

Senate Study Bill 2120

Bill Text

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

1 3 If moneys are not sufficient to pay claims against the
1 4 manure storage indemnity fund as provided in chapter 204, the
1 5 executive council may allocate from moneys in the general fund
1 6 of the state not otherwise appropriated, an amount to pay
1 7 claims against the manure storage indemnity fund created in
1 8 section 204.2. However, not more than a total of three
1 9 million dollars shall be allocated by the executive council to
1 10 the manure storage indemnity fund at any time.

1 11 Sec. 2. Section 204.2, subsection 5, Code 1997, is amended
1 12 to read as follows:

1 13 5. The following shall apply to moneys in the fund:

1 14 a. On August 31 following the close of each fiscal year,
1 15 moneys in the fund which are not obligated or encumbered on
1 16 June 30 of the past fiscal year, less the department's
1 17 estimate of the cost to the fund for pending or unsettled
1 18 claims, and which are in excess of one million dollars, shall
1 19 be deposited in the organic nutrient management fund as
1 20 created in section 161C.5 for purposes of supporting the
1 21 organic nutrient management program.

1 22 b. The executive council may allocate moneys to the fund
1 23 as provided in section 7D.10A to the extent that moneys in the
1 24 fund are not sufficient to pay all claims under section 204.4.

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

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

1 30 a. For all animals other than poultry, the amount of the
1 31 fee shall be

~~five~~

- ~~ten~~ cents per animal unit of capacity for
1 32 confinement feeding operations.

1 33 b. For poultry, the amount of the fee shall be

~~two~~

- ~~four~~

1 34 cents per animal unit of capacity for confinement feeding
1 35 operations.

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

2 5 a. For all animals other than poultry, the amount of the
2 6 fee shall be

~~seven and one half~~

- ~~fifteen~~ cents per animal unit
2 7 of capacity for confinement feeding operations.

2 8 b. For poultry, the amount of the fee shall be

~~three~~

- ~~six~~

2 9 cents per animal unit of capacity for confinement feeding

2 10 operations.
2 11 3. If the confinement feeding operation has an animal
2 12 weight capacity of one million two hundred fifty thousand or
2 13 more pounds, the following shall apply:
2 14 a. For all animals other than poultry, the amount of the
2 15 fee shall be

~~ten~~

- twenty cents per animal unit of capacity for
2 16 confinement feeding operations.
2 17 b. For poultry, the amount of the fee shall be

~~four~~

- eight
2 18 cents per animal unit of capacity for confinement feeding
2 19 operations.
2 20 Sec. 4. NEW SECTION. 331.302A LIMITATIONS ON COUNTY
2 21 LEGISLATION.
2 22 1. As used in this section:
2 23 a. "County legislation" means any ordinance, motion,
2 24 resolution, or amendment adopted by a county pursuant to
2 25 section 331.302.
2 26 b. "Agricultural operation" means a condition or activity
2 27 which occurs on land used for the production of agricultural
2 28 commodities, including but not limited to the raising,
2 29 harvesting, handling, drying, or storage of crops for feed,
2 30 food, seed, or fiber; the care or feeding of livestock; the
2 31 handling or transportation of crops or livestock; the storage,
2 32 treatment, or disposal of livestock manure; and the
2 33 application of fertilizers, soil conditioners, pesticides, and
2 34 herbicides on crops.
2 35 2. A county shall not adopt or enforce county legislation
3 1 regulating an agricultural operation, unless expressly
3 2 authorized by a provision of this Code. County legislation
3 3 adopted in violation of this section is void and unenforceable
3 4 and any enforcement activity conducted in violation of this
3 5 section is void.
3 6 Sec. 5. Section [455B.104](#), Code 1997, is amended to read as
3 7 follows:
3 8 455B.104 DEPARTMENTAL DUTIES PERMITS REQUIREMENTS
3 9 AND ASSISTANCE.
3 10 1. The department shall either approve or deny a permit to
3 11 a person applying for a permit under this chapter, within six
3 12 months from the date that the department receives a completed
3 13 application for the permit. An application which is not
3 14 approved or denied within the six-month period shall be
3 15 approved by default. The department shall issue a permit to
3 16 the applicant within ten days following the date of default
3 17 approval. However, this

~~section~~

- subsection shall not apply to
3 18 applications for permits which are issued under division II,
3 19 or division IV, parts 2 through 7.
3 20 2. The department shall not issue a permit to a person
3 21 under this chapter for five years after the date of the last
3 22 violation committed by a person or confinement feeding
3 23 operation in which the person holds a controlling interest
3 24 during which the person or operation was classified as a
3 25 habitual violator under section 455B.191.
3 26 3. The department shall assist persons applying for
3 27 assistance to establish and operate renewable fuel production
3 28 facilities pursuant to the value-added agricultural products
3 29 and processes financial assistance program established in
3 30 section 15E.111.
3 31 Sec. 6. Section [455B.171](#), Code Supplement 1997, is amended
3 32 by adding the following new subsections:

3 33 NEW SUBSECTION. 1A. "Anaerobic lagoon" means the same as
3 34 defined in section 455B.161.

3 35 NEW SUBSECTION. 3A. "Commercial manure applicator" means
4 1 a person who engages in the business of applying manure on the
4 2 land of another person for compensation.

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

4 5 NEW SUBSECTION. 9A. "Formed manure storage structure"
4 6 means the same as defined in section 455B.161.

4 7 NEW SUBSECTION. 12A. "Manure storage structure" means an
4 8 animal feeding operation structure used to store manure as
4 9 part of a confinement feeding operation. A manure storage
4 10 structure includes, but is not limited to, an anaerobic
4 11 lagoon, formed manure storage structure, or earthen manure
4 12 storage basin.

4 13 Sec. 7. Section 455B.173, subsection 13, Code 1997, is
4 14 amended to read as follows:

4 15 13. a. Adopt, modify, or repeal rules relating to the
4 16 construction or operation of animal feeding operations. The
4 17 rules shall include, but are not limited to, minimum manure
4 18 control requirements, requirements for obtaining permits, and
4 19 departmental evaluations of animal feeding operations. The
4 20 department shall not require that a person obtain a permit for
4 21 the construction of an animal feeding operation structure, if
4 22 the structure is part of a small animal feeding operation.

4 23 b. The department shall collect an indemnity fee as
4 24 provided in section 204.3 prior to the issuance of a
4 25 construction permit. The department shall deposit moneys
4 26 collected in indemnity fees in the manure storage indemnity
4 27 fund created in section 204.2.

4 28 c. The department shall not approve a permit for the
4 29 construction of three or more animal feeding operation
4 30 structures unless the applicant files a statement approved by
4 31 a professional engineer registered pursuant to chapter 542B
4 32 certifying that the construction of the animal feeding
4 33 operation structure will not impede the drainage through
4 34 established drainage tile lines which cross property boundary
4 35 lines unless measures are taken to reestablish the drainage
5 1 prior to completion of construction.

~~The department shall~~

5 2

~~deposit moneys collected in indemnity fees in the manure~~

5 3

~~storage indemnity fund created in section 204.2.~~

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

5 10 e. An applicant for a construction permit shall not begin
5 11 construction at the location of a site planned for the
5 12 construction of an animal feeding operation structure, until
5 13 the person has been granted a permit for the construction of
5 14 the structure by the department. The department shall make a
5 15 determination regarding the approval or denial of a permit
5 16 within sixty days from the date that the department receives a
5 17 completed application for a permit. However, the sixty-day
5 18 requirement shall not apply to an application, if the
5 19 applicant is not required to obtain a permit in order to
5 20 construct an animal feeding operation structure or to operate

5 21 an animal feeding operation.
5 22 f. The department shall deliver a copy or require the
5 23 applicant to deliver a copy of the application for a
5 24 construction permit to the county board of supervisors in the
5 25 county where the confinement feeding operation or

~~confinement~~

5 26 related animal feeding operation structure subject to the
5 27 permit is to be located. The department shall not approve the
5 28 application or issue a construction permit until thirty days
5 29 following delivery of the application to the county board of
5 30 supervisors. The department shall consider comments from the
5 31 county board of supervisors, regarding compliance by the
5 32 applicant with the legal requirements for the construction of
5 33 the confinement feeding operation

~~structure~~

~~or related animal~~

5 34 feeding operation structure as provided in this chapter, and
5 35 rules adopted by the department pursuant to this chapter, if
6 1 the comments are delivered to the department within fourteen
6 2 days after receipt of the application by the county board of
6 3 supervisors.
6 4 g. Prior to granting a permit to a person for the
6 5 construction of an animal feeding operation structure, the
6 6 department may require the installation and operation of a
6 7 hydrological monitoring system for an exclusively earthen
6 8 manure storage structure, if, after an on-site inspection, the
6 9 department determines that the site presents an extraordinary
6 10 potential for groundwater pollution.
6 11 h. A person shall not obtain a permit for the construction
6 12 of a confinement feeding operation, unless the person

~~develops~~

6 13 does all of the following:

6 14 (1) Is certified pursuant to section 455B.202A.
6 15 (2) Develops a manure management plan as provided in
6 16 section 455B.203. The department shall not issue a permit to
6 17 a person under this subsection if an enforcement action by the
6 18 department, relating to a violation of this chapter concerning
6 19 a confinement feeding operation in which the person has an
6 20 interest, is pending. The department shall not issue a permit
6 21 to a person under this subsection for five years after the
6 22 date of the last violation committed by a person or
6 23 confinement feeding operation in which the person holds a
6 24 controlling interest during which the person or operation was
6 25 classified as a habitual violator

~~under section 455B.191~~

~~as~~

6 26 provided in section 455B.104.

~~The department shall conduct an~~

6 27

~~annual review of each confinement feeding operation which is a~~

6 28

~~habitual violator and each confinement feeding operation in~~

6 29

~~which a habitual violator holds a controlling interest. The~~

6 30

~~department shall notify persons classified as habitual~~

6 31

~~violators of their classification, additional restrictions~~

6 32

~~imposed upon the persons pursuant to the classification, and~~

6 33

~~special civil penalties that may be imposed upon the persons.~~

6 34

~~The notice shall be sent to the persons by certified mail.~~

6 35 Sec. 8. Section [455B.191](#), subsection 7, unnumbered

7 1 paragraph 2, Code 1997, is amended to read as follows:

7 2 This subsection shall not apply unless the department of

7 3 natural resources has previously notified the person of the

7 4 person's classification as a habitual violator

~~as provided in~~

7 5

~~section 455B.173~~

~~The department shall notify persons~~

~~classified as habitual violators of their classification,~~

~~additional restrictions imposed upon the persons pursuant to~~

~~the classification, and special civil penalties that may be~~

~~imposed upon the persons. The notice shall be sent to the~~

~~persons by certified mail.~~

7 11 Sec. 9. Section [455B.202](#), Code Supplement 1997, is amended

7 12 to read as follows:

7 13 455B.202 CONFINEMENT FEEDING OPERATIONS PENDING ACTIONS

7 14 AND HABITUAL VIOLATORS.

7 15 1. As used in this section,

~~"construction"~~

~~unless the~~

7 16 ~~context otherwise requires:~~

7 17 a. ~~"Construction" means the same as defined by rules~~

7 18 ~~adopted by the department applicable to the construction of~~

7 19 ~~animal feeding operation structures as provided in this part.~~

7 20 b. ~~"Habitual violator" means a person classified as a~~

7 21 ~~habitual violator pursuant to section 455B.191.~~

7 22 c. ~~"Suspect transaction" means a transaction in which a~~

7 23 ~~habitual violator does any of the following:~~

7 24 ~~(1) Transfers a controlling interest in a confinement~~

7 25 ~~feeding operation to any of the following:~~

7 26 ~~(a) An employee of the habitual violator or business in~~

7 27 ~~which the person holds a controlling interest.~~

7 28 ~~(b) A person who holds an interest in a business,~~

7 29 ~~including a confinement feeding operation, in which the~~

7 30 ~~habitual violator holds a controlling interest.~~

7 31 ~~(c) A person related to the habitual violator as spouse,~~

7 32 ~~parent, grandparent, lineal ascendant of a grandparent or~~

7 33 ~~spouse and any other lineal descendant of the grandparent or~~

7 34 ~~spouse, or a person acting in a fiduciary capacity for a~~

7 35 ~~related person.~~

8 1 ~~(2) Provides financing for the construction or operation~~

8 2 of a confinement feeding operation to any person, by providing
8 3 a contribution or loan to the person, or providing cash or
8 4 other tangible collateral for a contribution or loan made by a
8 5 third person.
8 6 2. a. A person shall not construct or expand an animal
8 7 feeding operation structure which is part of a confinement
8 8 feeding operation, if the person is

~~a~~
- any of the following:

8 9 (1) A party to a pending action for a violation of this
8 10 chapter concerning a confinement feeding operation in which
8 11 the person has a controlling interest and the action is
8 12 commenced in district court by the attorney general.

8 13 (2) A habitual violator.

8 14 b. A person shall not construct or expand an animal
8 15 feeding operation structure which is part of a confinement
8 16 feeding operation for five years after the date of the last
8 17 violation committed by a person or confinement feeding
8 18 operation in which the person holds a controlling interest
8 19 during which the person or operation was classified as a
8 20 habitual violator

~~under section 455B.191.~~

8 21

~~3.~~
- c. This

~~section~~

- subsection shall not prohibit a person

8 22 from completing the construction or expansion of an animal
8 23 feeding operation structure, if any of the following apply:
8 24

~~a.~~

- (1) The person has an unexpired permit for the
8 25 construction or expansion of the animal feeding operation
8 26 structure.
8 27

~~b.~~

- (2) The person is not required to obtain a permit for
8 28 the construction or expansion of the animal feeding operation
8 29 structure.

8 30 3. A suspect transaction shall be presumed to be made in
8 31 order to avoid conditions and enhanced penalties imposed upon
8 32 a habitual violator pursuant to this chapter. A person
8 33 receiving control of a confinement feeding operation pursuant
8 34 to a suspect transaction shall be deemed to be an agent of the
8 35 habitual violator, unless the habitual violator and the person
9 1 receiving the controlling interest in the confinement feeding
9 2 operation because of the suspect transaction, both prove by
9 3 clear and convincing evidence all of the following:

9 4 a. That the suspect transaction was for a legitimate
9 5 business purpose made by parties exercising independent and
9 6 reasonable judgment.

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

9 10 4. The department shall conduct an annual review of each
9 11 confinement feeding operation which is a habitual violator and
9 12 each confinement feeding operation in which a habitual
9 13 violator holds a controlling interest.

9 14 Sec. 10. NEW SECTION. 455B.202A MANURE APPLICATION
9 15 CERTIFICATION.

9 16 1. As used in this section, unless the context otherwise
9 17 requires:

9 18 a. "Commercial manure applicator" means the same as
9 19 defined in section 455B.171.

9 20 b. "Permitted site" means a manure storage structure which
9 21 is part of a confinement feeding operation, constructed
9 22 pursuant to a permit issued by the department as provided in
9 23 section 455B.173.

9 24 c. "Permitted site manure applicator" means a person who
9 25 applies manure stored at a permitted site.

9 26 2. a. A commercial manure applicator shall not apply
9 27 manure to agricultural land, unless the person is certified
9 28 pursuant this section.

9 29 b. A permitted site manure applicator shall not apply
9 30 manure to agricultural land unless the person is certified
9 31 pursuant to this section.

9 32 3. A person required to be certified under this section
9 33 shall choose between a one-year certification for which the
9 34 person shall pay a thirty dollar fee or a three-year
9 35 certification for which the person shall pay a seventy-five
10 1 dollar fee.

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

10 11 5. The department shall adopt, by rule, requirements for
10 12 the certification, including educational program requirements.
10 13 The department may establish different educational programs
10 14 designed for commercial manure applicators and permitted site
10 15 manure applicators. The department shall adopt rules
10 16 necessary to administer this section, including establishing
10 17 certification standards, which shall at least include
10 18 standards for the handling, application, and storage of
10 19 manure, the potential effects of manure upon surface water and
10 20 groundwater, and procedures to remediate the potential effects
10 21 on surface water or groundwater.

10 22 a. The department shall adopt by rule criteria for
10 23 allowing a person required to be certified to complete either
10 24 a written or oral examination.

10 25 b. The department shall administer the continuing
10 26 instructional courses, by either teaching the courses or
10 27 selecting persons to teach the courses, according to criteria
10 28 as provided by rules adopted by the department. The
10 29 department shall, to the extent possible, select persons to
10 30 teach the continuing instructional courses. In selecting
10 31 persons, the department shall consult with organizations
10 32 interested in the application of manure, including
10 33 associations representing manure applicators and associations
10 34 representing agricultural producers. The Iowa cooperative
10 35 extension service in agriculture and home economics of Iowa
11 1 state university of science and technology shall cooperate
11 2 with the department in administering the continuing
11 3 instructional courses. The Iowa cooperative extension service
11 4 may teach continuing instructional courses, train persons
11 5 selected to teach courses, or distribute informational
11 6 materials to persons teaching the courses.

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

11 12 6. This section shall not require a person to be certified

11 13 as a commercial manure applicator because the person is any of
11 14 the following:

11 15 a. Actively engaged in farming who trades work with
11 16 another such person.

11 17 b. Employed by a person actively engaged in farming not
11 18 solely as a manure applicator who applies manure as an
11 19 incidental part of the person's general duties.

11 20 c. Engaged in applying manure as an incidental part of a
11 21 custom farming operation.

11 22 d. Engaged in applying manure as an incidental part of a
11 23 person's duties as provided by rules adopted by the department
11 24 providing for an exemption.

11 25 7. A person is not required to be certified to apply
11 26 manure for a period of thirty days from the date of initial
11 27 employment as a commercial manure applicator if the person
11 28 applying the manure is acting under the instructions and
11 29 control of a certified manure applicator who is in sight or
11 30 hearing distance of the supervised person.

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

11 33 A person who employs a commercial manure applicator shall
11 34 not be subject to any penalty for a violation of this chapter
11 35 caused by an error or omission, unreasonable lack of skill, or
12 1 failure to maintain a reasonable standard of care by the
12 2 commercial manure applicator in the course of practice of the
12 3 commercial manure applicator's occupation.

12 4 Sec. 12. Section [657.11](#), subsection 4, Code 1997, is
12 5 amended by striking the subsection.

12 6 Sec. 13. NEW SECTION. 657.11A CHRONIC VIOLATORS.

12 7 1. As used in this section, unless the context otherwise
12 8 requires:

12 9 a. "Commission" means the environmental protection
12 10 commission created in section 455A.6.

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

12 13 c. "Department" means the department of natural resources.

12 14 d. "Suspect transaction" means a transaction in which a
12 15 person classified as a chronic violator under this section
12 16 does any of the following:

12 17 (1) Transfers a controlling interest in a confinement
12 18 feeding operation to any of the following:

12 19 (a) An employee of the chronic violator or business in
12 20 which the person holds a controlling interest.

12 21 (b) A person who holds an interest in a business,
12 22 including a confinement feeding operation, in which the
12 23 chronic violator holds a controlling interest.

12 24 (c) A person related to the chronic violator as spouse,
12 25 parent, grandparent, lineal ascendant of a grandparent or
12 26 spouse and any other lineal descendant of the grandparent or
12 27 spouse, or a person acting in a fiduciary capacity for a
12 28 related person.

12 29 (2) Provides financing for the construction or operation
12 30 of a confinement feeding operation to any person, including by
12 31 providing a contribution, loan to the person, or providing
12 32 collateral for a contribution or loan made by a third person.

12 33 2. The rebuttable presumption provided in section 657.11
12 34 does not apply to a person during any period that the person
12 35 is classified as a chronic violator under this section as to
13 1 any confinement feeding operation in which the person holds a
13 2 controlling interest, as defined by rules adopted by the
13 3 department of natural resources. The rebuttable presumption
13 4 shall apply to the person on and after the date that the
13 5 person is removed from the classification of chronic violator.

13 6 3. A person shall be classified as a chronic violator if
13 7 the person has committed three or more violations as described
13 8 in this subsection prior to, on, or after July 1, 1996. In
13 9 addition, in relation to each violation, the person must have

13 10 been subject to either of the following:

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

13 14 b. A court order or judgment for a legal action brought by
13 15 the attorney general after referral by the department or
13 16 commission.

13 17 4. Each violation must have occurred within five years
13 18 prior to the date of the latest violation, counting any
13 19 violation committed by a confinement feeding operation in
13 20 which the person holds a controlling interest. A violation
13 21 occurs on the date the department issues an administrative
13 22 order to the person assessing a civil penalty of three
13 23 thousand dollars or more, or on the date the department
13 24 notifies a person in writing that the department will
13 25 recommend that the commission refer, or the commission refers
13 26 the case to the attorney general for legal action, or the date
13 27 of entry of the court order or judgment, whichever occurs
13 28 first. A violation under this subsection shall not be counted
13 29 if the civil penalty ultimately imposed is less than three
13 30 thousand dollars, the department or commission does not refer
13 31 the action to the attorney general, the attorney general does
13 32 not take legal action, or a court order or judgment is not
13 33 entered against the person. A person shall be removed from
13 34 the classification of chronic violator on the date on which
13 35 the person and all confinement feeding operations in which the
14 1 person holds a controlling interest have committed less than
14 2 three violations described in this subsection for the prior
14 3 five years.

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

14 17 a. Constructing or operating a related animal feeding
14 18 operation structure or installing or using a related pollution
14 19 control device or practice, for which the person must obtain a
14 20 permit, in violation of statute or rules adopted by the
14 21 department, including the terms or conditions of the permit.

14 22 b. Intentionally making a false statement or
14 23 misrepresenting information to the department as part of an
14 24 application for a construction permit for the related animal
14 25 feeding operation structure, or the installation of the
14 26 related pollution control device or practice, for which the
14 27 person must obtain a construction permit from the department.

14 28 c. Failing to obtain a permit or approval by the
14 29 department for a permit to construct or operate a confinement
14 30 feeding operation or use a related animal feeding operation
14 31 structure or pollution control device or practice, for which
14 32 the person must obtain a permit from the department.

14 33 d. Operating a confinement feeding operation, including a
14 34 related animal feeding operation structure or pollution
14 35 control device or practice, which causes pollution to the
15 1 waters of the state, if the pollution was caused
15 2 intentionally, or caused by a failure to take measures
15 3 required to abate the pollution which resulted from an act of
15 4 God.

15 5 e. Failing to submit a manure management plan as required,
15 6 or operating a confinement feeding operation required to have

15 7 a manure management plan without having submitted the manure
15 8 management plan.

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

15 18 a. That the suspect transaction was for a legitimate
15 19 business purpose made by parties exercising independent and
15 20 reasonable judgment.

15 21 b. That the chronic violator does not exercise a
15 22 controlling influence over the business affairs of the
15 23 confinement feeding operation.

15 24 Sec. 14. ANIMAL AGRICULTURE CONSULTING ORGANIZATION. The
15 25 department of natural resources shall consult with the animal
15 26 agriculture consulting organization established pursuant to
15 27 1995 Iowa Acts, chapter 195, as is necessary in order to
15 28 implement this Act, including but not limited to the adoption
15 29 of rules under this Act.

15 30 EXPLANATION

15 31 This bill relates to agriculture, including animal
15 32 agriculture.

15 33 The bill amends provisions relating to the manure storage
15 34 indemnity fund which was established in order to reimburse
15 35 counties for expenses incurred by counties in cleaning up
16 1 manure storage structures on a site that the county received
16 2 due to nonpayment of back taxes. The fund is supported by
16 3 fees paid by persons obtaining construction permits from the
16 4 department of natural resources for confinement feeding
16 5 operations. The bill provides that if moneys are not
16 6 sufficient to support the fund, the executive council may
16 7 allocate up to \$3 million from the general fund in order to
16 8 help satisfy claims by counties. The bill also doubles the
16 9 fees paid by permittees.

16 10 The bill prohibits a county from adopting or enforcing
16 11 county legislation regulating an agricultural operation,
16 12 unless expressly authorized by a Code provision.

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

16 19 The bill provides that a transaction involving a habitual
16 20 violator or a chronic violator may be considered suspect, if
16 21 the transaction involves (1) transferring a controlling
16 22 interest in the operation to a person who is financially close
16 23 or family related or (2) financing the construction or
16 24 operation of a confinement feeding operation. The bill
16 25 provides that a suspect transaction is not recognized for
16 26 purposes of enforcing environmental laws or claiming nuisance
16 27 suit protection, unless the violator and the person receiving
16 28 a controlling interest in a confinement feeding operation
16 29 prove by clear and convincing evidence that the transaction
16 30 was for a legitimate business purpose made by parties
16 31 exercising independent and reasonable judgment, and the
16 32 chronic violator does not exercise a controlling influence
16 33 over the business affairs of the confinement feeding
16 34 operation.

16 35 The bill provides certification requirements for a
17 1 commercial manure applicator and a person applying manure from
17 2 a confinement feeding operation required to obtain a
17 3 construction permit. The certification program is

17 4 administered by the department of natural resources in
17 5 cooperation with the department of agriculture and land
17 6 stewardship. The certification process is similar to that for
17 7 commercial pesticide applicators under Code chapter 206. The
17 8 person required to be certified may choose between a one-year
17 9 or three-year certification. The person is required to pay a
17 10 certification fee. To be initially certified, the person must
17 11 complete an educational program which consists of an
17 12 examination required to be passed by the person. After
17 13 initial certification, the person must renew the certification
17 14 by completing the educational program which shall consist of
17 15 either an examination or continuing instructional courses.

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

17 22 The bill requires the department of natural resources to
17 23 consult with the animal agriculture consulting organization as
17 24 is necessary in order to implement the bill, including the
17 25 adoption of rules under the bill.

17 26 This bill may impose a state mandate as provided in Code
17 27 chapter 25B.

17 28 LSB 3474XL 77

17 29 da/cf/24.2