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ENVIRONMENTAL PROTECTION

HOUSE FILE 2129

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

HF 2129

A BILL FOR

1 An Act providing for environmental protection, including by  
2 providing for a system of risk-based analysis and financial  
3 incentives, and making penalties applicable.

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

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1 Section 1. Section 455B.200A, Code 2001, is amended by  
2 adding the following new subsection:

3 NEW SUBSECTION. 4A. The department shall approve or  
4 disapprove a permit for the construction of a confinement  
5 feeding operation or related animal feeding operation  
6 structure, based on rules adopted by the department which  
7 include consideration of the risk-based siting analysis  
8 established pursuant to section 455B.200C.

9 Sec. 2. Section 455B.200A, subsection 7, Code 2001, is  
10 amended by adding the following new paragraph after paragraph  
11 a:

12 NEW PARAGRAPH. aa. A county which has adopted an  
13 ordinance establishing a confinement feeding operation siting  
14 review board as provided in section 455B.200D shall forward  
15 the application to the review board for further consideration.  
16 The process for determining siting shall proceed as provided  
17 in section 455B.200D. The county board of supervisors may  
18 submit the report of the confinement feeding operation siting  
19 review board to the department.

20 Sec. 3. Section 455B.200A, subsection 7, paragraph d, Code  
21 2001, is amended to read as follows:

22 d. The department shall consider and respond to ~~comments~~  
23 submitted submissions delivered to the department by the  
24 county board of supervisors regarding compliance by the  
25 applicant with the legal requirements for approving the  
26 construction permit as provided in this chapter, including  
27 rules adopted by the department pursuant to section 455B.200,  
28 if the ~~comments~~ submissions are delivered to the department  
29 within thirty days after receipt of the application by the  
30 county board of supervisors. Upon written request by a county  
31 resident, the county board of supervisors shall forward a copy  
32 of the ~~board's comments~~ submissions and the department's  
33 responses to the county resident as provided in chapter 22.

34 Sec. 4. NEW SECTION. 455B.200C SITING BASED ON RISK-  
35 BASED ANALYSIS.

1 1. The department shall adopt rules establishing a risk-  
2 based siting analysis according to recommendations made to the  
3 department by a technical advisory committee established  
4 pursuant to this section. The technical advisory committee  
5 shall compile data and develop, review, and update the siting  
6 analysis used to determine appropriate locations to construct  
7 an animal feeding operation structure which is partly a  
8 confinement feeding operation, including its orientation to  
9 other objects or locations for which separation distances are  
10 required pursuant to sections 455B.162 and 455B.204. The  
11 siting analysis shall provide a calculation of risks to the  
12 natural environment and the public health, comfort, and  
13 safety. The analysis shall be created as a computer model  
14 which shall account for topography, surface water drainage  
15 characteristics, seasonal air flow, suitability of the soils  
16 and the hydrology or hydrogeology of the site, the population  
17 density of the area, the character of residential development  
18 in the area, and factors related to land use planning. The  
19 analysis shall be designed to allow the department or a county  
20 confinement feeding operation siting review board to determine  
21 the appropriateness of the siting based on degrees of risk to  
22 the natural environment or the use of property by neighbors to  
23 the confinement feeding operation, including the degree to  
24 which the establishment of a conservation practice as provided  
25 in section 455B.207 may mitigate the risk. The analysis shall  
26 be used to determine whether a high, medium, or de minimus  
27 risk is present.

28 2. The technical advisory committee shall be composed of  
29 all of the following:

30 a. The presidents of the university of Iowa, Iowa state  
31 university, and the university of northern Iowa or their  
32 designees.

33 b. The director of public health or a designee.

34 c. The director of the soil conservation division of the  
5 department of agriculture and land stewardship or a designee.

1 d. The director of the center for agricultural health and  
2 safety at the university of Iowa or a designee.

3 e. The administrator of the energy and geological  
4 resources division of the department of natural resources or a  
5 designee who is responsible for the administration of the  
6 geological survey.

7 f. The administrator of the environmental protection  
8 division of the department of natural resources or a designee  
9 who is responsible for administering air quality regulations  
10 for the department.

11 g. The head of the Iowa waste reduction center for the  
12 safe and economic management of solid waste and hazardous  
13 substances at the university of northern Iowa or a designee.

14 h. A person representing the United States department of  
15 agriculture natural resources conservation service, if  
16 appointed by the service.

17 i. The president of the Iowa groundwater association or  
18 the president's designee who is a ground water professional  
19 pursuant to section 455G.18.

20 j. The chairperson of the Iowa environmental council or  
21 the chairperson's designee.

22 k. An engineer employed by a city or county who is  
23 appointed jointly by the Iowa league of cities and Iowa state  
24 association of counties.

25 l. The titular head or the head's designee of an  
26 organization serving agricultural producers generally as  
27 recognized by the governor.

28 3. The members of the technical advisory committee shall  
29 be reimbursed for their actual expenses for performing the  
30 official duties of the advisory committee.

31 Sec. 5. NEW SECTION. 455B.200D COUNTY CONFINEMENT  
32 FEEDING OPERATION SITING REVIEW BOARD.

33 1. Notwithstanding section 331.304A, a county may adopt an  
34 ordinance to establish a confinement feeding operation siting  
35 review board. The purpose of the board shall be to review the

1 appropriateness of siting an animal feeding operation  
2 structure which is part of a confinement feeding operation at  
3 a proposed site in the county, prior to the approval of a  
4 permit by the department for the construction of the  
5 structure, as provided in section 455B.200A.

6 2. The board shall be composed of all of the following:

- 7 a. A commissioner of the soil and water conservation  
8 district in the county who shall be appointed by the  
9 commissioners. If more than one district is located in the  
10 county, the board of supervisors for the county shall  
11 designate the district to be represented on a rotating basis.
- 12 b. Two members of the board of supervisors of the county  
13 who shall be appointed by the county board of supervisors.
- 14 c. The county engineer for the county or a designee.
- 15 d. The head of the local board of health for the county or  
16 a designee, who may be the county sanitarian.
- 17 e. The titular head or the head's designee of an  
18 organization serving agricultural producers generally having a  
19 presence in the county as recognized by the county's board of  
20 supervisors.

21 3. In performing the siting analysis, the board shall  
22 determine whether the siting of the animal feeding operation  
23 structure presents a high, medium, or de minimus risk to the  
24 natural environment or the use of property by neighbors to the  
25 confinement feeding operation.

26 a. If the board determines that a high risk is present,  
27 the board shall reject the proposed siting which determination  
28 shall not be reversed by the department, unless the department  
29 finds that the determination is unreasonable, arbitrary,  
30 capricious, or otherwise beyond the authority delegated to the  
31 board under this section.

32 b. If the board determines that a medium risk is present,  
33 the board shall reject the proposed siting which determination  
34 may be reversed by the department, if the department applies  
35 the siting analysis and determines that only a de minimus risk

1 is present. The board is not required to report its  
2 determination to the county board of supervisors if the board  
3 agrees to review an amended siting proposal submitted by the  
4 applicant. If an amended siting proposal is submitted by the  
5 applicant, the board and the applicant must execute an  
6 agreement to suspend the time limits for delivering  
7 submissions by the county to the department and for  
8 departmental approval or disapproval of a construction permit  
9 as required by section 455B.200A. The county shall deliver  
10 the agreement to the department according to procedures  
11 required by the department. The time limits as provided in  
12 section 455B.200A shall be suspended according to the terms  
13 and conditions provided in the agreement. The board may  
14 consider amendments which provide a different site, the change  
15 in the orientation or size of the animal feeding operation  
16 structure, or the establishment and maintenance of  
17 conservation practices as provided in section 455B.207. The  
18 board shall not approve an amended proposal unless the board  
19 determines that only a de minimus risk is present.

20 c. If the board determines that a de minimus risk is  
21 present, the board shall approve the proposed siting, which  
22 determination may be reversed by the department, if the  
23 department finds that the determination is unreasonable,  
24 arbitrary, capricious, or otherwise beyond the authority  
25 delegated to the board under this section.

26 Sec. 6. NEW SECTION. 455B.207 CONSERVATION PRACTICES  
27 PROGRAM -- COST-SHARE MONEYS.

28 1. The division of soil conservation of the department of  
29 agriculture and land stewardship shall establish and  
30 administer a program to provide financial incentives to  
31 support conservation practices on land where confinement  
32 feeding operations are located. A landowner who chooses to  
33 participate in the program must establish the conservation  
34 practice according to an agreement in which the landowner  
35 promises to establish and maintain the conservation practice

1 in return for financial incentives.

2 2. A conservation practice includes any practice that is  
3 designed to protect environmental quality from activities  
4 associated with a confinement feeding operation, including all  
5 of the following:

6 a. Water quality practices designed to protect water  
7 sources, including but not limited to the establishment of  
8 stream buffer strips, erosion control structure construction,  
9 the establishment of permanent grass and buffer zones, filter  
10 strips, and erosion control structures, and practices to  
11 mitigate the effects of concentrated contamination on surface  
12 and subsurface water quality from manure originating from  
13 confinement feeding operations.

14 b. Air quality practices, including but not limited to the  
15 establishment of stands of fast growing trees or wind barriers  
16 around confinement feeding operations and agricultural land  
17 where manure is stored or applied.

18 3. The financial incentives shall be allocated by the  
19 division on a cost-share basis which does not exceed fifty  
20 percent of the estimated cost of establishing the practices,  
21 or fifty percent of the actual cost, whichever is less.

22 4. The division shall adopt rules necessary to administer  
23 this section.

24 Sec. 7. NEW SECTION. 455B.208 ENERGY RECOVERY PROGRAM --  
25 COST-SHARE MONEYS.

26 1. The department of natural resources shall establish  
27 and administer a program to provide financial incentives to  
28 support the installation of energy recovery equipment as a  
29 part of confinement feeding operations. A landowner who  
30 chooses to participate in the program must install the  
31 equipment according to an agreement in which the landowner  
32 promises to install and maintain the equipment in return for  
33 financial incentives.

34 2. The financial incentives shall be allocated by the  
35 department on a cost-share basis which does not exceed fifty

1 percent of the estimated cost of installing the equipment, or  
2 fifty percent of the actual cost, whichever is less.

3 3. The department shall adopt rules necessary to  
4 administer this section.

5 Sec. 8. STUDY. The university of Iowa, Iowa state  
6 university, and the university of northern Iowa, under the  
7 direction of the state board of regents, shall cooperate in  
8 performing a study of the social and economic impacts  
9 associated with the expansion of confinement feeding  
10 operations in this state. The universities shall prepare and  
11 submit a report to the general assembly not later than January  
12 1, 2004.

13 EXPLANATION

14 This bill amends Code chapter 455B, which generally  
15 regulates environmental protection in the state by the  
16 department of natural resources. The bill amends current  
17 provisions providing for the regulation of confinement feeding  
18 operations, including Code section 455B.200A, which provides  
19 for departmental issuance of permits for the construction of  
20 animal feeding operation structures that are part of  
21 confinement feeding operations (e.g., confinement buildings  
22 and manure storage structures). The section provides for the  
23 siting of these structures with some participation by  
24 counties. Generally, under Code section 331.304A, a county is  
25 prohibited from establishing any specified locations for  
26 confinement feeding operations.

27 The bill provides that the department must establish a  
28 risk-based siting analysis according to recommendations made  
29 to the department by a technical advisory committee. The  
30 committee is responsible for compiling data and developing,  
31 reviewing, and updating the siting analysis used to determine  
32 appropriate locations to construct an animal feeding operation  
33 structure associated with a confinement feeding operation.  
34 The analysis is to provide a calculation of risks to the  
35 natural environment and the public health, comfort, and safety



1 based on computer modeling which accounts for a number of  
2 factors (e.g., topography, surface water drainage  
3 characteristics, seasonal air flow, soil conditions, hydrology  
4 or hydrogeology, population density, and the character of  
5 residential development in the area). The analysis is used to  
6 determine whether a high, medium, or de minimus risk is  
7 present.

8 The bill provides that, notwithstanding Code section  
9 331.304A, a county may adopt an ordinance to establish a  
10 confinement feeding operation siting review board. The  
11 purpose of the board is to review the appropriateness of  
12 siting an animal feeding operation structure associated with a  
13 confinement feeding operation at a proposed site in the  
14 county, prior to the approval of a permit by the department  
15 for the construction of the structure. In performing the  
16 siting analysis, the board is required to determine whether  
17 the siting of the animal feeding operation presents a high,  
18 medium, or de minimus risk to the natural environment or the  
19 use of property by neighbors to the confinement feeding  
20 operation.

21 If the board determines that there is a high risk, the  
22 board must reject the proposed siting which determination  
23 shall not be reversed by the department, unless the department  
24 finds that the determination is unreasonable, arbitrary,  
25 capricious, or otherwise beyond the authority delegated to the  
26 board. If the board determines that there is a medium risk,  
27 the board must reject the proposed siting which determination  
28 may be reversed by the department, if the department applies  
29 the siting analysis and determines that only a de minimus risk  
30 is present. The board and the applicant may execute an  
31 agreement to suspend the time limits for delivering  
32 submissions by the county to the department and for  
33 departmental approval or disapproval of a construction permit.  
34 If the board determines that only a de minimus risk is  
35 present, the board must approve the proposed siting, which

1 determination may be reversed by the department, if the  
2 department finds that the determination is unreasonable,  
3 arbitrary, capricious, or otherwise beyond the authority  
4 delegated to the board.

5 Generally under Code chapter 455B, a person who violates a  
6 provision regulating animal feeding operations is subject to a  
7 civil penalty. This bill amends water quality provisions. A  
8 person violating a water quality provision is subject to a  
9 civil penalty of up to \$5,000.

10 The bill requires the division of soil conservation of the  
11 department of agriculture and land stewardship to establish  
12 and administer a program to provide financial incentives to  
13 support conservation practices on land where confinement  
14 feeding operations are located. A landowner who chooses to  
15 participate in the program must establish the conservation  
16 practice according to an agreement in which the landowner  
17 promises to establish and maintain the conservation practice  
18 in return for financial incentives. A conservation practice  
19 includes any practice which is designed to protect  
20 environmental quality from activities associated with a  
21 confinement feeding operation, including practices related to  
22 air and water quality. The bill provides that the financial  
23 incentives are awarded on a cost-share basis.

24 The bill requires the department of natural resources to  
25 establish and administer a program to provide financial  
26 incentives to support the installation of energy recovery  
27 equipment as part of confinement feeding operations. The bill  
28 provides that the financial incentives are awarded on a cost-  
29 share basis.

30 The bill also provides for a study to be conducted by the  
31 university of Iowa, Iowa state university, and the university  
32 of northern Iowa, which are required to cooperate to consider  
33 the social and economic impacts associated with the expansion  
34 of confinement feeding operations in this state.

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# Legislative Fiscal Bureau

## Fiscal Note

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HF 2129 - Hog Lot Siting (LSB 5439 HH)

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Fiscal Note Version – New

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### Description

House File 2129 changes the method for issuing construction permits for animal feeding operations. This includes the establishment of a Department of Natural Resources Technical Advisory Committee and County Siting Review Board.

### Assumptions

1. The average one-time cost for a computer program and database to review suitable locations to construct animal feeding operations is \$400,000.
2. The average cost to operate the Technical Advisory Board is \$50,000 per year.
3. The average cost for salary and benefits for two full-time Division of Soil Conservation employees is \$100,000 for FY 2002 and subsequent years.
4. The average cost to offer financial incentives is \$50,000 per year.
5. The average cost for a study on the economical and social impacts associated with the expansion of confinement feeding operations is \$500,000.

### Fiscal Impact

The estimated fiscal impact of House File 2129 is an increase in General Fund expenditures of \$1.1 million (including \$900,000 in one-time costs for equipment and the economical and social impact study) and 2.00 FTE positions for FY 2003. The fiscal impact for FY 2004 and subsequent years is \$200,000 and no change in FTE positions.

### Source

Department of Natural Resources

\_\_\_\_\_ s/s Dennis C Prouty \_\_\_\_\_

February 7, 2002

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The fiscal note and correction impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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