

MAR 10 1999  
Agriculture

HOUSE FILE 612  
BY FREVERT

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

**A BILL FOR**

1 An Act regulating industrial swine confinement feeding  
2 operations, providing for fees, and making penalties  
3 applicable.

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

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1 Section 1. Section 331.304A, subsection 1, paragraph a,  
2 Code 1999, is amended to read as follows:

3 a. "Aerobic structure", "animal", "animal feeding  
4 operation", "animal feeding operation structure", "industrial  
5 swine confinement feeding operation", and "manure" mean the  
6 same as defined in section 455B.161.

7 Sec. 2. Section 331.304A, subsection 2, Code 1999, is  
8 amended to read as follows:

9 2. a. A county shall not adopt or enforce county  
10 legislation regulating a condition or activity occurring on  
11 land used for the production, care, feeding, or housing of  
12 animals unless the regulation of the production, care,  
13 feeding, or housing of animals is expressly authorized by  
14 state law.

15 b. County legislation adopted in violation of this section  
16 is void and unenforceable and any enforcement activity  
17 conducted in violation of this section is void.

18 c. A condition or activity occurring on land used for the  
19 production, care, feeding, or housing of animals includes but  
20 is not limited to the construction, operation, or management  
21 of an animal feeding operation, an animal feeding operation  
22 structure, or aerobic structure, and to the storage, handling,  
23 or application of manure or egg washwater.

24 d. This subsection does not apply to county legislation  
25 regulating an industrial swine confinement feeding operation,  
26 regardless of other provisions in state law, including chapter  
27 455B or rules adopted by the department of natural resources  
28 under chapter 455B. However, the county legislation shall not  
29 provide regulations that are less restrictive than a statute  
30 or rule adopted by a state agency.

31 Sec. 3. Section 335.2, Code 1999, is amended to read as  
32 follows:

33 335.2 FARMS AGRICULTURAL PURPOSES EXEMPT.

34 1. As used in this section, "industrial swine confinement  
35 feeding operation" means the same as defined in section

1 455B.161.

2 2. Except to the extent required to implement section  
3 335.277, no as provided in this section, an ordinance adopted  
4 under this chapter applies shall not apply to an agricultural  
5 operation, including land, farm houses, farm barns, farm  
6 outbuildings, or other buildings or structures, which are is  
7 primarily adapted, by reason of nature and area, for use for  
8 an agricultural purposes purpose, while so used. However, the  
9 ordinances an ordinance adopted under this chapter may apply  
10 to any of the following:

11 a. The implementation of an agricultural land preservation  
12 ordinance, as provided in section 335.27.

13 b. A structure, building, dam, obstruction, deposit, or  
14 excavation in or on the flood plains of any a river or stream.

15 c. An industrial swine confinement feeding operation.

16 Sec. 4. NEW SECTION. 455B.111A CITIZEN ACTIONS --  
17 INDUSTRIAL SWINE CONFINEMENT FEEDING OPERATIONS.

18 1. An individual, private organization or association,  
19 county, or city may bring an action in district court to  
20 enforce violations committed by swine confinement feeding  
21 operations under division II, part 2, and division III. The  
22 moneys collected in civil penalties and interest on the  
23 penalties arising out of the violations shall be deposited in  
24 the manure storage indemnity fund as created in section  
25 455J.2. A petitioner who seeks injunctive relief shall not be  
26 required to allege facts necessary to show, or tending to  
27 show, a lack of adequate remedy at law, or that irreparable  
28 damage or loss will result if the action is brought at law or  
29 that unique or special circumstances exist.

30 Sec. 5. Section 455B.161, subsection 4, Code 1999, is  
31 amended to read as follows:

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

1 animals in the operation. ~~Two-or-more-animal-feeding~~  
2 ~~operations-under-common-ownership-or-management-are-deemed-to~~  
3 ~~be-a-single-animal-feeding-operation-if-they-are-adjacent-or~~  
4 ~~utilize-a-common-system-for-manure-storage.~~ An animal feeding  
5 operation does not include a livestock market.

6 Sec. 6. Section 455B.161, Code 1999, is amended by adding  
7 the following new subsections:

8 NEW SUBSECTION. 6A. "Authorized industrial swine  
9 confinement feeding operation structure" means an industrial  
10 confinement animal feeding operation structure other than an  
11 uncovered anaerobic lagoon, uncovered earthen manure storage  
12 basin, or an uncovered formed manure storage structure.

13 NEW SUBSECTION. 16A. "Industrial swine confinement  
14 feeding operation" means a confinement feeding operation used  
15 to keep swine, if the animal weight capacity of the  
16 confinement feeding operation is more than eight hundred  
17 thousand pounds.

18 NEW SUBSECTION. 16B. "Industrial swine confinement  
19 feeding operation structure" means an animal feeding operation  
20 structure that is part of an industrial swine confinement  
21 feeding operation.

22 Sec. 7. Section 455B.161A, Code 1999, is amended by adding  
23 the following new subsection:

24 NEW SUBSECTION. 3. Two or more industrial swine  
25 confinement feeding operations under common ownership or  
26 management are deemed to be a single industrial swine  
27 confinement feeding operation if any of the following applies:

28 a. They are adjacent.

29 b. They utilize a common area or system for manure  
30 storage.

31 c. They are integrated.

32 d. They are located or discharge water within the same  
33 watershed or watersheds that are hydrologically connected.

34 e. They are located or discharge water onto land overlying  
35 the same groundwater aquifer.

1 Sec. 8. Section 455B.162, subsection 2, unnumbered  
2 paragraph 1, Code 1999, is amended to read as follows:

3 Except as provided in subsection subsections 3B and 6, and  
4 sections 455B.163 and 455B.165, this subsection applies to  
5 animal feeding operation structures constructed on or after  
6 January 1, 1999, but prior to the effective date of this Act,  
7 and to the expansion of structures constructed on or after  
8 January 1, 1999, but prior to the effective date of this Act.

9 The following table represents the minimum separation distance  
10 in feet required between an animal feeding operation structure  
11 and a residence not owned by the owner of the animal feeding  
12 operation, or a commercial enterprise, bona fide religious  
13 institution, or an educational institution:

14 Sec. 9. Section 455B.162, subsection 3, unnumbered  
15 paragraph 1, Code 1999, is amended to read as follows:

16 Except as provided in subsection subsections 3B and 6, and  
17 sections 455B.163 and 455B.165, this subsection applies to  
18 animal feeding operation structures constructed on or after  
19 May 31, 1995, but prior to the effective date of this Act; to  
20 the expansion of structures constructed on or after May 31,  
21 1995, but prior to the effective date of this Act; and to the  
22 expansion of structures constructed prior to May 31, 1995.

23 The following table represents the minimum separation distance  
24 in feet required between animal feeding operation structures  
25 and a public use area or a residence not owned by the owner of  
26 the animal feeding operation, a commercial enterprise, a bona  
27 fide religious institution, or an educational institution  
28 located within the corporate limits of a city:

29 Sec. 10. Section 455B.162, Code 1999, is amended by adding  
30 the following new subsections:

31 NEW SUBSECTION. 3A. Except as provided in paragraph "c",  
32 subsection 3B, and sections 455B.163 and 455B.165, this  
33 subsection applies to animal feeding operation structures  
34 constructed or expanded on or after the effective date of this  
35 Act:

1 a. The following table represents the minimum separation  
 2 distance in feet required between an animal feeding operation  
 3 structure, other than an industrial swine confinement feeding  
 4 operation structure, and a residence not owned by the owner of  
 5 the animal feeding operation, or a commercial enterprise, bona  
 6 fide religious institution, or an educational institution:

	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than bovine, or less than 1,600,000 pounds for bovine	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 for animals other than bovine, or less than 4,000,000 pounds for bovine	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than bovine, or 4,000,000 or more pounds for bovine
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29	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>
30	Anaerobic lagoon	1,250	1,875
31	Uncovered earthen		
32	manure storage		
33	basin	1,250	1,875
34	Uncovered formed		
35	manure storage		

1	structure	1,250	1,500	2,000
2	Covered earthen			
3	manure storage			
4	basin	1,000	1,000	1,500
5	Covered formed			
6	manure storage			
7	structure	1,000	1,250	1,875
8	Confinement			
9	building	1,000	1,250	1,875
10	Egg washwater			
11	storage structure	750	1,000	1,500

12 b. The following table represents the minimum separation  
 13 distance in feet required between an animal feeding operation  
 14 structure, other than an industrial swine confinement feeding  
 15 operation structure, and a public use area or a residence not  
 16 owned by the owner of the animal feeding operation, a  
 17 commercial enterprise, a bona fide religious institution, or  
 18 an educational institution located within the corporate limits  
 19 of a city:

20		Minimum	
21		separation	
22		distance in	
23		feet for	
24		operations	
25	Minimum	having an	
26	separation	animal	Minimum
27	distance in	weight	separation
28	feet for	capacity of	distance in
29	operations	625,000 or	feet for
30	having an	more pounds	operations
31	animal	but less than	having an
32	weight	1,250,000	animal
33	capacity of	pounds for	weight
34	less than	animals other	capacity of
35	625,000	than bovine,	1,250,000 or

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1	pounds for	or 1,600,000	more pounds
2	animals other	or more	for animals
3	than bovine,	pounds but	other than
4	or less than	less than	bovine, or
5	1,600,000	4,000,000	4,000,000 or
6	pounds for	pounds for	more pounds
7	<u>Type of structure</u>	<u>bovine</u>	<u>bovine</u>

8 Animal feeding  
 9 operation

10 structure other  
 11 than an industrial  
 12 swine confinement  
 13 feeding operation

14 structure                    1,250                    1,875                    2,500

15 c. An industrial swine confinement feeding operation  
 16 structure shall not be constructed or expanded closer than one  
 17 mile from a residence not owned by the owner of the industrial  
 18 swine confinement feeding operation structure, or a commercial  
 19 enterprise, bona fide religious institution, educational  
 20 institution, a public use area, or the corporate limits of a  
 21 city.

22 NEW SUBSECTION. 3B. An animal feeding operation structure  
 23 constructed prior to the effective date of this Act may be  
 24 expanded only if it is an authorized animal feeding operation  
 25 structure as provided in section 455B.163.

26 Sec. 11. Section 455B.163, unnumbered paragraph 1, Code  
 27 1999, is amended to read as follows:

28 An animal feeding operation constructed or expanded prior  
 29 to the date that a distance requirement became effective under  
 30 section 455B.162 and which does not comply with the section's  
 31 distance requirement may continue to operate regardless of the  
 32 distance requirement. The An animal feeding operation  
 33 structure shall not be expanded unless it complies with this  
 34 section. An industrial swine confinement feeding operation  
 35 may only be expanded by the construction or expansion of an

1 authorized industrial swine confinement feeding operation  
2 structure. In addition, the animal feeding operation may be  
3 expanded only if any of the following applies:

4 Sec. 12. NEW SECTION. 455B.166 CLEAN AIR STANDARDS.

5 1. As used in this section, "gases" includes compounds  
6 which produce odor or may have a deleterious effect upon human  
7 health, including but not limited to hydrogen sulfide,  
8 ammonia, methane, and any class of mercaptan.

9 2. The department shall develop comprehensive plans and  
10 programs for the abatement, control, and prevention of dust  
11 and gases originating from industrial swine confinement  
12 feeding operations or the application of manure originating  
13 from industrial swine confinement feeding operations. The  
14 department may establish schedules for compliance.

15 3. a. An industrial swine confinement feeding operation  
16 shall only use an authorized industrial swine confinement  
17 feeding operation structure which is one of the following:

18 (1) An aerobic structure.

19 (2) A confinement feeding operation structure which is  
20 covered.

21 b. The authorized industrial swine confinement feeding  
22 operation structure shall capture, recover, incinerate, or  
23 otherwise manage gases to the greatest extent practicable in  
24 accordance with standards adopted by the department. The  
25 standards shall exceed standards for covering other types of  
26 animal feeding operation structures.

27 c. A person shall not construct or expand an industrial  
28 swine confinement feeding operation structure unless it is an  
29 authorized industrial swine confinement feeding operation  
30 structure complying with the requirements of this section. A  
31 person owning an industrial swine confinement feeding  
32 operation structure shall cover the structure as required by  
33 this section not later than July 1, 2000.

34 Sec. 13. Section 455B.171, subsection 4, Code 1999, is  
35 amended to read as follows:

1 4. "Animal feeding operation" means a lot, yard, corral,  
2 building, or other area in which animals are confined and fed  
3 and maintained for forty-five days or more in any twelve-month  
4 period, and all structures used for the storage of manure from  
5 animals in the animal feeding operation. ~~Two or more animal~~  
6 ~~feeding operations under common ownership or management are~~  
7 ~~deemed to be a single animal feeding operation if they are~~  
8 ~~adjacent or utilize a common area or system for manure~~  
9 ~~disposal.~~ An animal feeding operation does not include a  
10 livestock market as defined in section 455B.161.

11 Sec. 14. Section 455B.171, Code 1999, is amended by adding  
12 the following new subsections:

13 NEW SUBSECTION. 2A. "Agronomic rate of application" means  
14 the rate of application of nutrient to plants that is  
15 necessary to satisfy the plants' nutritional requirements  
16 while strictly minimizing the amount of nutrients that run off  
17 to surface waters or which pass below the root zone of the  
18 plants.

19 NEW SUBSECTION. 6A. "Authorized industrial swine  
20 confinement feeding operation structure" means an industrial  
21 confinement animal feeding operation structure other than an  
22 uncovered anaerobic lagoon, uncovered earthen manure storage  
23 basin, or an uncovered formed manure storage structure.

24 NEW SUBSECTION. 14A. "Industrial swine confinement  
25 feeding operation" means a confinement feeding operation used  
26 to keep swine, if the animal weight capacity of the  
27 confinement feeding operation is more than eight hundred  
28 thousand pounds.

29 NEW SUBSECTION. 14B. "Industrial swine confinement  
30 feeding operation structure" means an animal feeding operation  
31 structure that is part of an industrial swine confinement  
32 feeding operation.

33 Sec. 15. Section 455B.200A, subsection 1, Code 1999, is  
34 amended to read as follows:

35 1. The department shall issue permits for the

1 construction, including the expansion, of animal feeding  
2 operation structures, including structures which are part of  
3 confinement feeding operations, as provided by rules adopted  
4 pursuant to section 455B.200. The department shall not issue  
5 a permit for the construction of an industrial swine  
6 confinement feeding operation structure unless it is an  
7 authorized industrial swine confinement feeding operation  
8 structure. The department shall issue a permit to an animal  
9 feeding operation if an application is submitted according to  
10 procedures required by the department and the application  
11 meets standards established by the department, regardless of  
12 whether the animal feeding operation is required to obtain  
13 such a permit. The department shall not require that a person  
14 obtain a permit for the construction of an animal feeding  
15 operation structure if the structure is part of a small animal  
16 feeding operation. For purposes of this section, an animal  
17 feeding operation structure includes a manure storage  
18 structure.

19 Sec. 16. Section 455B.200B, Code 1999, is amended by  
20 adding the following new subsection:

21 NEW SUBSECTION. 3. Two or more industrial swine  
22 confinement feeding operations under common ownership or  
23 management are deemed to be a single industrial swine  
24 confinement feeding operation if any of the following applies:

25 a. They are adjacent.

26 b. They utilize a common area or system for manure  
27 storage.

28 c. They are integrated.

29 d. They are located or discharge water within the same  
30 watershed or watersheds that are hydrologically connected.

31 e. They are located or discharge water onto land overlying  
32 the same aquifer.

33 Sec. 17. Section 455B.203, subsection 3, Code 1999, is  
34 amended by adding the following new paragraph:

35 NEW PARAGRAPH. h. For manure originating from an

1 industrial swine confinement feeding operation, a description  
2 of best available manure management practices employed by the  
3 person as provided in section 455B.201. The manure management  
4 plan shall provide for remediation of soil and water  
5 contamination caused by any release or application of manure  
6 in violation of this division.

7 Sec. 18. Section 455B.203, subsection 3, paragraph a, Code  
8 1999, is amended to read as follows:

9 a. Calculations necessary to determine the land area  
10 required for the application of manure from a confinement  
11 feeding operation based on nitrogen use levels in order to  
12 obtain optimum crop yields according to a crop schedule  
13 specified in the plan ~~and~~. A person required to submit a  
14 manure management plan for manure originating from an  
15 industrial swine confinement feeding operation shall include  
16 calculations necessary to determine the land area required for  
17 the application based on an agronomic rate of application.  
18 The calculations shall be computed according to requirements  
19 adopted by the department after receiving recommendations from  
20 the animal agriculture consulting organization provided for in  
21 1995 Iowa Acts, chapter 195, section 37.

22 Sec. 19. Section 455B.203, Code 1999, is amended by adding  
23 the following new subsections:

24 NEW SUBSECTION. 3A. A person required to submit a manure  
25 management plan for manure originating from an industrial  
26 swine confinement feeding operation shall submit a report to  
27 the department and the local health department every three  
28 months as required by the department. The quarterly statement  
29 shall include comprehensive monitoring reports and agronomic  
30 analyses that demonstrate that manure is stored or applied in  
31 accordance with requirements of this division. The person  
32 shall sample and monitor the soil and surface or subsurface  
33 water to ensure that nitrogen, phosphorus, heavy metals, and  
34 salts occur within parameters established by the department  
35 necessary to ensure the preservation of the natural

1 environment and the health and safety of affected persons.

2 NEW SUBSECTION. 3B. A person required to submit a manure  
3 management plan for an industrial swine confinement feeding  
4 operation shall submit a fee established by the department.  
5 The fee shall be paid to and collected by the department,  
6 prior to approving a manure management plan. The amount of  
7 the fee shall be twenty cents per animal unit of capacity of  
8 the industrial swine confinement feeding operation.

9 NEW SUBSECTION. 4. All of the following shall apply to  
10 manure originating from an industrial swine confinement  
11 feeding operation:

12 a. A person required to submit a manure management plan  
13 pursuant to section 455B.201 shall use the best available  
14 manure management practices as established by rule adopted by  
15 the department.

16 b. A person required to submit a manure management plan  
17 pursuant to section 455B.201 shall immediately report any  
18 unauthorized discharge of manure to the department according  
19 to rules adopted by the department. The industrial swine  
20 confinement feeding operation shall provide a written report  
21 to the local health department within twenty-four hours from  
22 the time of the unauthorized release, unless otherwise  
23 provided by the local health department.

24 EXPLANATION

25 This bill amends provisions regulating confinement feeding  
26 operations. Specifically, this bill regulates industrial  
27 swine confinement feeding operations which are confinement  
28 feeding operations used to keep swine having an animal weight  
29 capacity of more than 800,000 pounds.

30 The bill amends Code section 331.304A, which prohibits a  
31 county from adopting or enforcing county legislation  
32 regulating a condition or activity occurring on land used for  
33 the production, care, feeding, or housing of animals unless  
34 the regulation of the production, care, feeding, or housing of  
35 animals is expressly authorized by state law. The bill

1 provides that this prohibition does not apply to county  
2 legislation regulating an industrial swine confinement feeding  
3 operation. The bill provides that county legislation cannot  
4 provide regulations that are less restrictive than a statute  
5 or rule adopted by a state agency.

6 This bill amends Code section 335.2, which currently  
7 provides that land and structures relating to an agricultural  
8 operation are exempt from county zoning requirements. The  
9 bill provides that the exemption does not apply to industrial  
10 swine confinement feeding operations.

11 The bill provides that an individual, private organization  
12 or association, county, or city may bring an action in  
13 district court to enforce violations committed by industrial  
14 swine confinement feeding operations under Code chapter 455B,  
15 including by seeking civil penalties and injunctive relief.

16 The bill prohibits an industrial swine confinement feeding  
17 operation from storing manure in a structure, unless the  
18 structure is covered. The bill increases to one mile the  
19 separation distance requirements for structures associated  
20 with industrial swine confinement feeding operation  
21 structures.

22 The bill provides for considering when two or more  
23 industrial swine confinement feeding operations under common  
24 ownership or management are deemed to be a single industrial  
25 swine confinement feeding operation.

26 The bill requires the department of natural resources to  
27 develop comprehensive plans and programs for the abatement,  
28 control, and prevention of dust and gases originating from  
29 industrial swine confinement feeding operations or the  
30 application of manure originating from industrial swine  
31 confinement feeding operations.

32 The bill requires a person submitting a manure management  
33 plan to use the best available manure management practices as  
34 established by rule adopted by the department of natural  
35 resources. The bill requires that the person immediately

1 report any unauthorized discharge of manure to the department  
2 according to rules adopted by the department. The bill  
3 requires the person to provide a written report to the local  
4 health department within 24 hours from the time of the  
5 unauthorized discharge.

6 This bill provides that a manure management plan submitted  
7 by an industrial swine confinement feeding operation must  
8 include a description of the best available manure management  
9 practices employed. The bill provides that such a manure  
10 management plan must provide for remediation of soil and water  
11 contamination caused by any release or application of manure  
12 in violation of the bill.

13 The bill requires that a person submitting a manure  
14 management plan for manure originating from an industrial  
15 swine confinement feeding operation must submit a report to  
16 the department and the local health department every three  
17 months as required by the department. The bill provides that  
18 the quarterly statement must include comprehensive monitoring  
19 reports and agronomic analyses that demonstrate that manure is  
20 stored or applied in accordance with requirements of this  
21 division. The bill provides that a person required to submit  
22 manure management plans for an industrial swine confinement  
23 feeding operation must submit a fee established by the  
24 department, based on the animal unit of capacity of the  
25 industrial confinement feeding operation.

26 Generally, under Code section 455B.109, a person who  
27 violates a provision in Code chapter 455B is subject to a  
28 civil penalty of up to \$10,000. Code section 455B.191  
29 provides that a person who violates water quality standards  
30 for animal feeding operations can be fined \$5,000.

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