. a. A commercial manure applicator shall not apply
27 manure to agricultural land, unless the person is certified
28 pursuant this section.

29 b. A permitted site manure applicator shall not apply
30 manure to agricultural land unless the person is certified
31 pursuant to this section.

32 3. A person required to be certified under this section
33 shall choose between a one-year certification for which the
34 person shall pay a thirty dollar fee or a three-year
35 certification for which the person shall pay a seventy-five

1 dollar fee.

2 4. To be initially certified a person must complete an
3 educational program which shall consist of an examination
4 required to be passed by the person. After initial
5 certification, the person must renew the certification by
6 completing the educational program which shall consist of
7 either an examination or continuing instructional courses.
8 The person must pass the examination each third year following
9 initial certification or may elect to attend two hours of
10 continuing instructional courses each year.

11 5. The department shall adopt, by rule, requirements for
12 the certification, including educational program requirements.
13 The department may establish different educational programs
14 designed for commercial manure applicators and permitted site
15 manure applicators. The department shall adopt rules
16 necessary to administer this section, including establishing
17 certification standards, which shall at least include
18 standards for the handling, application, and storage of
19 manure, the potential effects of manure upon surface water and
20 groundwater, and procedures to remediate the potential effects
21 on surface water or groundwater.

22 a. The department shall adopt by rule criteria for
23 allowing a person required to be certified to complete either
24 a written or oral examination.

25 b. The department shall administer the continuing
26 instructional courses, by either teaching the courses or
27 selecting persons to teach the courses, according to criteria
28 as provided by rules adopted by the department. The
29 department shall, to the extent possible, select persons to
30 teach the continuing instructional courses. In selecting
31 persons, the department shall consult with organizations
32 interested in the application of manure, including
33 associations representing manure applicators and associations
34 representing agricultural producers. The Iowa cooperative
35 extension service in agriculture and home economics of Iowa

1 state university of science and technology shall cooperate
2 with the department in administering the continuing
3 instructional courses. The Iowa cooperative extension service
4 may teach continuing instructional courses, train persons
5 selected to teach courses, or distribute informational
6 materials to persons teaching the courses.

7 c. The department, in administering the certification
8 program under this section, shall cooperate with the
9 department of agriculture and land stewardship in
10 administering the certification program for pesticide
11 applicators pursuant to section 206.5.

12 6. This section shall not require a person to be certified
13 as a commercial manure applicator because the person is any of
14 the following:

15 a. Actively engaged in farming who trades work with
16 another such person.

17 b. Employed by a person actively engaged in farming not
18 solely as a manure applicator who applies manure as an
19 incidental part of the person's general duties.

20 c. Engaged in applying manure as an incidental part of a
21 custom farming operation.

22 d. Engaged in applying manure as an incidental part of a
23 person's duties as provided by rules adopted by the department
24 providing for an exemption.

25 7. A person is not required to be certified to apply
26 manure for a period of thirty days from the date of initial
27 employment as a commercial manure applicator if the person
28 applying the manure is acting under the instructions and
29 control of a certified manure applicator who is in sight or
30 hearing distance of the supervised person.

31 Sec. 11. NEW SECTION. 455B.202B COMMERCIAL MANURE
32 APPLICATION -- LIABILITY.

33 A person who employs a commercial manure applicator shall
34 not be subject to any penalty for a violation of this chapter
35 caused by an error or omission, unreasonable lack of skill, or

1 failure to maintain a reasonable standard of care by the
2 commercial manure applicator in the course of practice of the
3 commercial manure applicator's occupation.

4 Sec. 12. Section 657.11, subsection 4, Code 1997, is
5 amended by striking the subsection.

6 Sec. 13. NEW SECTION. 657.11A CHRONIC VIOLATORS.

7 1. As used in this section, unless the context otherwise
8 requires:

9 a. "Commission" means the environmental protection
10 commission created in section 455A.6.

11 b. "Confinement feeding operation" means the same as
12 defined in section 455B.161.

13 c. "Department" means the department of natural resources.

14 d. "Suspect transaction" means a transaction in which a
15 person classified as a chronic violator under this section
16 does any of the following:

17 (1) Transfers a controlling interest in a confinement
18 feeding operation to any of the following:

19 (a) An employee of the chronic violator or business in
20 which the person holds a controlling interest.

21 (b) A person who holds an interest in a business,
22 including a confinement feeding operation, in which the
23 chronic violator holds a controlling interest.

24 (c) A person related to the chronic violator as spouse,
25 parent, grandparent, lineal ascendant of a grandparent or
26 spouse and any other lineal descendant of the grandparent or
27 spouse, or a person acting in a fiduciary capacity for a
28 related person.

29 (2) Provides financing for the construction or operation
30 of a confinement feeding operation to any person, including by
31 providing a contribution, loan to the person, or providing
32 collateral for a contribution or loan made by a third person.

33 2. The rebuttable presumption provided in section 657.11
34 does not apply to a person during any period that the person
35 is classified as a chronic violator under this section as to

1 any confinement feeding operation in which the person holds a
2 controlling interest, as defined by rules adopted by the
3 department of natural resources. The rebuttable presumption
4 shall apply to the person on and after the date that the
5 person is removed from the classification of chronic violator.

6 3. A person shall be classified as a chronic violator if
7 the person has committed three or more violations as described
8 in this subsection prior to, on, or after July 1, 1996. In
9 addition, in relation to each violation, the person must have
10 been subject to either of the following:

11 a. The assessment of a civil penalty by the department or
12 the commission in an amount equal to three thousand dollars or
13 more.

14 b. A court order or judgment for a legal action brought by
15 the attorney general after referral by the department or
16 commission.

17 4. Each violation must have occurred within five years
18 prior to the date of the latest violation, counting any
19 violation committed by a confinement feeding operation in
20 which the person holds a controlling interest. A violation
21 occurs on the date the department issues an administrative
22 order to the person assessing a civil penalty of three
23 thousand dollars or more, or on the date the department
24 notifies a person in writing that the department will
25 recommend that the commission refer, or the commission refers
26 the case to the attorney general for legal action, or the date
27 of entry of the court order or judgment, whichever occurs
28 first. A violation under this subsection shall not be counted
29 if the civil penalty ultimately imposed is less than three
30 thousand dollars, the department or commission does not refer
31 the action to the attorney general, the attorney general does
32 not take legal action, or a court order or judgment is not
33 entered against the person. A person shall be removed from
34 the classification of chronic violator on the date on which
35 the person and all confinement feeding operations in which the

1 person holds a controlling interest have committed less than
2 three violations described in this subsection for the prior
3 five years.

4 5. For purposes of counting violations, a continuing and
5 uninterrupted violation shall be considered as one violation.
6 Different types of violations shall be counted as separate
7 violations regardless of whether the violations were committed
8 during the same period. The violation must be a violation of
9 a state statute, or a rule adopted by the department, which
10 applies to a confinement feeding operation and any related
11 animal feeding operation structure, including an anaerobic
12 lagoon, earthen manure storage basin, formed manure storage
13 structure, or egg washwater storage structure, or any related
14 pollution control device or practice. The structure, device,
15 or practice must be part of the confinement feeding operation.
16 The violation must be one of the following:

17 a. Constructing or operating a related animal feeding
18 operation structure or installing or using a related pollution
19 control device or practice, for which the person must obtain a
20 permit, in violation of statute or rules adopted by the
21 department, including the terms or conditions of the permit.

22 b. Intentionally making a false statement or
23 misrepresenting information to the department as part of an
24 application for a construction permit for the related animal
25 feeding operation structure, or the installation of the
26 related pollution control device or practice, for which the
27 person must obtain a construction permit from the department.

28 c. Failing to obtain a permit or approval by the
29 department for a permit to construct or operate a confinement
30 feeding operation or use a related animal feeding operation
31 structure or pollution control device or practice, for which
32 the person must obtain a permit from the department.

33 d. Operating a confinement feeding operation, including a
34 related animal feeding operation structure or pollution
35 control device or practice, which causes pollution to the

1 waters of the state, if the pollution was caused
2 intentionally, or caused by a failure to take measures
3 required to abate the pollution which resulted from an act of
4 God.

5 e. Failing to submit a manure management plan as required,
6 or operating a confinement feeding operation required to have
7 a manure management plan without having submitted the manure
8 management plan.

9 6. A suspect transaction shall be presumed to be made in
10 order to avoid a cause of action for nuisance brought against
11 the person classified as a chronic violator. The person
12 receiving control of the operation pursuant to the suspect
13 transaction shall be deemed to be an agent of the chronic
14 violator, unless the chronic violator and the person receiving
15 the controlling interest in the confinement feeding operation
16 because of the suspect transaction, prove by clear and
17 convincing evidence all of the following:

18 a. That the suspect transaction was for a legitimate
19 business purpose made by parties exercising independent and
20 reasonable judgment.

21 b. That the chronic violator does not exercise a
22 controlling influence over the business affairs of the
23 confinement feeding operation.

24 Sec. 14. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The
25 department of natural resources shall consult with the animal
26 agriculture consulting organization established pursuant to
27 1995 Iowa Acts, chapter 195, as is necessary in order to
28 implement this Act, including but not limited to the adoption
29 of rules under this Act.

30 EXPLANATION

31 This bill relates to agriculture, including animal
32 agriculture.

33 The bill amends provisions relating to the manure storage
34 indemnity fund which was established in order to reimburse
35 counties for expenses incurred by counties in cleaning up

1 manure storage structures on a site that the county received
 2 due to nonpayment of back taxes. The fund is supported by
 3 fees paid by persons obtaining construction permits from the
 4 department of natural resources for confinement feeding
 5 operations. The bill provides that if moneys are not
 6 sufficient to support the fund, the executive council may
 7 allocate up to \$3 million from the general fund in order to
 8 help satisfy claims by counties. The bill also doubles the
 9 fees paid by permittees.

10 The bill prohibits a county from adopting or enforcing
 11 county legislation regulating an agricultural operation,
 12 unless expressly authorized by a Code provision.

13 The bill amends a provision of law which currently
 14 prohibits a habitual violator from obtaining a permit by the
 15 department of natural resources for the construction or
 16 operation of another animal feeding operation. This bill
 17 extends that prohibition to apply to all environmental permits
 18 issued by the department under Code chapter 455B.

19 The bill provides that a transaction involving a habitual
 20 violator or a chronic violator may be considered suspect, if
 21 the transaction involves (1) transferring a controlling
 22 interest in the operation to a person who is financially close
 23 or family related or (2) financing the construction or
 24 operation of a confinement feeding operation. The bill
 25 provides that a suspect transaction is not recognized for
 26 purposes of enforcing environmental laws or claiming nuisance
 27 suit protection, unless the violator and the person receiving
 28 a controlling interest in a confinement feeding operation
 29 prove by clear and convincing evidence that the transaction
 30 was for a legitimate business purpose made by parties
 31 exercising independent and reasonable judgment, and the
 32 chronic violator does not exercise a controlling influence
 33 over the business affairs of the confinement feeding
 34 operation.

35 The bill provides certification requirements for a

1 commercial manure applicator and a person applying manure from
2 a confinement feeding operation required to obtain a
3 construction permit. The certification program is
4 administered by the department of natural resources in
5 cooperation with the department of agriculture and land
6 stewardship. The certification process is similar to that for
7 commercial pesticide applicators under Code chapter 206. The
8 person required to be certified may choose between a one-year
9 or three-year certification. The person is required to pay a
10 certification fee. To be initially certified, the person must
11 complete an educational program which consists of an
12 examination required to be passed by the person. After
13 initial certification, the person must renew the certification
14 by completing the educational program which shall consist of
15 either an examination or continuing instructional courses.

16 The bill provides that a person who employs a commercial
17 manure applicator is not subject to a penalty for a violation
18 of Code chapter 455B caused by an error or omission,
19 unreasonable lack of skill, or failure to maintain a
20 reasonable standard of care by the commercial manure
21 applicator.

22 The bill requires the department of natural resources to
23 consult with the animal agriculture consulting organization as
24 is necessary in order to implement the bill, including the
25 adoption of rules under the bill.

26 This bill may impose a state mandate as provided in Code
27 chapter 25B.

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