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Agriculture

HOUSE FILE 131  
BY GIPP

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for the approval of applications for permits to  
2 construct animal feeding operation structures associated with  
3 confinement feeding operations.

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

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HF 131

1 Section 1. Section 331.301, Code 1999, is amended by  
2 adding the following new subsection:

3 NEW SUBSECTION. 15. The county board of supervisors may  
4 review, evaluate, and approve or disapprove an application for  
5 the construction of an animal feeding operation structure  
6 which is part of a swine confinement feeding operation  
7 pursuant to a county review ordinance as provided in section  
8 331.309.

9 Sec. 2. NEW SECTION. 331.309 APPLICATIONS FOR SWINE  
10 CONFINEMENT FEEDING OPERATIONS -- COUNTY REVIEW ORDINANCE.

11 1. A county board of supervisors may pass a county review  
12 ordinance allowing the board to review, evaluate, and approve  
13 or disapprove applications for construction permits for animal  
14 feeding operation structures which are part of swine  
15 confinement feeding operations as those terms are defined in  
16 section 455B.171. The board shall receive applications for  
17 review and evaluation as provided in section 455B.200A.

18 2. The board shall adopt rules of procedure in accordance  
19 with the provisions of any ordinance passed by the board which  
20 shall be consistent with section 455B.200A. The board may  
21 provide all interested persons with an opportunity to submit  
22 data, views, or arguments in writing. The board may also hold  
23 public hearings regarding the application.

24 3. Within thirty days from the date that the application  
25 is received by the county, the county must approve the  
26 application, disapprove the application, or forward the  
27 application to the department without decision. If  
28 notification of the decision on the application is not  
29 received by the department within the thirty-day period, the  
30 application shall be deemed to be forwarded without decision.  
31 If the county approves or disapproves the application, the  
32 county shall endorse its decision on the application.

33 4. a. Regardless of the board's decision, the board may  
34 submit comments regarding compliance by the applicant with the  
35 legal requirements for the construction of the animal feeding

1 operation structure as provided in section 455B.200A.

2 b. If a county disapproves an application, the county  
3 shall submit a written decision justifying all grounds for the  
4 disapproval. A decision must be based on a finding that the  
5 construction of the animal feeding operation structure as  
6 proposed in the application violates a legal requirement or  
7 standard provided in chapter 455B, or rules adopted by the  
8 department under that chapter, and shall contain any  
9 supporting data. The decision may include a report proposing  
10 recommendations regarding or changes to the application.

11 5. The county may be a party to an appeal of a board's  
12 disapproval by the swine confinement feeding operation appeals  
13 board as provided in section 455B.200C.

14 Sec. 3. NEW SECTION. 455A.6A SWINE CONFINEMENT FEEDING  
15 OPERATION APPEALS BOARD -- ESTABLISHMENT AND ADMINISTRATION.

16 1. A swine confinement feeding operation appeals board is  
17 established within the department. The powers of the board  
18 are vested in and shall be exercised by five members.

19 2. The members shall include all of the following:

20 a. The director of the department of natural resources,  
21 who shall serve as chairperson of the board.

22 b. The state geologist serving as director of the Iowa  
23 geological survey established within the energy and geological  
24 resources division of the department of natural resources.

25 c. One member appointed by the animal agriculture  
26 consulting organization as established pursuant to section  
27 455A.6B.

28 d. Two members appointed by the governor who shall be the  
29 following:

30 (1) One person who is a member of an organization  
31 representing agricultural producers generally, if the person  
32 is actively engaged in livestock production.

33 (2) One person who is a member of an organization involved  
34 in the protection, preservation, or enhancement of the natural  
35 environment.

1 3. a. The appointed members shall be confirmed by the  
2 senate pursuant to section 2.32.

3 b. The appointed members shall serve terms of three years  
4 beginning and ending as provided in section 69.19. However,  
5 the governor shall appoint initial members to serve for less  
6 than three years to ensure members serve staggered terms.  
7 Appointments to the board shall be based upon the training,  
8 experience, and capacity of the appointees, and not upon  
9 political considerations, other than as provided in section  
10 69.16.

11 c. A vacancy on the board shall be filled in the same  
12 manner as an original appointment. A person appointed to fill  
13 a vacancy shall serve only for the unexpired portion of the  
14 term. An appointed member is eligible for reappointment.

15 d. An appointed member may be removed from office by the  
16 governor for misfeasance, malfeasance, willful neglect of  
17 duty, or other just cause, after notice and hearing, unless  
18 the notice and hearing is expressly waived in writing.

19 4. Three members of the board constitute a quorum and the  
20 affirmative vote of a majority of the members present is  
21 necessary for any substantive action to be taken by the board.  
22 The majority shall not include any member who has a conflict  
23 of interest and a statement by a member that the member has a  
24 conflict of interest is conclusive for this purpose. A  
25 vacancy in the membership does not impair the right of a  
26 quorum to exercise all rights and perform all duties of the  
27 board.

28 5. The appointed members are entitled to receive a per  
29 diem as specified in section 7E.6 for each day spent in  
30 performance of duties as members, and shall be reimbursed for  
31 all actual and necessary expenses incurred in the performance  
32 of duties as members.

33 6. The board shall meet on a regular basis and at the call  
34 of the chairperson or upon the written request to the  
35 chairperson of two or more members. The department shall

1 staff the board.

2 Sec. 4. NEW SECTION. 455A.6B ANIMAL AGRICULTURE

3 CONSULTING ORGANIZATION.

4 1. The department shall request that the Iowa pork  
5 producers association, the Iowa cattlemen's association, the  
6 Iowa poultry association, the Iowa dairy products association,  
7 Iowa state university, the soil conservation division of the  
8 department of agriculture and land stewardship, the natural  
9 resources conservation service of the United States department  
10 of agriculture, and two organizations representing  
11 agricultural producers generally each appoint one member to  
12 consult with the department regarding the regulation of animal  
13 feeding operations under chapter 455B, including related rules  
14 adopted pursuant to chapter 455B, and the implementation of  
15 the regulation. The department shall consult with these  
16 appointees in meetings which shall be conducted by the  
17 department, upon the call of the director of the department or  
18 the director's designee, or upon the request to the department  
19 of any three appointees.

20 2. This section is repealed on March 31, 2005.

21 Sec. 5. Section 455B.200A, subsections 1 and 3, Code 1999,  
22 are amended to read as follows:

23 1. The department shall issue permits for the  
24 construction, including the expansion, of animal feeding  
25 operation structures, including structures which are part of  
26 confinement feeding operations, as provided by rules adopted  
27 pursuant to section 455B.200. The department shall issue a  
28 permit to an animal feeding operation if an application is  
29 submitted according to procedures required by the department  
30 and the application ~~meets-standards-established-by-the~~  
31 department complies with legal requirements provided in this  
32 chapter and rules adopted by the department pursuant to this  
33 section, regardless of whether the animal feeding operation is  
34 required to obtain such a permit. The department shall not  
35 require that a person obtain a permit for the construction of

1 an animal feeding operation structure if the structure is part  
2 of a small animal feeding operation. For purposes of this  
3 section, an animal feeding operation structure includes a  
4 manure storage structure.

5 ~~3. The department shall not issue a~~ A permit for the  
6 construction of three or more animal feeding operation  
7 structures shall not be approved unless the applicant files a  
8 statement as part of the application. The statement must be  
9 approved by a professional engineer registered pursuant to  
10 chapter 542B certifying that the construction of the animal  
11 feeding operation structures will not impede the drainage  
12 through established drainage tile lines which cross property  
13 boundary lines unless measures are taken to reestablish the  
14 drainage prior to completion of construction.

15 Sec. 6. Section 455B.200A, Code 1999, is amended by adding  
16 the following new subsection:

17 NEW SUBSECTION. 7A. If a county has passed a county  
18 review ordinance adopted pursuant to section 331.309, the  
19 county may approve or disapprove a construction permit  
20 application according to the following procedures:

21 a. A county board of supervisors shall have thirty days to  
22 approve or disapprove the application. If a county board of  
23 supervisors approves or does not disapprove the application,  
24 the department shall either approve or deny the application  
25 based on compliance with the requirements of this chapter and  
26 rules adopted by the department. The department shall file  
27 the application that it approves and notify the county and the  
28 applicant of the approval and filing. The department shall  
29 not approve an application which has been disapproved by a  
30 county board of supervisors. If the county board of  
31 supervisors or the department disapproves the application, the  
32 department shall deny the application and notify the county  
33 and the applicant of the denial, including the right of the  
34 applicant to appeal under this subsection, and return any  
35 indemnity fee submitted with the application.

1 b. The applicant may appeal the denial of an application  
2 disapproved by a county board of supervisors or the department  
3 to the swine feeding operation confinement appeals board as  
4 provided in section 455B.200C.

5 Sec. 7. NEW SECTION. 455B.200C APPEALS TO THE SWINE  
6 CONFINEMENT FEEDING OPERATION APPEALS BOARD.

7 1. The swine confinement feeding operation appeals board  
8 established pursuant to section 455A.6A shall consider appeals  
9 regarding applications for permits for the construction of  
10 animal feeding operation structures which are part of swine  
11 confinement feeding operations as provided in section  
12 455B.200A.

13 a. The board shall consider an appeal brought by an  
14 applicant for the denial of an application based on the  
15 disapproval of the application by a county board of  
16 supervisors or the department under section 455B.200A.

17 b. The applicant must submit a petition to the board on  
18 forms and according to procedures required by the department.  
19 The applicant must file the petition of appeal within twenty  
20 days of receipt of the notice of denial by the department as  
21 provided in section 455B.200A.

22 2. Upon receipt of a petition by the applicant, the board  
23 shall consider the appeal. The board shall deliver notice of  
24 the appeal to the applicant and the county board of  
25 supervisors as provided by rules adopted by the department.  
26 The board shall conduct an inquiry or investigation as the  
27 board deems necessary to determine if the application complies  
28 with all requirements and standards of chapter 455B, including  
29 rules adopted by the department.

30 3. An appeal is not a contested case proceeding under  
31 chapter 17A. The board may do all of the following:

32 a. Hear evidence presented by the applicant and the  
33 county.

34 b. Require persons, including the applicant, to appear in  
35 order to be examined under oath. If the board requires a

1 person to appear and testify under oath, a transcript shall be  
2 made of the testimony.

3 c. Appoint a member of the department or request an  
4 administrative law judge to receive evidence which may include  
5 testimony under oath, and to issue a proposed decision to  
6 approve or disapprove an application for a permit. The board  
7 may affirm, reverse, or modify the proposed decision to  
8 approve or disapprove the application for the permit.

9 4. The board or a person appointed by the board to  
10 consider the appeal shall compile a record of the appeal. The  
11 record shall include all of the following:

12 a. Any evidence received or considered.

13 b. The application endorsed with the county's disapproval,  
14 and the county's decision explaining grounds for disapproving  
15 the application.

16 c. Records or transcripts of testimony.

17 d. All submissions and findings of fact.

18 e. A decision by the board or a person appointed by the  
19 board, and any decision of the board affirming, reversing, or  
20 modifying a proposed decision by a person appointed by the  
21 board.

22 5. Findings of fact shall be based solely on the evidence  
23 in the record and on matters officially noticed in the record.

24 6. If upon appeal the board determines that the county  
25 board of supervisors or the department acted arbitrarily,  
26 capriciously, or without reasonable cause in disapproving the  
27 application, the board shall reverse the denial and order the  
28 application to be approved and filed with any modifications or  
29 conditions established by the board.

30 7. Upon final action on the appeal by the board, the  
31 records shall be forwarded to the department. The applicant  
32 and county board of supervisors shall be notified of the  
33 decision by certified mail. The notice shall include the  
34 decision of the board or any decision of the board affirming,  
35 reversing, or modifying a proposed decision by a person

1 appointed by the board.

2 8. An applicant may seek judicial review of a board's  
3 decision, as if the decision were the department's final  
4 agency action under chapter 17A. A county board of  
5 supervisors may seek judicial review of a decision to reverse  
6 the denial of an application that was disapproved by the  
7 county board of supervisors as provided in chapter 17A. A  
8 petition for judicial review may be filed in the district  
9 court of the county where the animal feeding operation  
10 structure was proposed to be constructed.

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EXPLANATION

12 The bill amends the current procedure for approving or  
13 disapproving an application for a permit for the construction  
14 of an animal feeding operation structure which is part of a  
15 confinement feeding operation under Code section 455B.200A.  
16 Current law provides that the department of natural resources  
17 approves or disapproves an application. A county board of  
18 supervisors may make comments to the department and appeal the  
19 department's decision to the environmental protection  
20 commission with judicial review by the district court.

21 This bill provides that a county board of supervisors may  
22 also review, evaluate, and approve or disapprove the  
23 application. If the board of supervisors approves or does not  
24 disapprove the application, the department must either approve  
25 or disapprove the application. If the department approves the  
26 application, the department must file the application and  
27 notify the county and the applicant of the approval and  
28 filing. If the county board of supervisors or the department  
29 disapproves the application, the department must terminate the  
30 application and notify the county and the applicant of the  
31 termination, including the right of the applicant to appeal.  
32 The department cannot approve an application disapproved by  
33 the county.

34 The bill establishes a swine confinement feeding operation  
35 appeals board composed of the director of the department of

1 natural resources, the state geologist, one member approved by  
2 the animal agriculture consulting organization, and two  
3 members appointed by the governor, including a person who is a  
4 member of an organization representing agricultural producers  
5 generally and a person who is a member of an organization  
6 involved in the protection, preservation, or enhancement of  
7 the natural environment. The bill establishes a number of  
8 procedures available to the board for considering the appeal.  
9 If the board determines that the county board of supervisors  
10 or the department acted arbitrarily, capriciously, or without  
11 reasonable cause in disapproving the application, the board  
12 must reverse the denial and order the application to be filed  
13 with any modifications or conditions established by the board.  
14 The bill provides that an applicant may seek judicial review  
15 of a board's decision. A county board of supervisors may also  
16 seek judicial review of a decision to reverse the denial of an  
17 application that was disapproved by the county board of  
18 supervisors.

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