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Agriculture

HOUSE FILE
BY GREINER

510

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

A BILL FOR

1 An Act relating to habitual violators of regulations relating to
2 confinement feeding operations, by providing for penalties and
3 the forfeiture of property, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 510

1 Section 1. NEW SECTION. 455B.202A SUBSEQUENT VIOLATIONS
2 BY HABITUAL VIOLATORS -- CLOSING OPERATIONS.

3 1. This section applies to a violation of any provision of
4 this division involving a condition or requirement of a permit
5 required for a confinement feeding operation pursuant to
6 section 455B.200A, a provision of this part, or a rule or
7 order issued by the department under this division, if the
8 violation is committed by a confinement feeding operation
9 which is classified as a habitual violator pursuant to section
10 455B.191 or a person classified as a habitual violator who
11 holds a controlling interest in the confinement feeding
12 operation.

13 2. The department shall order that the owner of the
14 confinement feeding operation transfer the ownership to a
15 person approved by the department, not later than sixty days
16 from the issuance of departmental order.

17 3. Until the confinement feeding operation is transferred,
18 a person shall not transport animals, or viable eggs or semen
19 into the confinement feeding operation.

20 4. If the confinement feeding operation or a person who
21 holds a controlling interest in the confinement feeding
22 operation owes the state moneys for the payment of civil
23 penalties, criminal fines, or the reimbursement of
24 departmental expenses, a departmental official shall be
25 present during the transportation of the animals to slaughter.
26 The payment received for the sale of the animals shall be made
27 by joint check payable to the confinement feeding operation
28 and the department.

29 5. In order to access the confinement feeding operation, a
30 departmental official must comply with standard disease
31 control restrictions customarily required by the operation.
32 The department shall comply with section 455B.103, subsection
33 4, in entering the premises of the confinement feeding
34 operation.

35 6. The department shall assess, and the confinement

1 feeding operation shall pay, the actual costs of providing the
2 oversight to assure compliance with this section.

3 Sec. 2. NEW SECTION. 455B.202B SUBSEQUENT VIOLATIONS BY
4 HABITUAL VIOLATORS -- ENHANCED PENALTIES.

5 This section applies to a violation of any provision of
6 this division involving a condition or requirement of a permit
7 required for a confinement feeding operation pursuant to
8 section 455B.200A, a provision of this part, or a rule or
9 order issued by the department under this division, if the
10 violation is committed by a person who is classified as a
11 habitual violator.

12 1. For each violation committed subsequent to the
13 violation which results in the person being classified as a
14 habitual violator, one of the following shall apply:

15 a. If the violation is knowingly committed, the person is
16 guilty of an aggravated misdemeanor. A conviction for a
17 violation is punishable by a fine of not more than twenty-five
18 thousand dollars for each day of violation or by imprisonment
19 for not more than two years, or both.

20 b. The person is subject to a civil penalty not to exceed
21 twenty-five thousand dollars for each day the violation
22 continues.

23 2. For a second violation involving a confinement feeding
24 operation which is committed subsequent to the violation which
25 results in classifying the person as a habitual violator, the
26 confinement feeding operation shall be forfeited to the state
27 pursuant to section 455B.202C. If a person holding a
28 controlling interest in the forfeited confinement feeding
29 operation holds a controlling interest in another confinement
30 feeding operation, all confinement feeding operations in which
31 the person holds a controlling interest shall be forfeited to
32 the state as provided in section 455B.202C.

33 Sec. 3. NEW SECTION. 455B.202C HABITUAL VIOLATORS --
34 FORFEITURE AND RECEIVERSHIP -- PROCEEDINGS.

35 1. If a confinement feeding operation is subject to

1 forfeiture, the forfeiture shall proceed as provided in
2 chapter 809A. The attorney general shall serve as the
3 prosecuting attorney and the department shall serve as the
4 seizing agency.

5 2. Upon petition, the court hearing the case shall appoint
6 the department as receiver. Upon the filing of the petition
7 the court shall issue ex parte such temporary orders as may be
8 necessary to preserve or protect the assets in receivership,
9 or the assets' value, and the rights of creditors until a plan
10 of disposition is approved.

11 a. A petition filed by the department shall be accompanied
12 by the department's plan for disposition of the assets of the
13 confinement feeding operation. The plan shall provide for the
14 sale of the assets, including animals, for the benefit of
15 creditors, or as may be necessary, as the department in its
16 discretion determines to be necessary to minimize losses. The
17 plan shall provide for reimbursing expenses of the department
18 in administering the receivership, including expenses incurred
19 in appointing a receiver.

20 b. When a petition for receivership is filed by the
21 department, the clerk of the district court shall set a date
22 for hearing on the department's proposed plan of disposition
23 at a time not less than ten nor more than fifteen days after
24 the date the petition is filed. When appointed as a receiver
25 under this section, the department shall cause notification of
26 the appointment to be published once each week for two
27 consecutive weeks in a newspaper of general circulation in
28 each of the counties in which the confinement feeding
29 operation is located.

30 c. The actions of the department in connection with
31 petitioning for appointment as a receiver, and all actions
32 pursuant to such appointment, shall not be subject to the
33 provisions of chapter 17A.

34 d. The department may appoint a person to act as receiver.
35 A person appointed by the department and carrying out the

1 duties of the department in acting as receiver under this
2 section shall be deemed to be an employee of the state as
3 defined in section 669.2. Chapter 669 is applicable to any
4 claim as defined in section 669.2 against the person carrying
5 out the duties of the department in acting as receiver.

6 Sec. 4. EFFECTIVE DATE. This Act, being deemed of
7 immediate importance, takes effect upon enactment.

8 EXPLANATION

9 This bill amends Code chapter 455B, which provides for
10 environmental protection as administered by the department of
11 natural resources. Specifically, the bill imposes increased
12 penalties upon persons classified as habitual violators of
13 regulations relating to confinement feeding operations. Under
14 current law, a habitual violator is a person who commits three
15 or more violations concerning specific regulations involving
16 the construction or operation of a confinement feeding
17 operation. The violations relate to completing a false
18 application for a construction permit, failing to obtain a
19 construction permit prior to construction, causing pollution
20 to the waters of the state, or failing to submit a manure
21 management plan.

22 The bill imposes special penalties upon habitual violators
23 who commit a subsequent violation of provisions in Code
24 chapter 455B, including departmental rules. First, the
25 department must order the owner of the confinement feeding
26 operation to transfer ownership of the confinement feeding
27 operation to a person approved by the department. The bill
28 places restrictions upon the management of the confinement
29 feeding operation, which may involve direct departmental
30 oversight of the confinement feeding operation. In addition,
31 the bill imposes enhanced penalties upon habitual violators
32 who commit a subsequent violation. A habitual violator
33 knowingly committing a subsequent offense is guilty of an
34 aggravated misdemeanor punishable by up to two years
35 imprisonment and a \$25,000 per day criminal fine, or both. In

1 addition, a civil penalty of up to \$25,000 per day may be
2 assessed. The bill provides that for another subsequent
3 violation, the confinement feeding operation is forfeited to
4 the state. The bill provides for the management of the
5 forfeited confinement feeding operation, including the
6 appointment of the department as a receiver.

7 The bill takes effect upon enactment.

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