AGRICULTURE

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SENATE FILE 2159

BY SEXTON

Passed Senate, Date ____________ Passed House, Date ____________

Vote: Ayes _______ Nays ________ Vote: Ayes _______ Nays ________

Approved ______________________________

A BILL FOR

An Act relating to animal agriculture by establishing an animal agriculture compliance fee for purposes of supporting the administration of the department of natural resources, providing for a fund and the appropriation of moneys, and making penalties applicable and providing an effective date.

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

SF 2159

AGRICULTURE

TLSB 5780XS 79

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S.F. 2159 H.F. ______

Section 1. Section 7D.10A, Code 2001, is amended to read as follows:

7D.10A ~~ALLOCATION-TO-MANURE-STORAGE-INDEMNITY-FUND~~ ANIMAL AGRICULTURE -- FUNDS.

1. If moneys are not sufficient to support the manure storage indemnity fund as provided in chapter 455J, the executive council may allocate from moneys in the general fund of the state, which are not otherwise obligated or encumbered, an amount to the manure storage indemnity fund as provided under section 455J.2. However, not more than a total of one million dollars shall be allocated to the manure storage indemnity fund at any time.

2. The executive council may authorize the department of natural resources to adopt rules to establish rates for animal agriculture compliance fees or increase the rates as provided in section 455B.124 after July 1, if the department fails to adopt the rule by such date.

Sec. 2. Section 179.1, subsection 2, Code 2001, is amended to read as follows:

2. ~~The-term-"commission"-shall-mean~~ "Commission" means the Iowa dairy industry commission created pursuant to section 179.2.

Sec. 3. NEW SECTION. 179.7A COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES.

The commission shall cooperate with the department of natural resources in administering chapter 455B, division I, part 2. The department in cooperation with the commission may require the use of joint records, including but not limited to returns as provided in section 179.7 and invoices as provided in section 455B.125, on single forms.

Sec. 4. NEW SECTION. 181.19A COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES.

The executive committee shall cooperate with the department of natural resources in administering chapter 455B, division I, part 2. The department in cooperation with the executive committee may require the use of joint records, including but not limited to invoices as provided in sections 181.19 and 455B.125, on single forms.

Sec. 5. NEW SECTION. 182.15A COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES.

The board shall cooperate with the department of natural resources in administering chapter 455B, division I, part 2. The department in cooperation with the board may require the use of joint records, including but not limited to invoices as provided in sections 182.15 and 455B.125, on single forms.

Sec. 6. NEW SECTION. 183A.6A COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES.

The council shall cooperate with the department of natural resources in administering chapter 455B, division I, part 2. The department in cooperation with the council may require the use of joint records including but not limited to invoices as provided in sections 183A.6 and 455B.125, on single forms.

Sec. 7. NEW SECTION. 184.4A COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES.

The council shall cooperate with the department of natural resources in administering chapter 455B, division I, part 2. The department in cooperation with the council may require the use of joint records, including but not limited to invoices as provided in sections 184.4 and 455B.125, on single forms.

Sec. 8. NEW SECTION. 184A.3A COOPERATION WITH THE DEPARTMENT OF NATURAL RESOURCES.

The council shall cooperate with the department of natural resources in administering chapter 455B, division I, part 2. The department in cooperation with the council may require the use of joint records, including but not limited to invoices as provided in sections 184A.3 and 455B.125, on single forms.

PART 2

ANIMAL FEEDING OPERATIONS

Sec. 9. NEW SECTION. 455B.121 DEFINITIONS.

As used in this part, unless the context otherwise requires:

1. "Assessment" means an assessment imposed on a producer or an excise tax levied on a producer and collected for the benefit of a commodity organization as provided in chapters 179, 181, 182, 183A, 184, and 184A.

2. "Commodity organization" means the Iowa dairy industry commission created in section 179.2, the executive committee of the Iowa beef cattle producers association created in section 181.3, the Iowa sheep and wool promotion board established pursuant to section 182.4, the Iowa pork producers council created in section 183A.2, the Iowa egg council established pursuant to section 184.2, or the Iowa turkey marketing council established pursuant to section 184A.1A.

3. "Compliance costs" means all expenditures incurred or obligated by the department in administering and enforcing the provisions of division II, part 2, and division III, part 1, subpart A, as is necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions.

4. "Compliance fee" or "fee" means the animal agriculture compliance fee established in section 455B.123.

5. "Compliance fund" means the animal agriculture compliance fund created in section 455B.127.

6. "First purchaser" means any of the following:

a. A first purchaser as defined in section 179.1 who purchases milk from a producer in the same manner as provided in chapter 179.

b. A first purchaser as defined in section 181.1 who buys cattle or veal calves for slaughter in the same manner as provided in chapter 181.

c. A first purchaser as defined in section 182.1 who purchases sheep or wool from a producer in the same manner as provided in chapter 182.

d. A first purchaser as defined in section 183A.1 who buys porcine animals from a seller in the first instance in the same manner as provided in chapter 183A.

e. A processor as defined in section 184.1 who is the first purchaser of eggs from a producer or who both produces and processes eggs in the same manner as provided in chapter 184.

f. A processor as defined in section 184A.1 who purchases turkeys for slaughter in the same manner as provided in chapter 184A.

g. A processor who purchases broiler chickens for slaughter in the same manner as a processor as defined in section 184A.1 purchases turkeys for slaughter under chapter 184A.

7. "Producer" means the producer of a commodity that is subject to a compliance fee as provided in section 455B.123, including all of the following:

a. A producer as defined in sections 179.1, 181.1, 182.1, 183A.1, 184.1, and 184A.1.

b. A person residing within this state or outside this state who does business in this state and who raises more than five broiler chickens for slaughter each year, regardless of whether the person processes the broiler chickens.

8. "Record" means the same as defined in section 516E.1.

Sec. 10. NEW SECTION. 455B.122 COOPERATION BY INTERESTED AGENCIES AND ORGANIZATIONS.

The department of agriculture and land stewardship, the treasurer of state, and existent commodity organizations and their affiliated associations shall cooperate with the department in administering this part.

Sec. 11. NEW SECTION. 455B.123 ANIMAL AGRICULTURE COMPLIANCE FEE -- ESTABLISHMENT.

1. There is established an animal agriculture compliance fee that shall be imposed and collected as provided in section 455B.124. The compliance fee shall be collected on the following commodities produced in this state:

a. Milk.

b. Cattle and veal calves.

c. Wool or sheep.

d. Porcine animals.

e. Eggs.

f. Turkeys.

g. Broiler chickens.

2. a. Except as provided in paragraph "b", the compliance fee shall be imposed upon producers of the commodities provided in this section and collected by the first purchasers of the commodities in the same manner as assessments, regardless of whether an assessment is actually being collected pursuant to a referendum or whether the assessment has been suspended pursuant to a federal Act.

b. Notwithstanding procedures used for the collection of assessments for the sale of commodities to consumers or first purchasers in other states as provided in chapter 179, 181, 182, 183A, 184, or 184A, the department may exempt these transactions, or provide for other collection procedures including but not limited to requiring payment directly by the producer or executing agreements with first purchasers from outside this state for the payment of the compliance fee.

c. A compliance fee shall not be imposed upon a commodity that is produced outside this state.

Sec. 12. NEW SECTION. 455B.124 ANIMAL AGRICULTURE COMPLIANCE FEES -- ASSESSMENT AND ADJUSTMENTS -- DELINQUENCIES.

1. The rates for the animal agriculture compliance fee shall be established and adjusted by rule adopted by the department which shall be effective on July 1 of each year. The rates shall expire on the following June 30. Notwithstanding section 17A.5, a rule adopted under this section to establish rates for the compliance fee or increase rates shall not be effective immediately upon filing and shall not be made retroactively applicable. If the department fails

to adopt the rule establishing or adjusting the rates for the compliance fee as required in this section, the compliance fee shall be suspended until the following July 1 or the executive council authorizes the adoption of a rule by the department establishing or adjusting the rates effective after July 1.

2. The animal agriculture compliance fee shall be assessed as follows:

a. For milk that is subject to an excise tax levied on producers and collected by first purchasers as provided in section 179.5, the compliance fee shall be collected by the first purchasers at a rate of not more than three-fourths of one percent of the gross value of the milk produced in this state.

b. For cattle and veal calves that are subject to an excise tax levied on producers and collected by first purchasers as provided in section 181.19, the compliance fee shall be collected by first purchasers at a rate of not more than the following:

(1) Fifty cents per head on all beef cattle sold for slaughter.

(2) Thirty-five cents per head on all veal calves sold for slaughter and on all sales of beef cattle for any other purpose.

c. For wool or sheep that is subject to an assessment imposed on producers and collected by first purchasers as provided in section 182.14, the compliance fee shall be collected by the first purchasers at a rate of not more than two cents for each pound of wool produced and sold by a producer and not more than ten cents per head on sheep sold by a producer.

d. For porcine animals that are subject to an assessment imposed on sellers and collected by first purchasers as provided in section 183A.6, the compliance fee shall be collected by the first purchasers at a rate of not more than point zero zero three of the gross sale price of all porcine animals.

e. For eggs that are subject to an assessment imposed on producers and collected by purchasers as provided in section 184.3, the compliance fee shall be collected by the purchasers at a rate of not more than five cents for each thirty dozen eggs.

f. For turkeys that are subject to an assessment imposed on producers and collected by first purchasers who are processors as provided in section 184A.2, the compliance fee shall be collected by the first purchasers who are processors at a rate of not more than three cents for each turkey.

g. For broiler chickens the compliance fee shall be imposed on producers, and collected by the first purchasers who are processors in the same manner as turkeys are subject to an assessment imposed on producers and collected by first purchasers who are processors as provided in section 184A.2. The compliance fee shall be assessed at a rate of not more than one cent for each broiler chicken.

3. Prior to July 1, the department shall determine the balance of moneys available to completely pay compliance costs for the next fiscal year by calculating the ending balance of the compliance fund on June 30.

a. If the calculation indicates a balance of unexpended and unobligated moneys expected to be available on June 30 of three hundred thousand dollars or more, the department shall decrease the rates for the compliance fee for the next fiscal year by an amount which results in an ending estimated balance of moneys for June 30 of the next fiscal year of three hundred thousand dollars.

b. If the calculation indicates a balance of unexpended and unobligated moneys expected to be available on June 30 of less than three hundred thousand dollars, the department shall increase the rates for the compliance fee for the next fiscal year by an amount which will result in an ending estimated balance of such moneys for June 30 of the next fiscal year of three hundred thousand dollars.

4. The department may charge interest on any amount of a compliance fee that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue and finance pursuant to section 421.7. The interest amount shall be computed from the date the compliance fee is delinquent, unless the department designates a later date. The interest amount shall accrue for each month in which there is delinquency calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount due shall become a part of the amount of the compliance fee due.

5. The amount of a compliance fee, including any delinquency penalty, shall constitute a debt due the state and become the basis of a judgment against the person in arrears.

Sec. 13. NEW SECTION. 455B.125 RECORDS.

1. A first purchaser shall provide records as required by the department in order to notify producers of the animal agriculture compliance fee established pursuant to section 455B.123 and account for revenues from the compliance fees remitted to the treasurer of state pursuant to section 455B.126.

2. The records shall include all of the following:

a. A receipt returned to the producer that includes the rate for the animal agriculture compliance fee imposed and the total amount of the fee.

b. An invoice which shall be delivered to the department within a period established by departmental rule in order to audit the amount of the compliance fees owed, due, and collected. The invoice shall at least include all of the following:

(1) The name and address of the producer or seller.

(2) The name and address of the first purchaser.

(3) The commodity purchased and the amount of the

commodity as required to calculate the compliance fee.

c. The date of the commodity's delivery or purchase.

3. The first purchaser shall authenticate the invoice as required by the department. The department may require that the first purchaser submit a separate invoice for each purchase.

4. The department may provide for different forms of records based on the commodity purchased or may use joint records, including but not limited to invoices, for use by commodity organizations and the department on single forms.

5. A first purchaser shall provide the department with any information required by the department to carry out the provisions of this part. For the purpose of ascertaining the correctness of any information provided to the department, the department may examine the first purchaser's records. When entering the premises of a first purchaser, a departmental official or agent shall comply with section 455B.103.

Sec. 14. NEW SECTION. 455B.126 ADMINISTRATION OF ANIMAL AGRICULTURE COMPLIANCE FEES -- TREASURER OF STATE.

1. A first purchaser shall remit amounts collected from the animal agriculture compliance fee pursuant to section 455B.123 to the treasurer of state as required by the treasurer of state for deposit in the animal agriculture compliance fund as established in section 455B.127.

2. The treasurer of state may require that compliance fees be remitted in the same manner, at the same time, and according to the same procedures as assessments. However, compliance fees shall not be commingled with any other moneys, including assessments. A compliance fee is not refundable.

Sec. 15. NEW SECTION. 455B.127 ANIMAL AGRICULTURE COMPLIANCE FUND.

1. An animal agriculture compliance fund is created in the state treasury under the control of the department. The compliance fund is separate from the general fund of the state.

2. The compliance fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the compliance fund. The compliance fund shall include moneys deposited into the fund from the imposition of the animal agriculture compliance fee.

3. Moneys in the compliance fund are appropriated to the department exclusively to pay for compliance costs. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection.

4. Moneys in the fund, which may be subject to warrants written by the director of revenue and finance, shall be drawn upon the written requisition of the director of the department of natural resources or an authorized representative of the director.

5. Notwithstanding section 8.33, any unexpended balance in the compliance fund at the end of the fiscal year shall be retained in the fund. Notwithstanding section 12C.7, subsection 2, interest, earnings on investments, or time deposits of the moneys in the fund shall be credited to the fund.

Sec. 16. DIRECTIONS TO CODE EDITOR. The Code editor is directed to do all of the following:

1. Transfer section 455B.110 to a new section under division I, part 2, as provided in this Act.

2. Divide provisions in chapter 455B, division III, part 1, into two subparts for purposes of distinguishing provisions relating to animal feeding operations.

Sec. 17. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

EXPLANATION

This bill amends Code chapter 455B, which in part provides for the regulation of animal feeding operations by the department of natural resources, including confinement feeding operations and open feedlots. Provisions relating to animal feeding operations largely appear in two places: in Code chapter 455B, division II, which regulates air quality regulations (e.g., separation distance requirements), and division III, which regulates water quality (e.g., construction permit and manure management plan requirements). The bill amends division I of the Code chapter that provides for the department's administration of the Code chapter.

The bill establishes an animal agriculture compliance fee (referred to as a compliance fee) imposed upon the owners of animals in this state for the benefit of the department of natural resources in regulating animal feeding operations. The compliance fees are collected on the sale of commodities in the same manner as excise taxes or assessments (commonly referred to as checkoffs) are authorized to be collected on commodities for the benefit of promotional organizations such as the Iowa dairy industry commission, the executive committee of the Iowa beef cattle producers association, the Iowa sheep and wool promotion board, the Iowa pork producers council, the Iowa egg council, and the Iowa turkey marketing council. There is no promotional organization recognized in the Code for the promotion of products derived from broiler chickens. The bill imposes the compliance fee on the sale of broiler chickens in the same manner as it imposes the fee on the sale of turkeys. The provisions of the checkoff Code chapters provide that assessments are paid by the first purchaser of a commodity from the producer of the commodity and deposited into funds administered by the treasurer of state before being transferred to the commodity organizations.

The bill provides for rates for the compliance fee that is based on the current checkoff assessments. It requires that a first purchaser remit the compliance fee to the treasurer of state in the same manner as checkoff assessments. It provides that first purchasers must provide records as required by the department in order to notify producers of the compliance fee and provide the department with invoices for the purchases in order to account for correct revenues. The bill requires the department, the treasurer of state, the department of agriculture and land stewardship, and the commodity associations and their related associations to cooperate in order to administer the bill's provisions.

The bill establishes an agriculture animal compliance fund (also referred to as the compliance fund) used for the exclusive purpose of supporting the department in administering legal provisions applicable to animal feeding operations under Code chapter 455B. The bill provides that prior to July 1 of each year, the department must determine the balance of moneys available to pay compliance costs for the next fiscal year by calculating the ending balance of the compliance fund on June 30. The department is required to increase or decrease the rates for the compliance fee by an amount that will result in an ending estimated balance of moneys in the fund for June 30 of the next fiscal year of $300,000. If the department fails to timely establish the rate or provide for a rate increase, it must be authorized to adopt the rule by the executive council.

According to Code section 455B.109, the environmental protection commission is required to establish a schedule or range of civil penalties under the chapter for not more than $10,000 for a violation.

The bill takes effect upon enactment.