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SENATE FILE 472
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 229)

Passed Senate, Date 3/26/97 (p.818) Passed House, Date 4-10-97 ^(P.1176)
Vote: Ayes 48 Nays 0 Vote: Ayes 98 Nays 0
Approved May 19, 1997

A BILL FOR

1 An Act prohibiting a habitual violator or person charged with
2 violation from constructing or expanding an animal feeding
3 operation structure.

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

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S.F. 472

1 Section 1. NEW SECTION. 455B.202 CONFINEMENT FEEDING
 2 OPERATIONS -- PENDING ACTIONS AND HABITUAL VIOLATORS.
 3 A person shall not construct or expand an animal feeding
 4 operation structure which is part of a confinement feeding
 5 operation, if the person is a party to a pending legal action
 6 for a violation of this chapter concerning a confinement
 7 feeding operation in which the person has an interest and the
 8 legal action is commenced by the attorney general upon request
 9 by the department pursuant to section 455B.141. The person
 10 shall not construct or expand an animal feeding operation
 11 structure which is part of a confinement feeding operation for
 12 five years after the date of the last violation committed by a
 13 person or confinement feeding operation in which the person
 14 holds a controlling interest during which the person or
 15 operation was classified as a habitual violator under section
 16 455B.191.

EXPLANATION

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 18 The bill amends chapter 455B regulating animal feeding
 19 operations. The bill provides that a person is prohibited
 20 from constructing an animal feeding operation structure which
 21 is part of a confinement feeding operation if a legal action
 22 related to a violation involving a confinement feeding
 23 operation is pending against the person, or the person is
 24 classified as a habitual violator of regulations relating to
 25 confinement feeding operations.

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SENATE FILE 472

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1 Amend Senate File 472 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 455B.161, Code 1997, is
5 amended by adding the following new subsections:
6 NEW SUBSECTION. 17A. "Qualified animal feeding
7 operation structure" means an animal feeding operation
8 structure other than a single-stage anaerobic lagoon
9 or earthen manure storage basin.

10 NEW SUBSECTION. 18A. "Single-stage anaerobic
11 lagoon" means an anaerobic lagoon that uses a single
12 impoundment in the process of stabilizing organic
13 wastes which are stored in the impoundment.

14 Sec. 2. Section 455B.162, unnumbered paragraph 1,
15 Code 1997, is amended by striking the unnumbered
16 paragraph.

17 Sec. 3. Section 455B.162, subsection 1, unnumbered
18 paragraph 1, Code 1997, is amended by striking the
19 unnumbered paragraph and inserting in lieu thereof the
20 following:

21 Except as provided in this section, the following
22 tables shall apply to animal feeding operation
23 structures constructed or expanded on or after May 31,
24 1995, but prior to the effective date of this Act:

25 Sec. 4. Section 455B.162, Code 1997, is amended by
26 adding the following new subsections:

27 NEW SUBSECTION. 1A. A single-stage anaerobic
28 lagoon or earthen manure storage basin shall not be
29 constructed or expanded on or after the effective date
30 of this Act. Except as provided in this section, the
31 following tables shall apply to qualified animal
32 feeding operation structures constructed or expanded
33 on or after the effective date of this Act:

34 a. The following table represents the minimum
35 separation distance in feet required between a
36 qualified animal feeding operation structure and a
37 residence not owned by the owner of the animal feeding
38 operation, or a commercial enterprise, bona fide
39 religious institution, or an educational institution:

40		Minimum	
41		separation	
42		distance in	
43		feet for	
44		operations	
45	Minimum	having an	
46	separation	animal	Minimum
47	distance in	weight	separation
48	feet for	capacity of	distance in
49	operations	625,000 or	feet for
50	having an	more pounds	operations

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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>for bovine</u>

13	Multiple-stage			
14	anaerobic			
15	lagoon	1,250	1,875	2,500
16	Uncovered formed			
17	manure storage			
18	structure	1,000	1,500	2,000
19	Covered formed			
20	manure storage			
21	structure	750	1,000	1,500
22	Confinement			
23	building	750	1,000	1,500
24	Egg washwater			
25	storage structure	750	1,000	1,500

26 b. The following table represents the minimum
 27 separation distance in feet required between a
 28 qualified animal feeding operation structure and a
 29 public use area or a residence not owned by the owner
 30 of the animal feeding operation, a commercial
 31 enterprise, a bona fide religious institution, or an
 32 educational institution located within the corporate
 33 limits of a city:

34			Minimum	
35			separation	
36			distance in	
37			feet for	
38			operations	
39			having an	
40	Minimum		animal	Minimum
41	separation		weight	separation
42	distance in		capacity of	distance in
43	feet for		625,000 or	feet for
44	operations		more pounds	operations
45	having an		but less than	having an
46	animal		1,250,000	animal
47	weight		pounds for	weight
48	capacity of		animals other	capacity of
49	less than		than bovine,	1,250,000 or
50	625,000		or 1,600,000	more pounds

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1	animals other	or more	for animals
2	than bovine,	pounds but	other than
3	or less than	less than	bovine, or
4	1,600,000	4,000,000	4,000,000 or
5	pounds for	pounds for	more pounds
6	Type of structure	bovine	bovine
7	Qualified animal		
8	feeding operation		
9	structure	1,250	1,875 2,500

10 NEW SUBSECTION. 3. An animal feeding operation
 11 structure constructed prior to May 31, 1995, may be
 12 expanded only as provided in section 455B.163.

13 Sec. 5. Section 455B.163, unnumbered paragraph 1,
 14 Code 1997, is amended to read as follows:

15 An animal feeding operation structure constructed
 16 prior to the applicability of a requirement in section
 17 455B.162, which does not comply with the distance
 18 requirements of section 455B.162 on May 31, 1995
 19 requirement, may continue to operate regardless of
 20 those separation distances the requirement. The
 21 animal feeding operation may be expanded on or after
 22 May 31, 1995, regardless of those separation distances
 23 at any time, if either all of the following apply
 24 apply:

25 Sec. 6. Section 455B.163, Code 1997, is amended by
 26 adding the following new subsection:

27 NEW SUBSECTION. 3. The animal feeding operation
 28 structure is a qualified animal feeding operation
 29 structure.

30 Sec. 7. Section 455B.173, subsection 13, Code
 31 1997, is amended to read as follows:

32 13. a. Adopt, modify, or repeal rules relating to
 33 the construction or operation of animal feeding
 34 operations. The rules shall include, but are not
 35 limited to, minimum manure control requirements,
 36 requirements for obtaining permits, and departmental
 37 evaluations of animal feeding operations. The
 38 department shall not require that a person obtain a
 39 permit for the construction of an animal feeding
 40 operation structure, if the structure is part of a
 41 small animal feeding operation.

42 b. The department shall collect an indemnity fee
 43 as provided in section 204.3 prior to the issuance of
 44 a construction permit. The department shall deposit
 45 moneys collected in indemnity fees in the manure
 46 storage indemnity fund created in section 204.2.

47 c. The department shall not approve a permit for
 48 the construction of three or more animal feeding
 49 operation structures unless the applicant files a
 50 statement approved by a professional engineer

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1 registered pursuant to chapter 542B certifying that
 2 the construction of the animal feeding operation
 3 structure will not impede the drainage through
 4 established drainage tile lines which cross property
 5 boundary lines unless measures are taken to
 6 reestablish the drainage prior to completion of
 7 construction. ~~The department shall deposit moneys~~
 8 ~~collected in indemnity fees in the manure storage~~
 9 ~~indemnity fund created in section 204.2.~~ The
 10 department shall not approve a permit for the
 11 construction of an animal feeding operation structure
 12 other than a qualified animal feeding operation
 13 structure.

14 d. The department shall issue a permit for an
 15 animal feeding operation, if an application is
 16 submitted according to procedures required by the
 17 department, and the application meets standards
 18 established by the department, regardless of whether
 19 the animal feeding operation is required to obtain
 20 such a permit. An applicant for a construction permit
 21 shall not begin construction at the location of a site
 22 planned for the construction of an animal feeding
 23 operation structure, until the person has been granted
 24 a permit for the construction of the structure by the
 25 department. The department shall make a determination
 26 regarding the approval or denial of a permit within
 27 sixty days from the date that the department receives
 28 a completed application for a permit. However, the
 29 sixty-day requirement shall not apply to an
 30 application, if the applicant is not required to
 31 obtain a permit in order to construct an animal
 32 feeding operation structure or to operate an animal
 33 feeding operation. The department shall deliver a
 34 copy or require the applicant to deliver a copy of the
 35 application for a construction permit to the county
 36 board of supervisors in the county where the
 37 confinement feeding operation or confinement feeding
 38 operation structure subject to the permit is to be
 39 located. The department shall not approve the
 40 application or issue a construction permit until
 41 thirty days following delivery of the application to
 42 the county board of supervisors. The department shall
 43 consider comments from the county board of
 44 supervisors, regarding compliance by the applicant
 45 with the legal requirements for the construction of
 46 the confinement feeding operation structure as
 47 provided in this chapter, and rules adopted by the
 48 department pursuant to this chapter, if the comments
 49 are delivered to the department within fourteen days
 50 after receipt of the application by the county board

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1 of supervisors.

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

10 f. A person shall not obtain a permit for the
11 construction of a confinement feeding operation,
12 unless the person develops a manure management plan as
13 provided in section 455B.203.

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

36 2. Title page, line 1, by inserting after the
37 word "Act" the following: "relating to animal feeding
38 operations, by regulating animal feeding operation
39 structures and".

40 3. By renumbering as necessary.

By JOHN P. KIBBIE

S-3175 FILED MARCH 19, 1997

WITHDRAWN 3/26/97 (p. 817)

SENATE FILE 472

S-3173

1 Amend Senate File 472 as follows:
 2 1. Page 1, by striking lines 5 through 9 and
 3 inserting the following: "operation, if the person is
 4 a party to a pending legal or administrative action,
 5 including a contested case proceeding under chapter
 6 17A, relating to an alleged violation involving an
 7 animal feeding operation as regulated by the
 8 department of natural resources, regardless of whether
 9 the pending action is brought by the department or the
 10 attorney general. A person".

By TOM VILSACK

S-3173 FILED MARCH 19, 1997

WITHDRAWN 3/26/97 (p. 818)

SENATE FILE 472

S-3165

1 Amend Senate File 472 as follows:
 2 1. Page 1, line 3, by inserting before the word
 3 "A" the following: "1. a."
 4 2. Page 1, line 9, by striking the words "The
 5 person".
 6 3. Page 1, line 10, by inserting before the word
 7 "shall" the following:
 8 "b. A person".
 9 4. Page 1, by inserting after line 16 the
 10 following:
 11 "2. This section shall not prohibit a person from
 12 completing the construction or expansion of an animal
 13 feeding operation structure if the person has obtained
 14 a permit for the construction or expansion of the
 15 animal feeding operation structure or the person is
 16 not required to obtain a permit for the structure's
 17 construction or expansion."

By WILMER RENSINK

S-3165 FILED MARCH 18, 1997

Adopted 3/26/97 (p. 818)

SENATE FILE 472

S-3176

1 Amend Senate File 472 as follows:
 2 1. Page 1, by inserting after line 16 the
 3 following:
 4 "Sec. ____ . Section 657.11, Code 1997, is
 5 repealed."
 6 2. Title page, line 1, by inserting after the
 7 word "Act" the following: "relating to animal feeding
 8 operation structures, by".
 9 3. Title page, line 3, by inserting after the
 10 word "structure" the following: "and eliminating
 11 protection against nuisance suits".

By PATTY JUDGE

S-3176 FILED MARCH 19, 1997

WITHDRAWN 3/26/97 (p. 818)

SENATE FILE 472

S-3179

1 Amend Senate File 472 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 455B.161, subsection 3, Code
5 1997, is amended to read as follows:

6 3. a. "Animal feeding operation" means a lot,
7 yard, corral, building, or other area in which animals
8 are confined and fed and maintained for forty-five
9 days or more in any twelve-month period, and all
10 structures used for the storage of manure from animals
11 in the operation.

12 b. Two or more animal feeding operations ~~under~~
13 ~~common-ownership-or-management~~ are deemed to be a
14 single animal feeding operation ~~if-they-are-adjacent~~
15 as follows:

16 (1) If the animal feeding operations do not
17 include a confinement swine feeding operation, the
18 animal feeding operations must be both of the
19 following:

20 (a) Under common ownership or management.

21 (b) Adjacent or utilize a common system for manure
22 storage.

23 (2) If the animal feeding operations include a
24 confinement swine feeding operation, any of the
25 following apply to the animal feeding operations:

26 (a) They must utilize a common system for manure
27 storage or area for manure disposal.

28 (b) They must be separated by less than two
29 thousand five hundred feet, unless the combined animal
30 weight capacity of the animal feeding operations is
31 two hundred thousand pounds or less.

32 c. An animal feeding operation does not include a
33 livestock market.

34 Sec. ____ . Section 455B.161, Code 1997, is amended
35 by adding the following new subsections:

36 NEW SUBSECTION. 9A. "Confinement swine feeding
37 operation" means a confinement feeding operation in
38 which swine are confined and fed and all structures
39 used for the storage of manure from animals in the
40 operation.

41 NEW SUBSECTION. 9B. "Confinement swine feeding
42 operation structure" means a confinement building or a
43 formed swine manure storage structure.

44 NEW SUBSECTION. 14A. "Formed swine manure storage
45 structure" means a formed manure storage structure
46 used to store swine manure, which has walls and a
47 floor constructed of poured concrete.

48 NEW SUBSECTION. 16A. "Manure storage structure"
49 means any structure used to store manure from an
50 animal feeding operation, including an anaerobic

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1 lagoon, earthen manure storage basin, or formed manure
2 storage structure.

3 Sec. ____ . Section 455B.162, unnumbered paragraph
4 1, Code 1997, is amended to read as follows:

5 1. The Except as provided in subsection 1A, the
6 following shall apply to animal feeding operation
7 structures constructed on or after May 31, 1995; to
8 the expansion of structures constructed on or after
9 May 31, 1995; or, except as provided in section
10 455B.163, to the expansion of structures constructed
11 prior to May 31, 1995:

12 Sec. ____ . Section 455B.162, subsection 1,
13 unnumbered paragraph 1, Code 1997, is amended by
14 striking the unnumbered paragraph.

15 Sec. ____ . Section 455B.162, Code 1997, is amended
16 by adding the following new subsection:

17 NEW SUBSECTION. 1A. The following shall apply to
18 confinement swine feeding operation structures
19 constructed on or after the effective date of this
20 Act, if the confinement swine feeding operations are
21 established on or after the effective date of this
22 Act:

23 a. The following table represents the minimum
24 separation distance in feet required between a
25 confinement swine feeding operation structure and a
26 residence not owned by the owner of the confinement
27 swine feeding operation, or a commercial enterprise,
28 bona fide religious institution, or an educational
29 institution:

	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds	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	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds
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43 Type of structure

44 Uncovered formed

45 swine manure

46 storage

47 structure

2,250

2,750

3,250

48 Covered formed

49 swine manure

50 storage

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1 structure	1,900	2,250	2,750
2 Confinement			
3 building	1,900	2,250	2,750

4 b. The following table represents the minimum
 5 separation distance in feet required between
 6 confinement swine feeding operation structures and a
 7 public use area or a residence not owned by the owner
 8 of the confinement swine feeding operation, a
 9 commercial enterprise, a bona fide religious
 10 institution, or an educational institution located
 11 within the corporate limits of a city:

12	Minimum	Minimum	Minimum
13	separation	separation	separation
14	distance in	distance in	distance in
15	feet for	feet for	feet for
16	operations	operations	operations
17	having an	having an	having an
18	animal weight	animal weight	animal weight
19	capacity of	capacity of	capacity of
20	less than	625,000 or	1,250,000 or
21	625,000	more pounds	more pounds
22	pounds	but less than	
23		1,250,000	
24		pounds	

25 Type of structure

26 Confinement

27 swine

28 feeding

29 operation

30 structure

2,500	3,025	3,750
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31 Sec. ____ . Section 455B.171, subsection 2, Code
 32 1997, is amended to read as follows:

33 2. a. "Animal feeding operation" means a lot,
 34 yard, corral, building, or other area in which animals
 35 are confined and fed and maintained for forty-five
 36 days or more in any twelve-month period, and all
 37 structures used for the storage of manure from animals
 38 in the animal feeding operation.

39 b. Two or more animal feeding operations under
 40 common-ownership-or-management are deemed to be a
 41 single animal feeding operation if-they-are-adjacent
 42 as follows:

43 (1) If the animal feeding operations do not
 44 include a confinement swine feeding operation, the
 45 animal feeding operations must be both of the
 46 following:

47 (a) Under common ownership or management.

48 (b) Adjacent or utilize a common area or system
 49 for manure disposal.

50 (2) If the animal feeding operations include a

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1 confinement swine feeding operation, any of the
2 following apply to the animal feeding operations:

3 (a) They must utilize a common system or area for
4 manure storage.

5 (b) They must be separated by less than two
6 thousand five hundred feet, unless the combined animal
7 weight capacity of the animal feeding operations is
8 two hundred thousand pounds or less.

9 c. An animal feeding operation does not include a
10 livestock market as defined in section 455B.161.

11 Sec. ____ . Section 455B.171, Code 1997, is amended
12 by adding the following new subsections:

13 NEW SUBSECTION. 4A. "Confinement swine feeding
14 operation" means the same as defined in section
15 455B.161.

16 NEW SUBSECTION. 4B. "Confinement swine feeding
17 operation structure" means the same as defined in
18 section 455B.161.

19 NEW SUBSECTION. 9A. "Formed manure storage
20 structure" means the same as defined in section
21 455B.161.

22 NEW SUBSECTION. 9B. "Formed swine manure storage
23 structure" means the same as defined in section
24 455B.161.

25 NEW SUBSECTION. 12A. "Manure storage structure"
26 means the same as defined in section 455B.161.

27 Sec. ____ . Section 455B.201, Code 1997, is amended
28 by adding the following new subsection:

29 NEW SUBSECTION. 5. On and after the effective
30 date of this Act, a person shall not construct a
31 manure storage structure which is part of a
32 confinement swine feeding operation unless the manure
33 storage structure is a formed swine manure storage
34 structure."

35 2. Page 1, by inserting after line 16 the
36 following:

37 "Sec. ____ . Section 455B.204, subsection 1,
38 unnumbered paragraph 1, Code 1997, is amended to read
39 as follows:

40 An animal feeding operation structure shall not be
41 ~~located-at-least~~ constructed or expanded less than
42 five hundred feet away from the surface intake of an
43 agricultural drainage well or known sinkhole, and at
44 least not less than two hundred feet away from a lake,
45 river, or stream located within the territorial limits
46 of the state, any marginal river area adjacent to the
47 state, which can support a floating vessel capable of
48 carrying one or more persons during a total of a six-
49 month period in one out of ten years, excluding
50 periods of flooding. However, no a distance

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1 separation is not required between a location or
2 object and a farm pond or privately owned lake, as
3 defined in section 462A.2. A confinement swine
4 feeding operation structure shall not be constructed
5 or expanded less than five hundred feet away from a
6 drinking water well.

7 Sec. ____ . EFFECTIVE DATE. This Act, being deemed
8 of immediate importance, takes effect upon enactment."

9 3. Title page, line 1, by inserting after the
10 word "Act" the following: "regulating animal feeding
11 operations by providing for confinement swine feeding
12 operations and".

13 4. Title page, line 3, by inserting after the
14 word "structure" the following: ", and providing an
15 effective date".

16 5. By renumbering as necessary.

By PATTY JUDGE

S-3179 FILED MARCH 19, 1997

WITHDRAWN 3/26/97 (p. 818)

SENATE FILE 472

S-3177

1 Amend Senate File 472 as follows:
2 1. Page 1, by inserting before line 1 the
3 following:
4 "Sec. ____ . Section 455B.173, subsection 13, Code
5 1997, is amended to read as follows:
6 13. Adopt, modify, or repeal rules relating to the
7 construction or operation of animal feeding
8 operations. The rules shall include, but are not
9 limited to, minimum manure control requirements,
10 requirements for obtaining permits, and departmental
11 evaluations of animal feeding operations. The
12 department shall not require that a person obtain a
13 permit for the construction of an animal feeding
14 operation structure, if the structure is part of a
15 small animal feeding operation. The department shall
16 collect an indemnity fee as provided in section 204.3
17 prior to the issuance of a construction permit. The
18 department shall not approve a permit for the
19 construction of three or more animal feeding operation
20 structures unless the applicant files a statement
21 approved by a professional engineer registered
22 pursuant to chapter 542B certifying that the
23 construction of the animal feeding operation structure
24 will not impede the drainage through established
25 drainage tile lines which cross property boundary
26 lines unless measures are taken to reestablish the
27 drainage prior to completion of construction. The
28 department shall deposit moneys collected in indemnity
29 fees in the manure storage indemnity fund created in
30 section 204.2. The department shall issue a permit
31 for an animal feeding operation, if an application is
32 submitted according to procedures required by the
33 department, and the application meets standards
34 established by the department, regardless of whether
35 the animal feeding operation is required to obtain
36 such a permit. An applicant for a construction permit
37 shall not begin construction at the location of a site
38 planned for the construction of an animal feeding
39 operation structure, until the person has been granted
40 a permit for the construction of the structure by the
41 department. The department shall make a determination
42 regarding the approval or denial of a permit within
43 sixty days from the date that the department receives
44 a completed application for a permit. However, the
45 sixty-day requirement shall not apply to an
46 application, if the applicant is not required to
47 obtain a permit in order to construct an animal
48 feeding operation structure or to operate an animal
49 feeding operation. The department shall deliver a
50 copy or require the applicant to deliver a copy of the

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1 application for a construction permit to the county
2 board of supervisors in the county where the
3 confinement feeding operation or confinement feeding
4 operation structure subject to the permit is to be
5 located. The department shall not approve the
6 application or issue a construction permit until
7 thirty days following delivery of the application to
8 the county board of supervisors. The department shall
9 consider comments from the county board of
10 supervisors, regarding compliance by the applicant
11 with the legal requirements for the construction of
12 the confinement feeding operation structure as
13 provided in this chapter, and rules adopted by the
14 department pursuant to this chapter, if the comments
15 are delivered to the department within fourteen days
16 after receipt of the application by the county board
17 of supervisors. However, if the construction permit
18 is for an animal feeding operation structure which is
19 part of a confinement feeding operation in which swine
20 are confined, the department shall not issue the
21 permit if the county board of supervisors submits an
22 objection to the department within thirty days after
23 receipt of the application by the county board of
24 supervisors. The objection must be based upon a
25 threat to environmental quality or the public health
26 that the board determines may be caused by the
27 location or design of the animal feeding operation
28 structure. Prior to granting a permit to a person for
29 the construction of an animal feeding operation, the
30 department may require the installation and operation
31 of a hydrological monitoring system for an exclusively
32 earthen manure storage structure, if, after an on-site
33 inspection, the department determines that the site
34 presents an extraordinary potential for groundwater
35 pollution. A person shall not obtain a permit for the
36 construction of a confinement feeding operation,
37 unless the person develops a manure management plan as
38 provided in section 455B.203. The department shall
39 not issue a permit to a person under this subsection
40 if an enforcement action by the department, relating
41 to a violation of this chapter concerning a
42 confinement feeding operation in which the person has
43 an interest, is pending. The department shall not
44 issue a permit to a person under this subsection for
45 five years after the date of the last violation
46 committed by a person or confinement feeding operation
47 in which the person holds a controlling interest
48 during which the person or operation was classified as
49 a habitual violator under section 455B.191. The
50 department shall conduct an annual review of each

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1 confinement feeding operation which is a habitual
2 violator and each confinement feeding operation in
3 which a habitual violator holds a controlling
4 interest. The department shall notify persons
5 classified as habitual violators of their
6 classification, additional restrictions imposed upon
7 the persons pursuant to the classification, and
8 special civil penalties that may be imposed upon the
9 persons. The notice shall be sent to the persons by
10 certified mail."

11 2. Title page, line 1, by inserting after the
12 word "Act" the following: "relating to animal feeding
13 operation structures, by providing for permits and".

By PATTY JUDGE

S-3177 FILED MARCH 19, 1997

WITHDRAWN 3/26/97 (p. 817)

SENATE FILE 472

S-3178

1 Amend Senate File 472 as follows:

2 1. Page 1, by striking lines 5 through 8 and
3 inserting the following: "operation, if the person is
4 a party to a pending legal or administrative action,
5 including a contested case proceeding under chapter
6 17A, relating to an alleged violation involving an
7 animal feeding operation as regulated by the
8 department of natural resources, regardless of whether
9 the pending action is brought by the department or the
10 attorney general."

11 2. Page 1, line 9, by striking the words "by the
12 department pursuant to section 455B.141."

By TOM VILSACK

S-3178 FILED MARCH 19, 1997

WITHDRAWN 3/26/97 (p. 818)

SENATE FILE 472

S-3180

1 Amend Senate File 472 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. NEW SECTION. 103A.7A SWINE
5 CONFINEMENT FEEDING OPERATION STRUCTURES -- MODEL
6 CODE.

7 The commissioner shall establish a model building
8 code for confinement swine feeding operation
9 structures required to obtain a license as provided in
10 section 455B.173, for use by counties in amending
11 their building codes.

12 Sec. ____ . Section 137.6, Code 1997, is amended by
13 adding the following new subsection:

14 NEW SUBSECTION. 6. Monitor drinking water wells
15 which exist in close proximity to animal feeding
16 operations as provided by the state department
17 pursuant to section 455B.201.

18 Sec. ____ . Section 204.5, unnumbered paragraph 1,
19 Code 1997, is amended to read as follows:

20 A county which has acquired real estate containing
21 a confinement-feeding-operation manure storage
22 structure, or an egg washwater storage structure as
23 defined in section 455B.161, following the nonpayment
24 of taxes pursuant to section 446.19, may clean up the
25 site, including removing and disposing of manure at
26 any time. The county may seek reimbursement including
27 by bringing an action for the costs of the removal and
28 disposal from the person abandoning the real estate.

29 Sec. ____ . Section 331.304, subsection 3, paragraph
30 b, Code 1997, is amended to read as follows:

31 b. A Except as otherwise provided in this
32 paragraph, a county building code shall not apply to
33 farm houses, barns, outbuildings, or other farm
34 buildings or structures which are primarily adapted
35 for use for an agricultural purposes purpose, while so
36 used or under construction for that use. The county
37 building code may apply to a confinement swine feeding
38 operation structure constructed or expanded on or
39 after the effective date of this Act, which is
40 required to obtain a construction permit as provided
41 in section 455B.173.

42 Sec. ____ . Section 455B.171, Code 1997, is amended
43 by adding the following new subsections:

44 NEW SUBSECTION. 4A. "Confinement swine feeding
45 operation" means a confinement feeding operation in
46 which swine are confined and fed.

47 NEW SUBSECTION. 4B. "Confinement swine feeding
48 operation structure" means a confinement building or
49 an animal feeding operation structure which is part of
50 a confinement feeding operation, all as defined in

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1 section 455B.161.

2 NEW SUBSECTION. 12A. "Manure storage structure"
3 means an animal feeding operation structure used to
4 store manure as part of a confinement feeding
5 operation, including an anaerobic lagoon or earthen
6 manure storage structure, all as defined in section
7 455B.161.

8 Sec. ____ . Section 455B.173, subsection 13, Code
9 1997, is amended to read as follows:

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

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

25 c. The department shall not approve a permit for
26 the construction of a confinement swine feeding
27 operation structure or three or more other animal
28 feeding operation structures, unless the applicant
29 files a statement approved by a professional engineer
30 registered pursuant to chapter 542B certifying that
31 the construction of the animal-feeding-operation
32 structure will not impede the drainage through
33 established drainage tile lines which cross property
34 boundary lines unless measures are taken to
35 reestablish the drainage prior to completion of
36 construction. ~~The department shall deposit moneys~~
37 ~~collected in indemnity fees in the manure storage~~
38 ~~indemnity fund created in section 204.2.~~ The permit
39 for a confinement swine feeding operation structure
40 shall be conditional upon the removal of any drainage
41 tile located within fifty feet of the structure prior
42 to its operation, according to rules adopted by the
43 department, which shall provide for the removal,
44 capping, and rerouting of the drainage tile.

45 d. The department shall issue a permit for an
46 animal feeding operation, if an application is
47 submitted according to procedures required by the
48 department, and the application meets standards
49 established by the department, regardless of whether
50 the animal feeding operation is required to obtain

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1 such a permit. An applicant for a construction permit
2 shall not begin construction at the location of a site
3 planned for the construction of an animal feeding
4 operation structure, until the person has been granted
5 a permit for the construction of the structure by the
6 department. The department shall make a determination
7 regarding the approval or denial of a permit within
8 sixty days from the date that the department receives
9 a completed application for a permit. However, the
10 sixty-day requirement shall not apply to an
11 application, if the applicant is not required to
12 obtain a permit in order to construct an animal
13 feeding operation structure or to operate an animal
14 feeding operation. The department shall deliver a
15 copy or require the applicant to deliver a copy of the
16 application for a construction permit to the county
17 board of supervisors in the county where the
18 confinement feeding operation or confinement feeding
19 operation structure subject to the permit is to be
20 located. The department shall not approve the
21 application or issue a construction permit until
22 thirty days following delivery of the application to
23 the county board of supervisors. The department shall
24 consider comments from the county board of
25 supervisors, regarding compliance by the applicant
26 with the legal requirements for the construction of
27 the confinement feeding operation structure as
28 provided in this chapter, and rules adopted by the
29 department pursuant to this chapter, if the comments
30 are delivered to the department within fourteen days
31 after receipt of the application by the county board
32 of supervisors.

33 e. Prior to granting a permit to a person for the
34 construction of an animal feeding operation, the
35 department may require the installation and operation
36 of a hydrological monitoring system for an exclusively
37 earthen manure storage structure, if, after an on-site
38 inspection, the department determines that the site
39 presents an extraordinary potential for groundwater
40 pollution. The department shall require the
41 installation and operation of a hydrological
42 monitoring system for a manure storage structure which
43 is part of a confinement feeding operation prior to
44 issuing a permit to the confinement feeding operation,
45 unless after an on-site inspection, the department
46 determines that no potential for groundwater pollution
47 exists.

48 f. A person shall not obtain a permit for the
49 construction of a confinement feeding operation,
50 unless the person develops a manure management plan as

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1 provided in section 455B.203.

2 g. During each major stage of construction, the
3 department shall conduct an inspection of the
4 confinement swine feeding operation structure subject
5 to a permit required to be approved by the department,
6 in order to ensure that a confinement swine feeding
7 operation structure is being constructed according to
8 design requirements approved by the department. A
9 confinement swine feeding operation structure shall
10 not operate unless the department conducts a final
11 inspection and certifies that the confinement swine
12 feeding operation structure is constructed according
13 to requirements approved by the department. The
14 department shall conduct an annual inspection of each
15 confinement swine feeding operation required to obtain
16 a construction permit under this section.

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

39 Sec. ____. Section 455B.201, subsection 4, Code
40 1997, is amended to read as follows:

41 4. A person shall not apply manure by spray
42 irrigation equipment, ~~except as provided by rules~~
43 ~~which shall be adopted by the department pursuant to~~
44 ~~chapter 17A.~~

45 Sec. ____. Section 455B.201, Code 1997, is amended
46 by adding the following new subsections:

47 NEW SUBSECTION. 5. The department shall provide
48 for the installation and operation of a hydrological
49 monitoring system for a manure storage structure which
50 is part of a confinement feeding operation structure,

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1 unless after an on-site inspection, the department
2 determines that the site presents no potential for
3 groundwater pollution.

4 NEW SUBSECTION. 6. The department shall do all of
5 the following:

6 a. Cooperate with the Iowa department of public
7 health in regularly monitoring drinking water wells
8 which are located in close proximity to animal feeding
9 operations. The monitoring may be performed by
10 employees of a county board of health in the county
11 where a drinking water well is located and reported to
12 the department of natural resources as provided by the
13 Iowa department of public health.

14 b. Regularly inspect and evaluate the structural
15 integrity of manure storage structures which are part
16 of confinement swine feeding operations. The
17 department shall annually inspect and evaluate all
18 anaerobic lagoons and earthen manure storage basins
19 which are part of those operations and for which a
20 construction permit has been issued by the department.

21 NEW SUBSECTION. 7. Drainage tile shall not be
22 located within fifty feet from a manure storage
23 structure which is part of a confinement swine feeding
24 operation. The department shall adopt rules for the
25 inspection, removal, capping, and rerouting of the
26 drainage tile. The owner of a confinement swine
27 feeding operation shall comply with this subsection
28 not later than July 1, 1998."

29 2. Page 1, by inserting after line 16 the
30 following:

31 "Sec. ____ . Section 455B.203, subsection 2, Code
32 1997, is amended by adding the following new
33 paragraph:

34 NEW PARAGRAPH. h. A written record describing
35 actions taken to determine the existence of drainage
36 tile lines, including the findings, and actions taken
37 to comply with permit requirements in section
38 455B.173, and minimum manure control requirements
39 provided in section 455B.201.

40 Sec. ____ . DEPARTMENT OF NATURAL RESOURCES RULES
41 REQUIRED. The department of natural resources shall
42 adopt as rules recommended manure application
43 practices as provided in 567 IAC 65, to apply to
44 confinement swine feeding operations, unless
45 inconsistent with statute or rules required to
46 implement this Act.

47 Sec. ____ . EFFECTIVE DATE. This Act, being deemed
48 of immediate importance, takes effect upon enactment."

49 3. Title page, line 1, by inserting after the
50 word "Act" the following: "regulating animal feeding

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1 operations, including by regulating confinement swine
2 feeding operations and".

3 4. Title page, line 3, by inserting after the
4 word "structure" the following: ", and providing an
5 effective date".

6 5. By renumbering as necessary.

By PATTY JUDGE

S-3180 FILED MARCH 19, 1997

WIT DRAWN 3/26/97 (p. 818)

SENATE FILE 472

S-3266

1 Amend Senate File 472 as follows:

2 1. Page 1, line 5, by striking the word "legal".

3 2. Page 1, line 8, by striking the word "legal".

4 3. Page 1, line 8, by inserting after the word
5 "commenced" the following: "in district court".

6 4. Page 1, line 9, by striking the words "by the
7 department pursuant to section 455B.141" and inserting
8 the following: "by the department, or the action is
9 the second or a subsequent contested case proceeding
10 brought against the person by the department under
11 chapter 17A".

By TOM VILSACK

S-3266 FILED MARCH 26, 1997

ADOPTED (p. 818)

1 Section 1. NEW SECTION. 455B.202 CONFINEMENT FEEDING
2 OPERATIONS -- PENDING ACTIONS AND HABITUAL VIOLATORS.

3 1. a. A person shall not construct or expand an animal
4 feeding operation structure which is part of a confinement
*5 feeding operation, if the person is a party to a pending
6 action for a violation of this chapter concerning a
7 confinement feeding operation in which the person has an
*8 interest and the action is commenced in district court by the
9 attorney general upon request by the department, or the action
10 is the second or a subsequent contested case proceeding
11 brought against the person by the department under chapter
12 17A.

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

20 2. This section shall not prohibit a person from
21 completing the construction or expansion of an animal feeding
22 operation structure if the person has obtained a permit for
23 the construction or expansion of the animal feeding operation
24 structure or the person is not required to obtain a permit for
25 the structure's construction or expansion.

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SENATE FILE 472

H-1666

- 1 Amend Senate File 472, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by inserting after line 2 the
4 following:
5 "____. As used in this section, "construction"
6 means the same as defined by rules adopted by the
7 department applicable to the construction of animal
8 feeding operation structures as provided in this
9 part."
10 2. Page 1, line 7, by striking the word "an".
11 3. Page 1, by striking lines 8 through 12 and
12 inserting the following: "a controlling interest and
13 the action is commenced in district court by the
14 attorney general."
15 4. Page 1, by striking lines 22 through 24 and
16 inserting the following: "operation structure, if any
17 of the following apply:
18 a. The person has an unexpired permit for the
19 construction or expansion of the animal feeding
20 operation structure.
21 b. The person is not required to obtain a permit
22 for the construction or expansion of the animal
23 feeding operation structure."
24 5. Page 1, line 25, by striking the words "the
25 structure's construction or expansion."
26 6. By renumbering as necessary.

By EDDIE of Buena Vista

H-1666 FILED APRIL 9, 1997

adopted 4-10-97
(P.1175)

SENATE FILE 472

H-1556

- 1 Amend Senate File 472, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by inserting after line 25 the
4 following:
5 "Sec. ____ . EFFECTIVE DATE. This Act, being deemed
6 of immediate importance, takes effect upon enactment."
7 2. Title page, line 3, by inserting after the
8 word "structure" the following: ", and providing an
9 effective date".

By KOENIGS of Mitchell

H-1556 FILED APRIL 3, 1997

Adapted 4-10-97
(P.1175)

H-1672

1 Amend Senate File 472, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 1, by inserting before line 1 the
 4 following:
 5 "Section 1. Section 455B.161, subsection 3, Code
 6 1997, is amended to read as follows:
 7 3. a. "Animal feeding operation" means a lot,
 8 yard, corral, building, or other area in which animals
 9 are confined and fed and maintained for forty-five
 10 days or more in any twelve-month period, and all
 11 structures used for the storage of manure from animals
 12 in the operation.
 13 b. Two or more animal feeding operations under
 14 common ownership or management are deemed to be a
 15 single animal feeding operation if ~~they are adjacent~~
 16 ~~or any of the following apply:~~
 17 (1) The animal feeding operations utilize a common
 18 system for manure storage.
 19 (2) An animal feeding operation structure which is
 20 part of one animal feeding operation is less than two
 21 thousand five hundred feet from an animal feeding
 22 operation structure which is part of the other animal
 23 feeding operation.
 24 c. An animal feeding operation does not include a
 25 livestock market.
 26 Sec. 2. Section 455B.171, subsection 2, Code 1997,
 27 is amended to read as follows:
 28 2. a. "Animal feeding operation" means a lot,
 29 yard, corral, building, or other area in which animals
 30 are confined and fed and maintained for forty-five
 31 days or more in any twelve-month period, and all
 32 structures used for the storage of manure from animals
 33 in the animal feeding operation.
 34 b. Two or more animal feeding operations under
 35 common ownership or management are deemed to be a
 36 single animal feeding operation if ~~they are adjacent~~
 37 ~~or any of the following apply:~~
 38 (1) The animal feeding operations utilize a common
 39 area or system for manure disposal.
 40 (2) An animal feeding operation structure which is
 41 part of one animal feeding operation is less than two
 42 thousand five hundred feet from an animal feeding
 43 operation structure which is part of the other animal
 44 feeding operation.
 45 c. An animal feeding operation does not include a
 46 livestock market as defined in section 455B.161.
 47 2. Title page, line 1, by inserting after the
 48 word "Act" the following: "relating to animal feeding
 49 operations, by regulating animal feeding operation
 50 structures, and".

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Page 2

1 3. By renumbering as necessary.

By WEIGEL of Chickasaw
 KOENIGS of Mitchell

H-1672 FILED APRIL 9, 1997

Not Done 4/10/97 (A1174)

SENATE FILE 472

H-1673

1 Amend Senate File 472, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 455B.171, Code 1997, is
6 amended by adding the following new subsections:
7 NEW SUBSECTION. 1C. "Anaerobic lagoon" means the
8 same as defined in section 455B.161.

9 NEW SUBSECTION. 2A. "Animal feeding operation
10 structure" means the same as defined in section
11 455B.161.

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

14 Sec. 2. NEW SECTION. 455B.201A ANAEROBIC LAGOONS
15 AND EARTHEN MANURE STORAGE BASINS.

16 1. A person shall not construct or expand an
17 earthen manure storage basin used in conjunction with
18 a confinement feeding operation in which swine are
19 confined, if the earthen manure storage basin as
20 constructed or expanded would have the capacity to
21 store more than three million gallons of waste
22 discharge.

23 2. As a condition of a permit approved by the
24 department for the construction or expansion of an
25 animal feeding operation structure which is part of a
26 confinement feeding operation as provided in section
27 455B.173, the department shall inspect each anaerobic
28 lagoon or earthen manure storage basin which is part
29 of the confinement feeding operation at least once
30 each eighteen months. An inspection conducted
31 pursuant to this subsection shall be limited to a
32 visual inspection of the site where the anaerobic
33 lagoon or earthen manure storage basin is located.
34 The department shall inspect the site at a reasonable
35 time after providing twenty-four hours' notice to the
36 person owning or managing the confinement feeding
37 operation. However, in order to inspect the premises
38 the departmental inspector must comply with standard
39 biosecurity requirements customarily required by the
40 operation. The visual inspection shall consist of
41 determining whether any of the following exists:

42 a. An adequate freeboard level.

43 b. The seepage of manure from the anaerobic lagoon
44 or earthen manure storage basin.

45 c. Erosion.

46 d. Inadequate vegetation cover.

47 e. The presence of an opening allowing manure to
48 drain from the anaerobic lagoon or earthen manure
49 storage basin.

50 Sec. 3. NEW SECTION. 455B.201B RESTRICTIONS

H-1673

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1 WITHIN THE RATHBUN WATERSHED.

2 1. The following shall apply to an anaerobic
3 lagoon or earthen manure storage basin which is part
4 of a confinement feeding operation, if the anaerobic
5 lagoon or earthen manure storage basin is required to
6 receive a construction permit pursuant to section
7 455B.173 and is located within the Rathbun watershed
8 as designated by the United States government:

9 a. Not later than July 1, 1998, the owner of a
10 confinement feeding operation shall construct a
11 secondary manure containment for an anaerobic lagoon
12 or earthen manure storage basin existing on the
13 effective date of this Act and which is part of the
14 confinement feeding operation located within the
15 watershed.

16 b. A person shall not construct or expand an
17 anaerobic lagoon or earthen manure storage basin
18 within the watershed, unless the person constructs
19 secondary manure containment for the anaerobic lagoon
20 or earthen manure storage basin.

21 c. The department must approve a permit for the
22 construction of the secondary manure containment prior
23 to its construction. The department shall approve the
24 construction of the secondary manure containment as
25 part of the construction permit for an anaerobic
26 lagoon or earthen manure storage basin constructed on
27 and after the effective date of this Act.

28 d. The secondary manure containment required to be
29 constructed pursuant to this section shall be
30 constructed of materials and according to
31 specifications required by rules which shall be
32 adopted by the department in order to contain an
33 above-grade breach or overflow of a berm of an
34 anaerobic lagoon or earthen manure storage basin.

35 2. The department shall adopt rules which impose
36 restrictions on the use of spray irrigation equipment
37 within the watershed.

38 3. A person shall not be prohibited from
39 constructing a secondary manure containment under this
40 section because the person is classified as a habitual
41 violator as provided in section 455B.173."

42 2. Title page, line 1, by inserting after the
43 word "Act" the following: "relating to animal feeding
44 operations, by regulating animal feeding operation
45 structures and".

46 3. By renumbering as necessary.

By SUKUP of Franklin
ARNOLD of Lucas
TEIG of Hamilton
EDDIE of Buena Vista
GREINER of Washington

MEYER of Sac
GREIG of Emmet
GARMAN of Story
KOENIGS of Mitchell
MUNDIE of Webster

H-1673 FILED APRIL 9, 1997

4/10/98
W/D

(P. 1175)

SENATE FILE 472

H-1680

1 Amend the amendment, H-1673, to Senate File 472, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 6 the
5 following:

6 "NEW SUBSECTION. 1A. "Animal" means the same as
7 defined in section 455B.161."

8 2. Page 1, line 18, by striking the word "swine"
9 and inserting the following: "animals".

By MEYER of Sac

H-1680 FILED APRIL 10, 1997

OUT OF ORDER

(P.1175)

SENATE FILE 472

H-1681

1 Amend the amendment, H-1673, to Senate File 472, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 49, the
5 following:

6 "_____. A county board of supervisors may adopt an
7 ordinance pursuant to section 331.302 requiring a
8 person to submit security evidence of financial
9 responsibility with the county prior to constructing
10 an anaerobic lagoon or earthen manure storage basin
11 which is part of a confinement feeding operation. A
12 person shall not construct or expand an anaerobic
13 lagoon or earthen manure storage basin in violation of
14 the ordinance. The security evidence of financial
15 responsibility may be in the form of a bond, cash
16 deposit, or statement of net worth as required by the
17 board. The bond or cash deposit shall be for an
18 amount and be used for the exclusive purpose of
19 ensuring the cleanup of a site contaminated by manure
20 originating from the confinement feeding operation.
21 As used in this subsection, "bond" means a bond issued
22 by a surety company or an irrevocable letter of credit
23 issued by a financial institution as defined in
24 section 12.61."

By FREVERT of Palo Alto

H-1681 FILED APRIL 10, 1997

OUT OF ORDER

(P.1175)

SENATE FILE 472

H-1677

- 1 Amend the amendment, H-1673, to Senate File 472, as
- 2 amended, passed, and reprinted by the Senate, as
- 3 follows:
- 4 1. Page 1, line 40, by striking the words
- 5 "consist of" and inserting the following: "include,
- 6 but not be limited to,".

By KOENIGS of Mitchell

H-1677 FILED APRIL 10, 1997
OUT OF ORDER

O/Order 4/10/97 (P.1175)

SENATE FILE 472

H-1678

- 1 Amend the amendment, H-1673, to Senate File 472, as
- 2 amended, passed, and reprinted by the Senate, as
- 3 follows:
- 4 1. Page 2, line 1, by striking the words "THE
- 5 RATHBUN WATERSHED" and inserting the following:
- 6 "WATERSHEDS".
- 7 2. Page 2, by striking lines 7 and 8 and
- 8 inserting the following: "455B.173 and is located
- 9 within the watershed of any lake used to supply
- 10 drinking water:"

By KOENIGS of Mitchell

H-1678 FILED APRIL 10, 1997
OUT OF ORDER

(P.1175)

SENATE FILE 472

H-1679

- 1 Amend the amendment, H-1673, to Senate File 472, as
- 2 amended, passed, and reprinted by the Senate, as
- 3 follows:
- 4 1. Page 1, line 16, by inserting after the word
- 5 "an" the following: "anaerobic lagoon or".
- 6 2. Page 1, line 19, by inserting before the word
- 7 "earthen" the following: "anaerobic lagoon or".

By KOENIGS of Mitchell

H-1679 FILED APRIL 10, 1997
OUT OF ORDER

(P.1175)

SENATE FILE 472

H-1983

1 Amend Senate File 472, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. NEW SECTION. 7D.10A MANURE STORAGE
6 INDEMNITY FUND.

7 If moneys are not sufficient to support the manure
8 storage indemnity fund as provided in chapter 204, the
9 executive council may allocate from moneys in the
10 general fund of the state, which are not otherwise
11 obligated or encumbered, an amount to the manure
12 storage indemnity fund as required pursuant to section
13 204.2. However, not more than a total of one million
14 dollars shall be credited to the manure storage
15 indemnity fund at any time.

16 Sec. _____. Section 204.1, subsections 4, 8, and 9,
17 Code 1997, are amended to read as follows:

18 4. "Department" means the department of
19 ~~agriculture-and-land-stewardship~~ natural resources.

20 8. "Manure storage structure" means a structure
21 used to store manure as part of a confinement feeding
22 operation subject-to-a-construction-permit-issued-by
23 the-department-of-natural-resources-pursuant-to
24 section-455B.173. A manure storage structure
25 includes, but is not limited to, an anaerobic lagoon,
26 aerobic structure, formed manure storage structure, or
27 earthen manure storage basin, all as defined in
28 section 455B.161.

29 9. "Permittee" means a person who, pursuant to
30 section 455B.173, obtains a permit for the
31 construction of a manure storage structure, or a
32 confinement feeding operation, if a manure storage
33 structure is connected to the confinement feeding
34 operation.

35 Sec. _____. Section 204.2, subsections 2, 3, and 5,
36 Code 1997, are amended to read as follows:

37 2. The fund consists of moneys from indemnity fees
38 remitted by permittees to the department ~~of-natural~~
39 ~~resources-and-transferred-to-the-department-of~~
40 ~~agriculture-and-land-stewardship~~ as provided in
41 section 204.3; moneys from indemnity fees remitted by
42 persons required to submit manure management plans to
43 the department pursuant to section 204.3A; sums
44 collected on behalf of the fund by the department
45 through legal action or settlement; moneys required to
46 be repaid to the department by a county pursuant to
47 this chapter; civil penalties assessed and collected
48 by the department ~~of-natural-resources~~ or the attorney
49 general pursuant to chapter 455B, against permittees
50 animal feeding operations; moneys paid as a settlement

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1 involving an enforcement action for a civil penalty
2 subject to assessment and collection against
3 permittees by the department of ~~natural resources~~ or
4 the attorney general pursuant to chapter 455B;
5 interest, property, and securities acquired through
6 the use of moneys in the fund; or moneys contributed
7 to the fund from other sources.

8 3. The moneys collected under this section and
9 shall be deposited in the fund and shall be
10 appropriated to the department for the exclusive
11 purpose of ~~indemnifying a county for expenses related~~
12 ~~to cleaning up the site of the confinement feeding~~
13 ~~operation, including removing and disposing of manure~~
14 ~~from a manure storage structure~~ providing cleanup as
15 provided in section 204.4, and to pay the department
16 for costs related to administering the provisions of
17 this chapter. For each fiscal year, the department
18 shall not use more than one percent of the total
19 amount which is available in the fund or ten thousand
20 dollars, whichever is less, to pay for the costs of
21 administration. Moneys in the fund shall not be
22 subject to appropriation or expenditure for any other
23 purpose than provided in this section.

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

26 a. On August 31 following the close of each fiscal
27 year, moneys in the fund which are not obligated or
28 encumbered on June 30 of the past fiscal year, less
29 not counting the department's estimate of the cost to
30 the fund for pending or unsettled claims and any
31 amount required to be credited to the general fund of
32 the state under this subsection, and which are in
33 excess of one three million dollars, shall be
34 deposited in the organic nutrient management fund as
35 created in section 161C.5 for purposes of supporting
36 the organic nutrient management program.

37 b. The executive council may allocate moneys from
38 the general fund of the state as provided in section
39 7D.10A an amount necessary to support the fund,
40 including payment of claims as provided in section
41 204.4. However, such an allocation of moneys from the
42 general fund of the state shall be made only if the
43 amount of moneys in the fund, which are not obligated
44 or encumbered, and not counting the department's
45 estimate of the cost to the fund for pending or
46 unsettled claims and any amount required to be
47 credited to the general fund of the state under this
48 subsection, is less than one million dollars.

49 c. The department shall credit an amount to the
50 general fund of the state which is equal to the amount

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1 allocated to the fund by the executive council. The
2 department shall credit the moneys to the general fund
3 of the state, if the moneys in the fund which are not
4 obligated or encumbered, and not counting the
5 department's estimate of the cost to the fund for
6 pending or unsettled claims and any amount required to
7 be transferred to the general fund under this
8 paragraph, are in excess of two million five hundred
9 thousand dollars. The department is not required to
10 credit the total amount to the general fund of the
11 state during any one fiscal year.

12 Sec. _____. Section 204.3, subsection 2, paragraph
13 a, Code 1997, is amended to read as follows:

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

18 Sec. _____. Section 204.3, subsection 3, paragraph
19 a, Code 1997, is amended to read as follows:

20 a. For all animals other than poultry, the amount
21 of the fee shall be ~~ten~~ fifteen cents per animal unit
22 of capacity for confinement feeding operations.

23 Sec. _____. Section 204.3, subsection 3, unnumbered
24 paragraph 2, Code 1997, is amended by striking the
25 paragraph.

26 Sec. _____. **NEW SECTION. 204.3A MANURE MANAGEMENT**
27 **PLAN -- INDEMNITY FEE REQUIRED.**

28 An indemnity fee shall be assessed upon persons
29 required to submit a manure management plan as
30 provided in chapter 455B, but not required to obtain a
31 construction permit pursuant to section 455B.173. The
32 amount of the fees shall be five cents per animal unit
33 of capacity for confinement feeding operations.

34 Sec. _____. Section 204.4, subsection 1, Code 1997,
35 is amended to read as follows:

36 1. A county that has acquired real estate
37 containing a manure storage structure following
38 nonpayment of taxes pursuant to section 446.19, may
39 make a claim against the fund to pay ~~the costs of~~
40 ~~cleaning-up-the-site-of-the-confinement-feeding~~
41 ~~operation, including the costs of removing and~~
42 ~~disposing-of-the-manure-from-a-manure-storage~~
43 structure cleanup costs incurred by the county as
44 provided in section 204.5. Each claim shall include a
45 bid by a qualified person, other than a governmental
46 entity, to remove and dispose of the manure for a
47 fixed amount specified in the bid.

48 Sec. _____. **NEW SECTION. 204.4A USE OF THE FUND BY**
49 **THE DEPARTMENT TO PAY FOR EMERGENCY CLEANUP.**

50 If the department provides cleanup of a hazardous

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1 condition caused by a confinement feeding operation as
2 provided in section 204.5, the department may use
3 moneys in the fund for purposes of supporting the
4 cleanup. The department shall reimburse the fund from
5 moneys recovered by the department as reimbursement
6 for the cleanup as provided in section 204.5.

7 Sec. ____ . Section 204.5, Code 1997, is amended to
8 read as follows:

9 204.5 SITE CLEANUP.

10 1. a. A county ~~which~~ that has acquired real
11 estate containing on which there is located a
12 confinement feeding operation structure, as defined in
13 section 455B.161, following the nonpayment of taxes
14 pursuant to section 446.19, may ~~clean-up-the-site~~
15 provide for cleanup, including removing and disposing
16 of manure at any time, remediating contamination which
17 originates from the confinement feeding operation, or
18 demolishing and disposing of structures relating to
19 the confinement feeding operation. The county may
20 seek reimbursement including by bringing an action for
21 the costs of the ~~removal-and-disposal~~ cleanup from the
22 person abandoning the real estate.

23 b. If a hazardous condition exists prior to a
24 county acquiring real estate on which there is located
25 a confinement feeding operation because of the
26 confinement feeding operation, the department may
27 clean up the confinement feeding operation and
28 remediate contamination which originates from the
29 confinement feeding operation, pursuant to sections
30 455B.381 through 455B.399. The department may seek
31 reimbursement, including by bringing an action for the
32 costs of the cleanup, from a person liable for causing
33 the hazardous condition.

34 2. A person cleaning up a site confinement feeding
35 operation located on real estate acquired by a county
36 may demolish or dispose of any building or equipment
37 used-in of the confinement feeding operation located
38 on the land according to rules adopted by the
39 department of-natural-resources pursuant to chapter
40 17A, which apply to the disposal of farm buildings or
41 equipment by an individual or business organization.

42 Sec. ____ . NEW SECTION. 331.304A PRODUCTION,
43 CARE, FEEDING, AND HOUSING OF ANIMALS.

44 1. As used in this section, the following shall
45 apply:

46 a. "Aerobic structure", "animal", "animal feeding
47 operation", "animal feeding operation structure", and
48 "manure" mean the same as defined in section 455B.161.

49 b. "County legislation" means a motion,
50 resolution, amendment, or ordinance.

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1 2. A county shall not pass or enforce county
2 legislation relating to a condition or activity
3 occurring in connection with the production, care,
4 feeding, or housing of animals, unless the regulation
5 of the production, care, feeding, or housing of
6 animals is expressly authorized by state law. If
7 authorized by state law, the county shall pass or
8 enforce the county legislation only to the extent
9 authorized by state law. The production, care,
10 feeding, or housing of animals includes but is not
11 limited to the construction, operation, or management
12 of an animal feeding operation, an animal feeding
13 operation structure, or aerobic structure; and to the
14 storage, handling, or application of manure, or egg
15 washwater.

16 Sec. _____. Section 455B.161, Code 1997, is amended
17 by adding the following new subsection:

18 NEW SUBSECTION. 0A. "Aerobic structure" means an
19 animal feeding operation structure other than an egg
20 washwater storage structure which employs bacterial
21 action which is maintained by the utilization of air
22 or oxygen and which includes aeration equipment.

23 Sec. _____. Section 455B.161, subsection 3, Code
24 1997, is amended to read as follows:

25 3. a. "Animal feeding operation" means a lot,
26 yard, corral, building, or other area in which animals
27 are confined and fed and maintained for forty-five
28 days or more in any twelve-month period, and all
29 structures used for the storage of manure from animals
30 in the operation.

31 b. Two or more animal feeding operations under
32 common ownership or management are deemed to be a
33 single animal feeding operation if ~~they are adjacent~~
34 ~~or either of the following apply:~~

35 (1) The animal feeding operations utilize a common
36 system for manure storage.

37 (2) The animal feeding operations are adjacent.
38 As used in this subsection, "adjacent" means that the
39 animal feeding operations are separated at their
40 closest points by a distance of one thousand two
41 hundred fifty feet or less. However, two or more
42 confinement feeding operations are adjacent if all of
43 the following apply:

44 (a) The confinement feeding operations are
45 separated at their closest points by two thousand five
46 hundred feet or less.

47 (b) The confinement feeding operations have a
48 combined animal weight capacity of six hundred twenty-
49 five thousand pounds or more for animals other than
50 bovine or one million six hundred thousand pounds or

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1 more for bovine.

2 c. An animal feeding operation does not include a
3 livestock market.

4 Sec. _____. Section 455B.165, subsection 5, Code
5 1997, is amended to read as follows:

6 5. An animal feeding operation structure which is
7 located constructed or expanded within any distance
8 from a residence, educational institution, commercial
9 enterprise, bona fide religious institution, city, or
10 public use area, if the residence, educational
11 institution, commercial enterprise, or bona fide
12 religious institution was constructed or expanded, or
13 the boundaries of the city or public use area were
14 expanded, after the date that the animal feeding
15 operation was established. The date the animal
16 feeding operation was established is the date on which
17 the animal feeding operation commenced operating. A
18 change in ownership or expansion of the animal feeding
19 operation shall not change the established date of
20 operation.

21 Sec. _____. Section 455B.171, subsection 2, Code
22 1997, is amended to read as follows:

23 2. a. "Animal feeding operation" means a lot,
24 yard, corral, building, or other area in which animals
25 are confined and fed and maintained for forty-five
26 days or more in any twelve-month period, and all
27 structures used for the storage of manure from animals
28 in the animal feeding operation.

29 b. Two or more animal feeding operations under
30 common ownership or management are deemed to be a
31 single animal feeding operation if ~~they are adjacent~~
32 or either of the following apply:

33 (1) The animal feeding operations utilize a common
34 area or system for manure disposal.

35 (2) The animal feeding operations are adjacent.
36 As used in this subsection, "adjacent" means that the
37 animal feeding operations are separated at their
38 closest points by a distance of one thousand two
39 hundred fifty feet or less. However, two or more
40 confinement feeding operations are adjacent if all of
41 the following apply:

42 (a) The confinement feeding operations are
43 separated at their closest points by two thousand five
44 hundred feet or less.

45 (b) The confinement feeding operations have a
46 combined animal weight capacity of six hundred twenty-
47 five thousand pounds or more for animals other than
48 bovine or one million six hundred thousand pounds or
49 more for bovine.

50 c. An animal feeding operation does not include a

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1 livestock market as defined in section 455B.161.
2 Sec. _____. Section 455B.171, Code 1997, is amended
3 by adding the following new subsections:
4 NEW SUBSECTION. 1A. "Aerobic structure" means the
5 same as defined in section 455B.161.
6 NEW SUBSECTION. 1B. "Anaerobic lagoon" means the
7 same as defined in section 455B.161.
8 NEW SUBSECTION. 2A. "Animal feeding operation
9 structure" means the same as defined in section
10 455B.161.
11 NEW SUBSECTION. 7A. "Earthen manure storage
12 basin" means the same as defined in section 455B.161.
13 Sec. _____. Section 455B.173, subsection 13, Code
14 1997, is amended to read as follows:
15 13. a. Adopt, modify, or repeal rules relating to
16 the construction, including expansion, or operation of
17 animal feeding operations, and related animal feeding
18 operation structures which for purposes of this
19 subsection shall include aerobic structures. The
20 rules shall include, but are not limited to, minimum
21 manure control requirements, requirements for
22 obtaining permits, and departmental evaluations of
23 animal feeding operations. The department shall not
24 require that a person obtain a permit for the
25 construction of an animal feeding operation structure,
26 if the structure is part of a small animal feeding
27 operation.
28 b. The department shall collect an indemnity fee
29 as provided in section 204.3 prior to the issuance of
30 a construction permit and as provided in section
31 204.3A prior to filing a manure management plan by
32 persons not required to obtain a construction permit.
33 The department shall deposit moneys collected in
34 indemnity fees in the manure storage indemnity fund
35 created in section 204.2.
36 c. The department shall not approve a permit for
37 the construction of three or more animal feeding
38 operation structures unless the applicant files a
39 statement approved by a professional engineer
40 registered pursuant to chapter 542B certifying that
41 the construction of the animal feeding operation
42 structure will not impede the drainage through
43 established drainage tile lines which cross property
44 boundary lines unless measures are taken to
45 reestablish the drainage prior to completion of
46 construction. ~~The department shall deposit moneys~~
47 ~~collected in indemnity fees in the manure storage~~
48 ~~indemnity fund created in section 204.2.~~
49 d. The department shall issue a permit for an
50 animal feeding operation, if an application is

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1 submitted according to procedures required by the
2 department, and the application meets standards
3 established by the department, regardless of whether
4 the animal feeding operation is required to obtain
5 such a permit.

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

20 f. The department shall deliver a copy or require
21 the applicant to deliver a copy of the application for
22 a construction permit to the county board of
23 supervisors in the county where the confinement
24 feeding operation or confinement related animal
25 feeding operation structure subject to the permit is
26 to be located. The department shall not approve the
27 application or issue a construction permit until
28 thirty days following delivery of the application to
29 the county board of supervisors. The county board of
30 supervisors may hold a public hearing to receive
31 public comments regarding the application. When
32 approving a permit, the department shall consider
33 comments from the county board of supervisors and take
34 into account public comments, and respond to all
35 comments regarding compliance by the applicant with
36 the legal requirements for the construction of the
37 confinement animal feeding operation structure as
38 provided in this chapter, and rules adopted by the
39 department pursuant to this chapter, ~~if the.~~ All
40 comments are must be delivered to the department
41 within ~~fourteen~~ thirty days after receipt of the
42 application by the county board of supervisors. The
43 comments by the board and the public may include, but
44 are not limited to, references to the existence of a
45 structure or area not included in the permit
46 application which benefits from a separation distance
47 requirement as provided in section 455B.162 or
48 455B.204; the suitability of soils and the hydrology
49 of the site where construction is proposed; and the
50 availability of land for the application of manure

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1 originating from the confinement feeding operation.

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

10 h. A person shall not obtain a permit for the
11 construction of a confinement feeding operation,
12 unless the person develops a manure management plan as
13 provided in section 455B.203. The department shall,
14 or require the owner of the confinement feeding
15 operation to, deliver to the county where a
16 confinement feeding operation is located a copy of a
17 manure management plan required to be submitted to the
18 department by the confinement feeding operation,
19 regardless of whether the confinement feeding
20 operation is constructed pursuant to a permit approved
21 pursuant to this subsection.

22 i. The department shall not issue a permit to a
23 person under this subsection if an enforcement action
24 by the department, relating to a violation of this
25 chapter concerning a confinement feeding operation in
26 which the person has an interest, is pending. The
27 department shall not issue a permit to a person under
28 this subsection for five years after the date of the
29 last violation committed by a person or confinement
30 feeding operation in which the person holds a
31 controlling interest during which the person or
32 operation was classified as a habitual violator under
33 section 455B.191. The department shall conduct an
34 annual review of each confinement feeding operation
35 which is a habitual violator and each confinement
36 feeding operation in which a habitual violator holds a
37 controlling interest. The department shall notify
38 persons classified as habitual violators of their
39 classification, additional restrictions imposed upon
40 the persons pursuant to the classification, and
41 special civil penalties that may be imposed upon the
42 persons. The notice shall be sent to the persons by
43 certified mail.

44 Sec. . NEW SECTION. 455B.201A ANAEROBIC
45 LAGOONS AND EARTHEN MANURE STORAGE BASINS.

46 1. A person shall not construct or expand an
47 earthen manure storage basin used in conjunction with
48 a confinement feeding operation, if the earthen manure
49 storage basin as constructed or expanded would have
50 the capacity to store more than three million gallons

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1 of manure.
 2 2. The department shall inspect each anaerobic
 3 lagoon or earthen manure storage basin which is part
 4 of a confinement feeding operation at least once each
 5 eighteen months. An inspection conducted pursuant to
 6 this subsection shall be limited to a visual
 7 inspection of the site where the anaerobic lagoon or
 8 earthen manure storage basin is located. The
 9 department shall inspect the site at a reasonable time
 10 after providing at least twenty-four hours' notice to
 11 the person owning or managing the confinement feeding
 12 operation. However, in order to inspect the premises
 13 the departmental inspector must comply with standard
 14 biosecurity requirements customarily required by the
 15 operation. The visual inspection shall include, but
 16 not be limited to, determining whether any of the
 17 following exists:
 18 a. An adequate freeboard level.
 19 b. The seepage of manure from the anaerobic lagoon
 20 or earthen manure storage basin.
 21 c. Erosion.
 22 d. Inadequate vegetation cover.
 23 e. The presence of an opening allowing manure to
 24 drain from the anaerobic lagoon or earthen manure
 25 storage basin."

26 2. Page 1, by inserting before line 26 the
 27 following:

28 "Sec. ____ . Section 455B.203, Code 1997, is amended
 29 by adding the following new subsection:

30 NEW SUBSECTION. 5A. The department may require
 31 that a person other than a person required to obtain a
 32 construction permit submit a manure management plan as
 33 provided by the department by rule.

34 Sec. ____ . Section 657.11, subsections 2 and 3,
 35 Code 1997, are amended to read as follows:

36 2. ~~If a person has received all permits required~~
 37 ~~pursuant to chapter 455B for an animal feeding~~
 38 ~~operation, as defined in section 455B.161, there shall~~
 39 ~~be a rebuttable presumption that an~~ An animal feeding
 40 operation is shall not be found to be a public or
 41 private nuisance under this chapter or under
 42 principles of common law, and that the animal feeding
 43 operation does shall not be found to unreasonably and
 44 continuously interfere with another person's
 45 comfortable use and enjoyment of the person's life or
 46 property under any other cause of action. The
 47 ~~rebuttable presumption also applies to persons who are~~
 48 ~~not required to obtain a permit pursuant to chapter~~
 49 ~~455B for an animal feeding operation as defined in~~
 50 ~~section 455B.161.~~ However,

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1 ~~this section shall not apply if-the~~ to an injury to a
 2 person or damage to property is proximately caused by
 3 a any of the following:

4 a. ~~The failure to comply with a federal statute or~~
 5 regulation or a state statute or rule which applies to
 6 the animal feeding operation.

7 ~~3.--The-rebuttable-presumption-may-be-overcome-by~~
 8 ~~clear-and-convincing-evidence-of-both-of-the~~
 9 ~~following:~~

10 a.--~~The-animal-feeding-operation-unreasonably-and~~
 11 ~~continuously-interferes-with-another-person's~~
 12 ~~comfortable-use-and-enjoyment-of-the-person's-life-or~~
 13 ~~property.~~

14 b. ~~The-injury-or-damage-is-proximately-caused-by~~
 15 the negligent operation of the animal feeding
 16 operation.

17 Sec. _____. Section 657.11, subsection 4, unnumbered
 18 paragraph 1, Code 1997, is amended to read as follows:

19 ~~The-rebuttable-presumption~~ This section does not
 20 apply to a person during any period that the person is
 21 classified as a chronic violator under this subsection
 22 as to any confinement feeding operation in which the
 23 person holds a controlling interest, as defined by
 24 rules adopted by the department of natural resources.
 25 ~~The-rebuttable-presumption~~ This section shall apply to
 26 the person on and after the date that the person is
 27 removed from the classification of chronic violator.

28 For purposes of this subsection, "confinement feeding
 29 operation" means ~~an-animal-feeding-operation-in-which~~
 30 ~~animals-are-confined-to-areas-which-are-totally~~
 31 ~~roofed,-and-which-are-regulated-by-the-department-of~~
 32 ~~natural-resources-or-the-environmental-protection~~
 33 ~~commission~~ the same as defined in section 455B.161.

34 Sec. _____. Section 657.11, subsections 5 through 8,
 35 Code 1997, are amended to read as follows:

36 5. ~~The-rebuttable-presumption-created-by-this~~ This
 37 section shall apply regardless of the established date
 38 of operation or expansion of the animal feeding
 39 operation. ~~The-rebuttable-presumption~~ A defense
 40 against a cause of action for nuisance includes, but
 41 is not limited to, a defense for actions arising out
 42 of the care and feeding of animals; the handling or
 43 transportation of animals; the treatment or disposal
 44 of manure resulting from animals; the transportation
 45 and application of animal manure; and the creation of
 46 noise, odor, dust, or fumes arising from an animal
 47 feeding operation.

48 ~~6.--An-animal-feeding-operation-that-complies-with~~
 49 ~~the-requirements-in-chapter-455B-for-animal-feeding~~
 50 ~~operations-shall-be-deemed-to-meet-any-common-law~~

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~~1 requirements-regarding-the-standard-of-a-normal-person~~
~~2 living-in-the-locality-of-the-operation-~~
3 7- 6. A person who brings a losing cause of action
4 against a person for whom the rebuttable presumption
5 created under this section is not rebutted, who may
6 raise a nuisance defense under this section shall be
7 liable to the person against whom the action was
8 brought for all costs and expenses incurred in the
9 defense of the action, if the court determines that a
10 claim is frivolous.

11 8- 7. ~~The rebuttable presumption created in this~~
12 This section does not apply to an injury to a person
13 or damages to property caused by the animal feeding
14 operation before May 31, 1995.

15 Sec. ____ . APPLICABILITY. The amendments to
16 section 455B.161, subsection 3, and section 455B.171,
17 subsection 2, as enacted in this Act, shall not apply
18 to separation distance requirements applicable to
19 animal feeding operation structures as provided in
20 section 455B.162 or permit requirements for animal
21 feeding operation structures as provided in section
22 455B.173, if any of the following apply:

23 1. The animal feeding operation structure is
24 constructed or under construction on or before May 15,
25 1997.

26 2. The animal feeding operation may be constructed
27 pursuant to a valid permit which the department has
28 approved on or before May 15, 1997, or pursuant to an
29 application for a permit that has been filed with the
30 department by May 15, 1997.

31 Sec. ____ . PRIOR PERMITTEES.

32 1. The department of natural resources shall
33 notify all persons required to pay an indemnity fee
34 for deposit in the manure storage indemnity fund as
35 provided in 1995 Iowa Acts, chapter 195, section 38,
36 who have not received notice as provided in that
37 section. The notice shall be provided not later than
38 June 1, 1997, as provided in that section.

39 2. A person required to pay an indemnity fee for
40 deposit in the manure storage indemnity fund as
41 provided in section 204.3, shall pay the fee at the
42 rate established pursuant to 1995 Iowa Acts, chapter
43 195, section 6, rather than the increased rate as
44 provided in this Act, if the person's application for
45 a construction permit is received by the department
46 prior to the effective date of this Act.

47 Sec. ____ . STAFF FOR THE DEPARTMENT OF NATURAL
48 RESOURCES. The additional full-time equivalent
49 positions allocated to the department of natural
50 resources for purposes of supporting the regulation of

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1 animal feeding operations pursuant to 1997 Iowa Acts,
2 House File 708, shall be used exclusively for the
3 regulation of animal feeding operations as defined in
4 section 455B.161, including but not limited to the
5 issuance of permits, the inspection of the operations,
6 and the investigation of complaints.

7 Sec. _____. REQUIREMENT THAT THE DEPARTMENT OF
8 NATURAL RESOURCES ENFORCE STATE LAWS. The department
9 of natural resources and the environmental protection
10 commission shall enforce state laws, including
11 statutes and rules which relate to the storage,
12 disposal, and application of manure originating from
13 animal feeding operations, as defined in section
14 455B.161. The department and environmental protection
15 commission shall vigorously assess civil penalties and
16 refer violators to the attorney general in a manner
17 that ensures compliance with state law and deters
18 potential violators. The department shall submit a
19 report to the general assembly not later than January
20 15, 1998, regarding its efforts to comply with this
21 section.

22 Sec. _____. DEPARTMENTAL REVIEW OF RECOMMENDATIONS
23 SUBMITTED BY THE ANIMAL AGRICULTURE CONSULTING
24 ORGANIZATION. The department of natural resources
25 shall immediately consider the adoption of rules based
26 on recommendations last submitted prior to the
27 effective date of this Act to the department by the
28 animal agriculture consulting organization established
29 pursuant to 1995 Iowa Acts, chapter 195, section 37.

30 Sec. _____. DIRECTIONS TO IOWA CODE EDITOR. The
31 Iowa Code editor is directed to transfer chapter 204,
32 as amended by this Act, to new chapter 456 or another
33 chapter determined appropriate by the Iowa Code
34 editor. The Iowa Code editor shall correct internal
35 references as necessary.

36 Sec. _____. EFFECTIVE DATE. This Act, being deemed
37 of immediate importance, takes effect upon enactment."

38 3. Title page, by striking lines 1 through 3 and
39 inserting the following: "An Act providing for the
40 regulation of animal feeding operations, fees, the
41 expenditure of moneys, making penalties applicable,
42 and an effective date."

By CARROLL of Poweshiek
EDDIE of Buena Vista
MEYER of Sac
GREIG of Emmet

HUSEMAN of Cherokee
DIX of Butler
VANDE HOEF of Osceola

H-1983 FILED APRIL 29, 1997
OUT OF ORDER

H-1984

1 Amend Senate File 472 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 26 the
4 following:

5 "Sec. ____ . NEW SECTION. 455B.203A MANURE PLAN
6 MANAGEMENT CERTIFICATION -- TRAINING PROGRAM.

7 1. The department shall establish and administer a
8 program to certify persons as manure plan managers, if
9 the persons are involved in the management or
10 application of manure originating from an animal
11 feeding operation structure constructed pursuant to a
12 permit approved under section 455B.173. A manure plan
13 manager shall be trained to carry out the terms and
14 conditions of a manure management plan as provided in
15 section 455B.204.

16 2. In order to be certified, a person must
17 complete not less than four hours of training in the
18 administration of the terms and conditions of the
19 manure management plans.

20 3. A certification shall expire five years
21 following the date that the person was last certified.
22 In order to be recertified, the person must complete
23 four additional hours of training as provided in this
24 section.

25 4. Iowa state university shall develop and
26 administer the training program in cooperation with
27 qualified persons approved by the department. The
28 training shall be conducted by Iowa state university
29 or a qualified person approved by the department. To
30 every extent possible, training courses shall be
31 offered in each county. The state is not required to
32 compensate persons selected to provide training. A
33 certification fee of ten dollars shall be paid to the
34 department. The department shall collect and use the
35 fees for purposes of supporting the training of manure
36 plan managers. Notwithstanding section 8.33, on
37 August 31 following the close of each fiscal year, all
38 unencumbered or unobligated moneys from fees shall be
39 deposited in the organic nutrient management fund as
40 created in section 161C.5."

By THOMAS of Clayton

H-1984 FILED APRIL 29, 1997
OUT OF ORDER

HOUSE AMENDMENT TO
SENATE FILE 472

S-3852

1 Amend Senate File 472, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting after line 2 the
4 following:

5 "_____. As used in this section, "construction"
6 means the same as defined by rules adopted by the
7 department applicable to the construction of animal
8 feeding operation structures as provided in this
9 part."

10 2. Page 1, line 7, by striking the word "an".

11 3. Page 1, by striking lines 8 through 12 and
12 inserting the following: "a controlling interest and
13 the action is commenced in district court by the
14 attorney general."

15 4. Page 1, by striking lines 22 through 24 and
16 inserting the following: "operation structure, if any
17 of the following apply:

18 a. The person has an unexpired permit for the
19 construction or expansion of the animal feeding
20 operation structure.

21 b. The person is not required to obtain a permit
22 for the construction or expansion of the animal
23 feeding operation structure."

24 5. Page 1, line 25, by striking the words "the
25 structure's construction or expansion."

26 6. Page 1, by inserting after line 25 the
27 following:

28 "Sec. _____. EFFECTIVE DATE. This Act, being deemed
29 of immediate importance, takes effect upon enactment."

30 7. Title page, line 3, by inserting after the
31 word "structure" the following: ", and providing an
32 effective date".

33 8. By renumbering, relettering, or redesignating
34 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3852 FILED APRIL 29, 1997

CONCURRED (p. 1565)

Rensink, Ch
J. Black
D. Black
Bartz
Kibbie

SSB 229

Agriculture

Succeeded by

(SF/HF 472)

SENATE FILE
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON RENSINK)

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

A BILL FOR

1 An Act prohibiting a habitual violator or person charged with
2 violation from constructing or expanding a confinement feeding
3 operation structure.

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

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1 Section 1. NEW SECTION. 455B.202 CONFINEMENT FEEDING
2 OPERATIONS -- PENDING ACTIONS AND HABITUAL VIOLATORS.

3 A person shall not construct or expand an animal feeding
4 operation structure which is part of a confinement feeding
5 operation if an enforcement action is pending for a violation
6 of this chapter concerning a confinement feeding operation in
7 which the person has an interest. The person shall not
8 construct or expand an animal feeding operation structure
9 which is part of a confinement feeding operation for five
10 years after the date of the last violation committed by a
11 person or confinement feeding operation in which the person
12 holds a controlling interest during which the person or
13 operation was classified as a habitual violator under section
14 455B.191.

15 EXPLANATION

16 The bill amends chapter 455B regulating animal feeding
17 operations. The bill provides that a person is prohibited
18 from constructing an animal feeding operation structure which
19 is part of a confinement feeding operation if an enforcement
20 action related to a violation involving a confinement feeding
21 operation is pending against the person, or the person is
22 classified as a habitual violator of regulations relating to
23 confinement feeding operations.

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SENATE FILE 472

AN ACT

PROHIBITING A HABITUAL VIOLATOR OR PERSON CHARGED WITH VIOLATION FROM CONSTRUCTING OR EXPANDING AN ANIMAL FEEDING OPERATION STRUCTURE, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. NEW SECTION. 455B.202 CONFINEMENT FEEDING OPERATIONS -- PENDING ACTIONS AND HABITUAL VIOLATORS.

1. As used in this section, "construction" means the same as defined by rules adopted by the department applicable to the construction of animal feeding operation structures as provided in this part.

2. a. A person shall not construct or expand an animal feeding operation structure which is part of a confinement feeding operation, if the person is a party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

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

3. This section shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if any of the following apply:

a. The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

b. The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

MARY E. KRAMER

President of the Senate

RON J. CORBETT

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 472, Seventy-seventh General Assembly.

MARY PAT GUNDERSON

Secretary of the Senate

Approved May 19, 1997

TERRY E. BRANSTAD

Governor