

MAR 9 2004  
Place On Calendar

HOUSE FILE 2523  
BY COMMITTEE ON ENVIRONMENTAL  
PROTECTION

(SUCCESSOR TO HSB 695)  
(COMPANION TO LSB 6597SV)

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

**A BILL FOR**

1 An Act providing for the regulation of air quality, and making  
2 penalties applicable.

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

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HF 2523

**HOUSE FILE 2523**

**H-8269**

- 1 Amend House File 2523 as follows:
- 2 1. Page 1, by striking lines 1 through 31.
- 3 2. By renumbering as necessary.

By KUHN of Floyd  
GREIMANN of Story

H-8269 FILED MARCH 18, 2004

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1 Section 1. Section 455B.133, subsection 4, unnumbered  
2 paragraph 1, Code 2003, is amended to read as follows:

3 Adopt, amend, or repeal emission limitations or standards  
4 relating to the maximum quantities of air contaminants that  
5 may be emitted from any air contaminant source. The standards  
6 or limitations adopted under this section shall not exceed the  
7 standards or limitations promulgated by the administrator of  
8 the United States environmental protection agency or the  
9 requirements of the federal Clean Air Act as amended through  
10 January 1, 1991. ~~This does not prohibit the~~ The commission  
11 ~~from adopting~~ shall not adopt a standard for a source or class  
12 of sources for which the United States environmental  
13 protection agency has not promulgated a standard. This ~~also~~  
14 section does not prohibit the commission from adopting an  
15 emission standard or limitation for infectious medical waste  
16 treatment or disposal facilities which exceeds the standards  
17 or limitations promulgated by the administrator of the United  
18 States environmental protection agency or the requirements of  
19 the federal Clean Air Act as amended through January 1, 1991.  
20 The commission shall not adopt an emission standard or  
21 limitation for infectious medical waste treatment or disposal  
22 facilities prior to January 1, 1995, which exceeds the  
23 standards or limitations promulgated by the administrator of  
24 the United States environmental protection agency or the  
25 requirements of the federal Clean Air Act, as amended through  
26 January 1, 1991, for a hospital, or a group of hospitals,  
27 licensed under chapter 135B which has been operating an  
28 infectious medical waste treatment or disposal facility prior  
29 to January 1, 1991. The commission shall not adopt or enforce  
30 rules under this section that apply to an animal feeding  
31 operation as provided in chapter 459.

32 Sec. 2. NEW SECTION. 455B.133A HEALTH EFFECT ADVISORY  
33 PANEL.

34 Concurrent with the field study conducted pursuant to  
35 section 459.207, a health effect advisory panel shall be

1 convened as provided in this section.

2 1. a. The director shall request interested organizations  
3 to appoint voting members to the panel as follows:

4 (1) The national research council of the national  
5 academies, which may appoint up to three members.

6 (2) The agency for toxic substances and disease registry,  
7 which may appoint one member.

8 (3) The university of Iowa or the national institutes of  
9 health, which may appoint one member.

10 (4) Iowa State university, which may appoint one member.

11 (5) The Iowa department of public health, which may  
12 appoint one member.

13 (6) The United States department of agriculture, which may  
14 appoint one member.

15 (7) The department of agriculture and land stewardship,  
16 which may appoint one member.

17 Each organization that appoints a member to the panel may  
18 also appoint an alternate who shall serve as the  
19 organization's representative on the panel if the principal  
20 appointee is unable to attend.

21 b. The director shall appoint the following persons who  
22 shall serve on the panel as ex officio, nonvoting members:

23 (1) A person who owns a confinement feeding operation that  
24 includes a structure which stores liquid manure, other than a  
25 small animal feeding operation.

26 (2) A person who owns a confinement feeding operation that  
27 includes a structure which stores manure exclusively on a dry-  
28 matter basis, other than a small animal feeding operation.

29 (3) A person who resides within one mile of a confinement  
30 feeding operation, other than a small animal feeding  
31 operation.

32 (4) A person who is actively engaged in a manufacturing  
33 business, other than the manufacturing of anhydrous ammonia.

34 (5) A person who is actively engaged in a business  
35 involved in the manufacturing, storage, or delivery of

1 anhydrous ammonia.

2 (6) A person who represents a municipality in this state  
3 and is actively engaged in operating a wastewater treatment  
4 facility.

5 (7) A person who is employed by the department.

6 Each ex officio member may appoint an alternate who shall  
7 serve in place of the principal member appointed by the  
8 director whenever the principal member is unable to attend a  
9 meeting.

10 2. a. The voting members of the panel shall elect a  
11 chairperson from the panel's membership. Meetings may be  
12 called by the chairperson or a majority of the voting members.  
13 A majority of the panel's voting members constitutes a quorum.  
14 An affirmative vote of a majority of the entire voting  
15 membership is necessary for the panel to take a substantive  
16 action other than adjourning a meeting.

17 b. The voting members shall serve without per diem, but  
18 shall be reimbursed by the department for actual and necessary  
19 expenses. The ex officio members shall serve without per diem  
20 expenses.

21 3. Upon request by the panel, the department shall provide  
22 clerical and technical staffing, materials, and meeting rooms  
23 necessary for the panel's operations.

24 4. The panel is a government body for purposes of chapters  
25 21 and 22.

26 5. a. The panel may advise the department and shall  
27 submit interim reports and a final report to the general  
28 assembly regarding health effect levels as defined in section  
29 459.207, if any, for odor. The report shall include a  
30 determination whether a health effect level for odor is  
31 determinable based on a reasonable degree of scientific  
32 certainty. If the panel finds that it is determinable, the  
33 report shall contain findings and recommendations regarding  
34 the health effect levels of odor.

35 b. The panel shall submit an interim report to the general

1 this state.

2 3. The department shall collect monitoring data only from  
3 separated locations as provided in this subsection.

4 Monitoring data collected at locations other than as provided  
5 in this subsection shall be invalid.

6 a. For purposes of measuring hydrogen sulfide and ammonia,  
7 monitoring data is considered to be taken at a separated  
8 location if the monitor is located within three hundred feet  
9 of the following:

10 (1) A structure that constitutes the separated location.

11 (2) The boundaries of a public use area.

12 However, in no event shall monitoring data be collected at  
13 a distance closer than the required minimum separation  
14 distance that applies to the manure application or confinement  
15 feeding operation structure.

16 b. For purposes of measuring odor, monitoring data is  
17 considered to be taken at a separated location if the  
18 monitoring data is collected at a location that is not closer  
19 than the required minimum separation distance that applies to  
20 the manure application or confinement feeding operation  
21 structure.

22 4. a. For an airborne pollutant that is hydrogen sulfide,  
23 the minimal risk levels are as follows:

24 (1) The acute minimal risk level is a concentration dose  
25 exceeding seventy parts per billion for the duration of  
26 fourteen consecutive days. The sum of the hourly averages for  
27 fourteen consecutive days shall not exceed twenty-three and  
28 fifty-two hundredths parts per million-hour.

29 (2) The intermediate minimal risk level is a concentration  
30 dose exceeding thirty parts per billion for the duration of  
31 three hundred sixty-four consecutive days. The sum of the  
32 hourly averages for three hundred sixty-four consecutive days  
33 shall not exceed two hundred sixty-two parts per million-hour.

34 b. For an airborne pollutant that is ammonia, the minimal  
35 risk levels are as follows:

1 (1) The minimal risk level is a concentration dose  
2 exceeding one thousand seven hundred parts per billion for the  
3 duration of fourteen consecutive days. The sum of the hourly  
4 averages for fourteen consecutive days shall not exceed five  
5 hundred seventy-one parts per million-hour.

6 (2) The chronic minimal risk level is a concentration dose  
7 exceeding three hundred parts per billion for the duration of  
8 three hundred sixty-five or more consecutive days. The sum of  
9 the hourly averages for three hundred sixty-five consecutive  
10 days shall not exceed two thousand six hundred twenty-eight  
11 parts per million-hour.

12 c. A consecutive day for purposes of this subsection shall  
13 be determined as provided in this paragraph. Hourly averages  
14 must first be computed by averaging all valid five-minute  
15 averages recorded by the data acquisition system in that hour.  
16 An hourly average is considered valid if at least forty-five  
17 minutes of valid five-minute averages are recorded by the date  
18 acquisition system. A sampling day consists of twenty-four  
19 nonoverlapping hours beginning from midnight on a given day to  
20 midnight on the following day. A day of continuous monitoring  
21 data is valid if at least eighteen hours of valid hourly  
22 averages have been recorded at the monitoring location. To  
23 determine the daily average, each of the valid hourly  
24 concentrations associated with a sampling day shall be  
25 averaged and truncated to one part per billion. The daily  
26 average shall be used to compare with the appropriate minimal  
27 risk level or health effect level to determine whether the  
28 requisite number of consecutive daily averages exceeds the  
29 applicable concentration dose.

30 5. After completion of the field study, the commission may  
31 adopt rules pursuant to chapter 17A, except section 17A.4,  
32 subsection 2, and section 17A.5, subsection 2, paragraph "b",  
33 to do any of the following:

34 a. Establish recommended best management practices,  
35 mechanisms, processes, or infrastructure designed to reduce

1 airborne pollutants from animal feeding operations in  
2 accordance with this section. The recommended best management  
3 practices, mechanisms, processes, or infrastructure may be  
4 developed for a particular air pollutant and for a specific  
5 type of confinement feeding operating structure if the data  
6 from the field study demonstrates to a reasonable degree of  
7 scientific certainty that a particular airborne pollutant from  
8 that type of confinement feeding operation structure is  
9 present at the separated location at a level exceeding a  
10 minimal risk level for hydrogen sulfide or ammonia, or as  
11 applicable a health effect level for odor. The department  
12 shall consult with the department of agriculture and land  
13 stewardship, Iowa state university college of agriculture, and  
14 livestock producers who may be impacted before establishing  
15 recommended best management practices, mechanisms, processes,  
16 or infrastructure. The department shall provide a procedure  
17 for the approval of alternative or experimental best  
18 management practices, mechanisms, processes, or infrastructure  
19 designed to reduce an airborne pollutant from an animal  
20 feeding operation.

21 b. Establish rules for the enforcement of a minimal risk  
22 level or health effect level only in accordance with this  
23 subsection. The commission may adopt rules providing for the  
24 enforcement of a minimal risk level for hydrogen sulfide or  
25 ammonia, or as applicable a health effect level for odor for a  
26 particular airborne pollutant, for a specific type of  
27 confinement feeding operation structure if all of the  
28 following apply:

29 (1) The data from the field study demonstrates to a  
30 reasonable degree of scientific certainty that the airborne  
31 pollutant from that type of confinement feeding operation  
32 structure is present at separated locations at levels  
33 exceeding the minimal risk level for hydrogen sulfide or  
34 ammonia, or as applicable a health effect level for odor.

35 (2) A statute that provides for the health effect level is

1 enacted.

2 The commission shall not adopt rules if the data does not  
3 demonstrate to a reasonable degree of scientific certainty  
4 that the airborne pollutant from a specific type of  
5 confinement feeding operation structure is present at  
6 separated locations at levels that exceed the minimal risk  
7 level for hydrogen sulfide or ammonia, or as applicable the  
8 health effect level for odor.

9 6. If the commission adopts rules under subsection 5, the  
10 department may monitor the level of airborne pollutants at a  
11 separated location in accordance with subsection 3. However,  
12 the department shall not monitor the level of airborne  
13 pollutants unless a written complaint is received from the  
14 owner or occupant of the separated location. The department  
15 shall monitor the level of airborne pollutants by collecting  
16 data at the separated location owned or occupied by the person  
17 making the complaint. In providing for the enforcement of the  
18 minimal risk level for hydrogen sulfide or ammonia, or as  
19 applicable the health effect level for odor, the department  
20 shall take all measurements at the separated location in  
21 accordance with subsection 3.

22 a. In using monitoring equipment to collect data for  
23 hydrogen sulfide, equipment shall incorporate a thermal  
24 oxidizer and a reference method for the measurement of ambient  
25 concentrations of sulfur dioxide that meet all calibrations,  
26 standards, and testing requirements established by the United  
27 States environmental protection agency. In using monitoring  
28 equipment to collect data for ammonia, the equipment shall  
29 incorporate a thermal oxidizer and a reference method for the  
30 measurement of ambient concentrations of nitrogen dioxide that  
31 meet all calibrations, standards, and testing requirements  
32 established by the United States environmental protection  
33 agency.

34 b. The department shall not enforce a rule adopted  
35 pursuant to this section based on data, if any of the

1 following apply to the collection of such data:

2 (1) The data is collected from a site other than a  
3 separated location as provided in this section.

4 (2) The data collected exceeds the minimal risk level or  
5 health effect level but is within the monitoring equipment's  
6 margin of error as established pursuant to rules which shall  
7 be adopted by the commission.

8 (3) The monitoring equipment used to collect data for  
9 hydrogen sulfide or ammonia does not meet the specifications  
10 for such equipment as required by this section or rules  
11 adopted by the commission.

12 c. If the department determines that a violation of a  
13 minimal risk level or health effect level exists, the  
14 department shall conduct an investigation to trace the source  
15 of the airborne pollutant after the department has collected  
16 data measuring an airborne pollutant from a separated  
17 location. The department may enter the premises of a  
18 confinement feeding operation in compliance with section  
19 455B.103. The department shall comply with standard  
20 biosecurity requirements customarily required by the  
21 confinement feeding operation that are necessary to control  
22 the spread of disease among an animal population.

23 d. If the department determines that a violation of a  
24 minimal risk level or health effect level is caused by an  
25 airborne pollutant from a confinement feeding operation  
26 structure, the department shall issue a written notice to the  
27 owner of the confinement feeding operation. The notice shall  
28 require that the owner reduce the emission of the airborne  
29 pollutant to meet the minimal risk level or health effect  
30 level. The notice shall expire one year from the date of its  
31 issuance. The owner shall not be in violation of state law  
32 for failing to comply with the notice during its effective  
33 period. If the department determines that a violation of a  
34 minimal risk level or health effect level is caused by an  
35 airborne pollutant from the confinement feeding operation

1 structure after the notice has expired, the department may  
2 commence an enforcement action as provided in this chapter.  
3 However, the owner shall not be subject to an enforcement  
4 action for the period that the department's notice is in  
5 effect, and shall not be subject to the imposition of  
6 penalties based on a violation during that period.

7 7. The commission's rules providing for a minimal risk  
8 level or health effect level shall not exceed a standard or  
9 limitation applying to the same minimal risk level or health  
10 effect level pursuant to the requirements of the federal Clean  
11 Air Act as amended through January 1, 1991, or regulations  
12 promulgated by the United States environmental protection  
13 agency. This section shall supersede the commission's  
14 authority under section 455B.133.

15 EXPLANATION

16 GENERAL. This bill amends provisions in Code chapters 455B  
17 and 459, regulating air quality administered by the department  
18 of natural resources. Code chapter 455B, division II,  
19 provides general air quality regulatory authority to the  
20 department, and Code chapter 459 specifically regulates animal  
21 feeding operations and especially confinement feeding  
22 operations.

23 REGULATION OF AIR CONTAMINANTS. Code section 455B.133  
24 authorizes the department to adopt rules that establish  
25 standards for air contaminants that may be emitted from any  
26 source. The standards cannot exceed those promulgated by the  
27 United States environmental protection agency, but the Code  
28 section does authorize the department to adopt standards for  
29 emissions from other sources. The bill provides that the  
30 commission is prohibited from adopting a standard for these  
31 other sources. The bill also provides that the department  
32 cannot adopt rules that apply to animal feeding operations  
33 other than as provided in Code chapter 459. That Code chapter  
34 provides authority to the department to regulate animal  
35 feeding operations, including the emission of airborne

1 pollutants.

2 HEALTH EFFECT ADVISORY PANEL. The bill creates new Code  
3 section 455B.133A, which requires the establishment of a  
4 health effect advisory panel. The panel must be composed of a  
5 number of persons representing public and private  
6 organizations, including regulators, the scientific community,  
7 animal agriculture, rural residents, and industry. The  
8 purpose of the panel is to advise the department and to issue  
9 interim reports and a final report to the general assembly  
10 regarding health effect levels of odor. The department of  
11 natural resources is prohibited from adopting standards for a  
12 health effect level before the panel submits its final report  
13 to the general assembly and a health effect level is  
14 established by statute.

15 AIR POLLUTANTS EMITTED FROM ANIMAL FEEDING OPERATIONS.  
16 Current Code section 459.207 requires the department to  
17 conduct a comprehensive field study to monitor the level of  
18 airborne pollutants (defined as hydrogen sulfide, ammonia, or  
19 odor) emitted from animal feeding operations. The Code  
20 section provides that plans and programs established by the  
21 department cannot provide for the enforcement of an air  
22 quality standard prior to December 1, 2004. The Code section  
23 also provides that any air quality standard established by the  
24 department must be based on, and enforced at, distances  
25 measured from a confinement feeding operation structure to a  
26 separated location defined as a residence, school, church,  
27 business, or public use area (but not public thoroughfare).  
28 In providing for enforcement, the department must take all  
29 initial measurements at the separated location. If the  
30 department determines that a violation of a standard exists,  
31 it may conduct an investigation to trace the source of the  
32 airborne pollutant.

33 The bill rewrites Code section 459.207. The provides that  
34 departmental standards must be based on a "health effect  
35 level" for odor that is at a level and duration of exposure

1 that causes a material and verifiable physical disease  
2 consistent with the average exposure periods and levels  
3 recorded at a separated location. The standards also provide  
4 for a "minimal risk level" that is a duration of exposure to  
5 hydrogen sulfide or ammonia as recorded at separated  
6 locations.

7 The bill provides that the department must conduct a  
8 comprehensive field study to monitor the level of airborne  
9 pollutants emitted from animal feeding operations for a period  
10 of at least three years. The bill establishes minimum  
11 separation distances for monitoring hydrogen sulfide, ammonia,  
12 and odor. The bill provides specific concentrations for  
13 hydrogen sulfide and ammonia which constitute health effect  
14 levels. The bill establishes minimal risk levels for both  
15 hydrogen sulfide and ammonia and procedures for sampling and  
16 maintaining data.

17 The bill requires the department to establish best  
18 management practices, mechanisms, processes, or infrastructure  
19 designed to reduce airborne pollutants. The department must  
20 also provide a procedure for the approval of alternative or  
21 experimental best management practices, mechanisms, processes,  
22 or infrastructure. The bill prescribes how the department may  
23 monitor the level of airborne pollutants at particular  
24 locations.

25 The bill establishes technical standards for equipment used  
26 to measure airborne pollutants, including a thermal oxidizer  
27 and a reference method for the measurement of ambient  
28 concentrations as set out by the United States environmental  
29 protection agency. The bill restricts enforcement of a  
30 standard if data are not collected as required in the bill.  
31 It also provides that if the department determines that a  
32 violation of a minimum risk level or health effect level  
33 exists, it must provide the owner of the confinement feeding  
34 operation with a one-year grace period in order to comply with  
35 the department's standards. The department's rules cannot

1 exceed a standard adopted by the United States environmental  
2 protection agency.

3 A person who violates a provision of the bill is subject to  
4 a civil penalty which is established, assessed, and collected  
5 in the same manner as provided in Code section 455B.109. That  
6 Code section requires the department to establish a schedule  
7 of penalties for violations. A civil penalty may be up to  
8 \$10,000 and each day of a violation constitutes a separate  
9 offense.

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**HOUSE FILE 2523****H-8282**

1 Amend House File 2523 as follows:  
2 1. Page 4, by striking lines 32 and 33 and  
3 inserting the following: "The monitoring period for  
4 an airborne pollutant shall begin with the start of  
5 collection of valid data for such airborne pollutant,  
6 including but not limited to the collection of valid  
7 data prior to the effective date of this Act. The  
8 field".

By GREINER of Washington

H-8282 FILED MARCH 22, 2004

**HOUSE FILE 2523****H-8283**

1 Amend House File 2523 as follows:  
2 1. Page 4, by striking line 2 and inserting the  
3 following: "final report shall be submitted no later  
4 than December 31, 2006. The final report shall  
5 contain findings and, if appropriate,  
6 recommendations."

By GREINER of Washington  
FORD of Polk

H-8283 FILED MARCH 22, 2004

**HOUSE FILE 2523****H-8284**

1 Amend House File 2523 as follows:  
2 1. Page 4, line 2, by inserting after the word  
3 "recommendations." the following: "The panel shall  
4 submit its final report to the general assembly on or  
5 before January 15, 2007."

By KUHN of Floyd

H-8284 FILED MARCH 22, 2004

**HOUSE FILE 2523****H-8286**

1 Amend House File 2523 as follows:  
2 1. By striking page 4, line 34, through page 5,  
3 line 1, and inserting the following: "study shall  
4 include monitoring data from at least five confinement  
5 feeding operations that to every extent practicable  
6 are located in different geographic locations in the  
7 state. In performing the study, the department shall  
8 monitor each type of production and management system  
9 that is associated with each type of confinement  
10 feeding operation structure commonly used in this  
11 state."

By GREINER of Washington

H-8286 FILED MARCH 22, 2004

**HOUSE FILE 2523****H-8287**

- 1 Amend House File 2523 as follows:  
2 1. Page 2, by striking line 5, and inserting the  
3 following: "academies, which may appoint up to three  
4 members who reside in this state or in states  
5 contiguous to this state".  
6 2. Page 2, by striking lines 6 through 9, and  
7 inserting the following:  
8 "( ) The university of Iowa, which may appoint  
9 one member."  
10 3. Page 3, by inserting after line 23, the  
11 following:  
12 "\_\_\_\_. The panel shall consult with the agency for  
13 toxic substances and disease registry as to the health  
14 effect levels as defined in section 459.207, if any,  
15 for odor."  
16 4. Page 3, by striking line 26, and inserting the  
17 following:  
18 "\_\_\_\_. a. The panel shall".  
19 5. By renumbering as necessary.

By MERTZ of Kossuth

GREINER of Washington

**H-8287** FILED MARCH 22, 2004

**HOUSE FILE 2523****H-8288**

- 1 Amend House File 2523 as follows:  
2 1. Page 4, line 16, by striking the words  
3 "physical disease" and inserting the following:  
4 "adverse physical effect".

By HOGG of Linn

**H-8288** FILED MARCH 22, 2004

**HOUSE FILE 2523**

**H-8296**

1 Amend the amendment, H-8286, to House File 2523, as  
2 follows:

3 1. By striking page 1, lines 3 through 11, and  
4 inserting the following: "line 1, and inserting the  
5 following: "study shall include monitoring data from  
6 at least five confinement feeding operations for each  
7 type or phase of animal production system commonly  
8 used in this state and for each type of manure storage  
9 or treatment system commonly used at such animal  
10 production systems. The confinement feeding  
11 operations monitored shall, to every extent  
12 practicable, be located in different geographic  
13 locations in the state.""

**By GREINER** of Washington

**H-8296** FILED MARCH 23, 2004

ADOPTED

**HOUSE FILE 2523**

**H-8297**

1 Amend the amendment, H-8287, to House File 2523, as  
2 follows:

3 1. Page 1, by inserting after line 9, the  
4 following:  
5 "( ) The Iowa medical society which may appoint  
6 one member. The member shall be a physician who is  
7 board certified as a pulmonary specialist.""

**By SHOULTZ** of Black Hawk

**H-8297** FILED MARCH 23, 2004

LOST

**HOUSE FILE 2523****H-8298**

1 Amend the amendment, H-8283, to House File 2523 as  
2 follows:  
3 1. Page 1, by inserting after line 1 the  
4 following:  
5 "\_\_\_\_. Page 1, by striking lines 1 through 31."  
6 2. Page 1, by inserting after line 6 the  
7 following:  
8 "\_\_\_\_. By striking page 4, line 3, through page  
9 10, line 14, and inserting the following:  
10 "\_\_\_\_. The commission shall adopt rules determined  
11 necessary to implement recommendations contained in  
12 the panel's final report.""

By HOGG of Linn

**H-8298** FILED MARCH 23, 2004  
NOT GERMANE

**HOUSE FILE 2523****H-8299**

1 Amend House File 2523 as follows:  
2 1. Page 1, by striking lines 1 through 31.  
3 2. Page 2, lines 8 and 9, by striking the words  
4 "or the national institutes of health".  
5 3. Page 4, line 2, by inserting after the word  
6 "recommendations." the following: "The panel shall  
7 submit a final report to the general assembly not  
8 later than January 15, 2007."  
9 4. By striking page 4, line 3, through page 10,  
10 line 14.  
11 5. Title page, lines 1 and 2, by striking the  
12 words ", and making penalties applicable".  
13 6. By renumbering as necessary.

By HOGG of Linn

**H-8299** FILED MARCH 23, 2004  
OUT OF ORDER

**HOUSE FILE 2523****H-8301**

1 Amend the amendment, H-8288, to House File 2523, as  
2 follows:  
3 1. Page 1, line 4, by striking the word  
4 "physical" and inserting the following: "health".

By HOGG of Linn

**H-8301** FILED MARCH 23, 2004  
ADOPTED

**Fiscal Services Division  
Legislative Services Agency  
Fiscal Note**

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HF 2523 - Health Effects Regulation (LSB 6597 HV)  
Analyst: Debra Kozel (Phone: (515) 281-6767) (deb.kozel@legis.state.ia.us)  
Fiscal Note Version - New

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**Description**

House File 2523 makes changes to air quality regulations related to animal feeding operations. Some of the changes include:

- Specifies that the Department of Natural Resources cannot adopt rules regulating air contaminants that exceed the standards of the federal Environmental Protection Agency (EPA).
- Specifies that a Department standard cannot be enforced if the data is not collected as outlined in the Bill.
- Creates a Health Effects Advisory Panel that will advise the Department of Natural Resources and the General Assembly about the health effects related to odor emitted from animal feeding operations. The Panel will submit a final report with recommendations to the General Assembly. The Department of Natural Resources, based on the Panel's recommendations, will establish standards.
- Specifies the Environmental Protection Commission cannot adopt a rule related to the health effect level for odor until the Advisory Panel submits the final report and a health effects level for odor is enacted.
- Specifies that Department standards must be based on a health effect level for odor.
- Specifies the Department of Natural Resources must conduct a comprehensive field study of airborne pollutants for a period of at least three years.
- Specifies that a violator will receive a written notice from the Department of Natural Resources and must reduce emissions during a one-year grace period.

**Assumptions**

1. The cost of one hydrogen sulfide and ammonia monitor is \$60,000 and ten additional sites will be needed. Total monitoring equipment costs are estimated at \$600,000.
2. Additional equipment needed for monitoring sites is \$20,000 per site for a total cost of \$200,000.
3. Operating costs for 20 air-monitoring sites is estimated at \$500,000 per year.
4. The estimated cost for the Health Effects Advisory Panel is \$10,000 per year.

**Fiscal Impact**

The estimated fiscal impact of HF 2523 is an increase in expenditures of \$860,000 for FY 2005 and \$460,000 for FY 2006 to the Department of Natural Resources. The increased expenditures would be funded from the Environment First Fund.

**Source**

Department of Natural Resources

Dennis C Prouty

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March 16, 2004

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The fiscal note and correctional 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 Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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HOUSE FILE 2523

BY COMMITTEE ON ENVIRONMENTAL  
PROTECTION

(SUCCESSOR TO HSB 695)

(COMPANION TO LSB 6597SV)

(As Amended and Passed by the House March 23, 2004)

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

**A BILL FOR**

1 An Act providing for the regulation of air quality, and making  
2 penalties applicable.

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

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House Amendments \_\_\_\_\_

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1 Section 1. Section 455B.133, subsection 4, unnumbered  
2 paragraph 1, Code 2003, is amended to read as follows:  
3 Adopt, amend, or repeal emission limitations or standards  
4 relating to the maximum quantities of air contaminants that  
5 may be emitted from any air contaminant source. The standards  
6 or limitations adopted under this section shall not exceed the  
7 standards or limitations promulgated by the administrator of  
8 the United States environmental protection agency or the  
9 requirements of the federal Clean Air Act as amended through  
10 January 1, 1991. ~~This does not prohibit the~~ The commission  
11 ~~from adopting~~ shall not adopt a standard for a source or class  
12 of sources for which the United States environmental  
13 protection agency has not promulgated a standard. This ~~also~~  
14 section does not prohibit the commission from adopting an  
15 emission standard or limitation for infectious medical waste  
16 treatment or disposal facilities which exceeds the standards  
17 or limitations promulgated by the administrator of the United  
18 States environmental protection agency or the requirements of  
19 the federal Clean Air Act as amended through January 1, 1991.  
20 The commission shall not adopt an emission standard or  
21 limitation for infectious medical waste treatment or disposal  
22 facilities prior to January 1, 1995, which exceeds the  
23 standards or limitations promulgated by the administrator of  
24 the United States environmental protection agency or the  
25 requirements of the federal Clean Air Act, as amended through  
26 January 1, 1991, for a hospital, or a group of hospitals,  
27 licensed under chapter 135B which has been operating an  
28 infectious medical waste treatment or disposal facility prior  
29 to January 1, 1991. The commission shall not adopt or enforce  
30 rules under this section that apply to an animal feeding  
31 operation as provided in chapter 459.

32 Sec. 2. NEW SECTION. 455B.133A HEALTH EFFECT ADVISORY  
33 PANEL.

34 Concurrent with the field study conducted pursuant to  
35 section 459.207, a health effect advisory panel shall be

1 convened as provided in this section.

2 1. a. The director shall request interested organizations  
3 to appoint voting members to the panel as follows:

4 (1) The national research council of the national  
5 academies, which may appoint up to three members who reside in  
6 this state or in states contiguous to this state.

7 (2) The university of Iowa, which may appoint one member.

8 (3) Iowa State university, which may appoint one member.

9 (4) The Iowa department of public health, which may  
10 appoint one member.

11 (5) The United States department of agriculture, which may  
12 appoint one member.

13 (6) The department of agriculture and land stewardship,  
14 which may appoint one member.

15 Each organization that appoints a member to the panel may  
16 also appoint an alternate who shall serve as the  
17 organization's representative on the panel if the principal  
18 appointee is unable to attend.

19 b. The director shall appoint the following persons who  
20 shall serve on the panel as ex officio, nonvoting members:

21 (1) A person who owns a confinement feeding operation that  
22 includes a structure which stores liquid manure, other than a  
23 small animal feeding operation.

24 (2) A person who owns a confinement feeding operation that  
25 includes a structure which stores manure exclusively on a dry-  
26 matter basis, other than a small animal feeding operation.

27 (3) A person who resides within one mile of a confinement  
28 feeding operation, other than a small animal feeding  
29 operation.

30 (4) A person who is actively engaged in a manufacturing  
31 business, other than the manufacturing of anhydrous ammonia.

32 (5) A person who is actively engaged in a business  
33 involved in the manufacturing, storage, or delivery of  
34 anhydrous ammonia.

35 (6) A person who represents a municipality in this state

1 and is actively engaged in operating a wastewater treatment  
2 facility.

3 (7) A person who is employed by the department.

4 Each ex officio member may appoint an alternate who shall  
5 serve in place of the principal member appointed by the  
6 director whenever the principal member is unable to attend a  
7 meeting.

8 2. a. The voting members of the panel shall elect a  
9 chairperson from the panel's membership. Meetings may be  
10 called by the chairperson or a majority of the voting members.  
11 A majority of the panel's voting members constitutes a quorum.  
12 An affirmative vote of a majority of the entire voting  
13 membership is necessary for the panel to take a substantive  
14 action other than adjourning a meeting.

15 b. The voting members shall serve without per diem, but  
16 shall be reimbursed by the department for actual and necessary  
17 expenses. The ex officio members shall serve without per diem  
18 expenses.

19 3. Upon request by the panel, the department shall provide  
20 clerical and technical staffing, materials, and meeting rooms  
21 necessary for the panel's operations.

22 4. The panel shall consult with the agency for toxic  
23 substances and disease registry as to the health effect levels  
24 as defined in section 459.207, if any, for odor.

25 5. The panel is a government body for purposes of chapters  
26 21 and 22.

27 6. a. The panel shall submit interim reports and a final  
28 report to the general assembly regarding health effect levels  
29 as defined in section 459.207, if any, for odor. The report  
30 shall include a determination whether a health effect level  
31 for odor is determinable based on a reasonable degree of  
32 scientific certainty. If the panel finds that it is  
33 determinable, the report shall contain findings and  
34 recommendations regarding the health effect levels of odor.

35 b. The panel shall submit an interim report to the general

1 assembly on or before January 15 of each year. The panel's  
2 final report shall be submitted no later than December 31,  
3 2006. The final report shall contain findings and, if  
4 appropriate, recommendations.

5 c. The commission shall not adopt a rule providing a  
6 health effect level for odor until after the panel submits its  
7 final report to the general assembly and a statute that  
8 provides for the health effect level for odor is enacted.

9 Sec. 3. Section 459.207, Code 2003, is amended by striking  
10 the section and inserting in lieu thereof the following:

11 459.207 ANIMAL FEEDING OPERATIONS -- AIRBORNE POLLUTANTS  
12 CONTROL.

13 1. As used in this section:

14 a. "Airborne pollutant" means hydrogen sulfide, ammonia,  
15 or odor.

16 b. "Health effect level" means a level and duration of  
17 exposure to odor that causes a material and verifiable  
18 physical disease when humans are exposed to an airborne  
19 pollutant for periods consistent with the average exposure  
20 periods and levels recorded at a separated location.

21 c. "Minimal risk level" means the concentration dose and  
22 duration of exposure to hydrogen sulfide or ammonia as  
23 provided in subsection 4 as recorded at a separated location.

24 d. "Separated location" means a location or object from  
25 which a separation distance is required under section  
26 455B.134, subsection 3, paragraph "f", section 459.202, or  
27 section 459.204, other than a public thoroughfare.

28 2. The department shall conduct a comprehensive field  
29 study to monitor the level of airborne pollutants from animal  
30 feeding operations in this state, including but not limited to  
31 each type of confinement feeding operation structure. The  
32 field study as to each airborne pollutant shall be conducted  
33 and shall continue for a period of not less than three years.

34 The monitoring period for an airborne pollutant shall begin  
35 with the start of collection of valid data for such airborne

1 pollutant, including but not limited to the collection of  
2 valid data prior to the effective date of this Act. The field  
3 study shall include monitoring data from at least five  
4 confinement feeding operations for each type or phase of  
5 animal production system commonly used in this state and for  
6 each type of manure storage or treatment system commonly used  
7 at such animal production systems. The confinement feeding  
8 operations monitored shall, to every extent practicable, be  
9 located in different geographic locations in the state.

10 3. The department shall collect monitoring data only from  
11 separated locations as provided in this subsection.

12 Monitoring data collected at locations other than as provided  
13 in this subsection shall be invalid.

14 a. For purposes of measuring hydrogen sulfide and ammonia,  
15 monitoring data is considered to be taken at a separated  
16 location if the monitor is located within three hundred feet  
17 of the following:

18 (1) A structure that constitutes the separated location.

19 (2) The boundaries of a public use area.

20 However, in no event shall monitoring data be collected at  
21 a distance closer than the required minimum separation  
22 distance that applies to the manure application or confinement  
23 feeding operation structure.

24 b. For purposes of measuring odor, monitoring data is  
25 considered to be taken at a separated location if the  
26 monitoring data is collected at a location that is not closer  
27 than the required minimum separation distance that applies to  
28 the manure application or confinement feeding operation  
29 structure.

30 4. a. For an airborne pollutant that is hydrogen sulfide,  
31 the minimal risk levels are as follows:

32 (1) The acute minimal risk level is a concentration dose  
33 exceeding seventy parts per billion for the duration of  
34 fourteen consecutive days. The sum of the hourly averages for  
35 fourteen consecutive days shall not exceed twenty-three and

1 fifty-two hundredths parts per million-hour.

2 (2) The intermediate minimal risk level is a concentration  
3 dose exceeding thirty parts per billion for the duration of  
4 three hundred sixty-four consecutive days. The sum of the  
5 hourly averages for three hundred sixty-four consecutive days  
6 shall not exceed two hundred sixty-two parts per million-hour.

7 b. For an airborne pollutant that is ammonia, the minimal  
8 risk levels are as follows:

9 (1) The minimal risk level is a concentration dose  
10 exceeding one thousand seven hundred parts per billion for the  
11 duration of fourteen consecutive days. The sum of the hourly  
12 averages for fourteen consecutive days shall not exceed five  
13 hundred seventy-one parts per million-hour.

14 (2) The chronic minimal risk level is a concentration dose  
15 exceeding three hundred parts per billion for the duration of  
16 three hundred sixty-five or more consecutive days. The sum of  
17 the hourly averages for three hundred sixty-five consecutive  
18 days shall not exceed two thousand six hundred twenty-eight  
19 parts per million-hour.

20 c. A consecutive day for purposes of this subsection shall  
21 be determined as provided in this paragraph. Hourly averages  
22 must first be computed by averaging all valid five-minute  
23 averages recorded by the data acquisition system in that hour.  
24 An hourly average is considered valid if at least forty-five  
25 minutes of valid five-minute averages are recorded by the date  
26 acquisition system. A sampling day consists of twenty-four  
27 nonoverlapping hours beginning from midnight on a given day to  
28 midnight on the following day. A day of continuous monitoring  
29 data is valid if at least eighteen hours of valid hourly  
30 averages have been recorded at the monitoring location. To  
31 determine the daily average, each of the valid hourly  
32 concentrations associated with a sampling day shall be  
33 averaged and truncated to one part per billion. The daily  
34 average shall be used to compare with the appropriate minimal  
35 risk level or health effect level to determine whether the

1 requisite number of consecutive daily averages exceeds the  
2 applicable concentration dose.

3 5. After completion of the field study, the commission may  
4 adopt rules pursuant to chapter 17A, except section 17A.4,  
5 subsection 2, and section 17A.5, subsection 2, paragraph "b",  
6 to do any of the following:

7 a. Establish recommended best management practices,  
8 mechanisms, processes, or infrastructure designed to reduce  
9 airborne pollutants from animal feeding operations in  
10 accordance with this section. The recommended best management  
11 practices, mechanisms, processes, or infrastructure may be  
12 developed for a particular air pollutant and for a specific  
13 type of confinement feeding operating structure if the data  
14 from the field study demonstrates to a reasonable degree of  
15 scientific certainty that a particular airborne pollutant from  
16 that type of confinement feeding operation structure is  
17 present at the separated location at a level exceeding a  
18 minimal risk level for hydrogen sulfide or ammonia, or as  
19 applicable a health effect level for odor. The department  
20 shall consult with the department of agriculture and land  
21 stewardship, Iowa state university college of agriculture, and  
22 livestock producers who may be impacted before establishing  
23 recommended best management practices, mechanisms, processes,  
24 or infrastructure. The department shall provide a procedure  
25 for the approval of alternative or experimental best  
26 management practices, mechanisms, processes, or infrastructure  
27 designed to reduce an airborne pollutant from an animal  
28 feeding operation.

29 b. Establish rules for the enforcement of a minimal risk  
30 level or health effect level only in accordance with this  
31 subsection. The commission may adopt rules providing for the  
32 enforcement of a minimal risk level for hydrogen sulfide or  
33 ammonia, or as applicable a health effect level for odor for a  
34 particular airborne pollutant, for a specific type of  
35 confinement feeding operation structure if all of the

1 following apply:

2 (1) The data from the field study demonstrates to a  
3 reasonable degree of scientific certainty that the airborne  
4 pollutant from that type of confinement feeding operation  
5 structure is present at separated locations at levels  
6 exceeding the minimal risk level for hydrogen sulfide or  
7 ammonia, or as applicable a health effect level for odor.

8 (2) A statute that provides for the health effect level is  
9 enacted.

10 The commission shall not adopt rules if the data does not  
11 demonstrate to a reasonable degree of scientific certainty  
12 that the airborne pollutant from a specific type of  
13 confinement feeding operation structure is present at  
14 separated locations at levels that exceed the minimal risk  
15 level for hydrogen sulfide or ammonia, or as applicable the  
16 health effect level for odor.

17 6. If the commission adopts rules under subsection 5, the  
18 department may monitor the level of airborne pollutants at a  
19 separated location in accordance with subsection 3. However,  
20 the department shall not monitor the level of airborne  
21 pollutants unless a written complaint is received from the  
22 owner or occupant of the separated location. The department  
23 shall monitor the level of airborne pollutants by collecting  
24 data at the separated location owned or occupied by the person  
25 making the complaint. In providing for the enforcement of the  
26 minimal risk level for hydrogen sulfide or ammonia, or as  
27 applicable the health effect level for odor, the department  
28 shall take all measurements at the separated location in  
29 accordance with subsection 3.

30 a. In using monitoring equipment to collect data for  
31 hydrogen sulfide, equipment shall incorporate a thermal  
32 oxidizer and a reference method for the measurement of ambient  
33 concentrations of sulfur dioxide that meet all calibrations,  
34 standards, and testing requirements established by the United  
35 States environmental protection agency. In using monitoring

1 equipment to collect data for ammonia, the equipment shall  
2 incorporate a thermal oxidizer and a reference method for the  
3 measurement of ambient concentrations of nitrogen dioxide that  
4 meet all calibrations, standards, and testing requirements  
5 established by the United States environmental protection  
6 agency.

7 b. The department shall not enforce a rule adopted  
8 pursuant to this section based on data, if any of the  
9 following apply to the collection of such data:

10 (1) The data is collected from a site other than a  
11 separated location as provided in this section.

12 (2) The data collected exceeds the minimal risk level or  
13 health effect level but is within the monitoring equipment's  
14 margin of error as established pursuant to rules which shall  
15 be adopted by the commission.

16 (3) The monitoring equipment used to collect data for  
17 hydrogen sulfide or ammonia does not meet the specifications  
18 for such equipment as required by this section or rules  
19 adopted by the commission.

20 c. If the department determines that a violation of a  
21 minimal risk level or health effect level exists, the  
22 department shall conduct an investigation to trace the source  
23 of the airborne pollutant after the department has collected  
24 data measuring an airborne pollutant from a separated  
25 location. The department may enter the premises of a  
26 confinement feeding operation in compliance with section  
27 455B.103. The department shall comply with standard  
28 biosecurity requirements customarily required by the  
29 confinement feeding operation that are necessary to control  
30 the spread of disease among an animal population.

31 d. If the department determines that a violation of a  
32 minimal risk level or health effect level is caused by an  
33 airborne pollutant from a confinement feeding operation  
34 structure, the department shall issue a written notice to the  
35 owner of the confinement feeding operation. The notice shall

1 require that the owner reduce the emission of the airborne  
2 pollutant to meet the minimal risk level or health effect  
3 level. The notice shall expire one year from the date of its  
4 issuance. The owner shall not be in violation of state law  
5 for failing to comply with the notice during its effective  
6 period. If the department determines that a violation of a  
7 minimal risk level or health effect level is caused by an  
8 airborne pollutant from the confinement feeding operation  
9 structure after the notice has expired, the department may  
10 commence an enforcement action as provided in this chapter.  
11 However, the owner shall not be subject to an enforcement  
12 action for the period that the department's notice is in  
13 effect, and shall not be subject to the imposition of  
14 penalties based on a violation during that period.

15 7. The commission's rules providing for a minimal risk  
16 level or health effect level shall not exceed a standard or  
17 limitation applying to the same minimal risk level or health  
18 effect level pursuant to the requirements of the federal Clean  
19 Air Act as amended through January 1, 1991, or regulations  
20 promulgated by the United States environmental protection  
21 agency. This section shall supersede the commission's  
22 authority under section 455B.133.

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**HOUSE FILE 2523****S-5178**

- 1 Amend House File 2523, as amended, passed, and
  - 2 reprinted by the House, as follows:
  - 3 1. Page 7, line 13, by striking the word
  - 4 "operating" and inserting the following: "operation".
- By** DAVID JOHNSON

**S-5178** FILED MARCH 30, 2004**HOUSE FILE 2523****S-5175**

- 1 Amend House File 2523, as amended, passed, and
  - 2 reprinted by the House, as follows:
  - 3 1. Page 1, by striking lines 11 and 12 and
  - 4 inserting the following: "~~from adopting a~~ shall not
  - 5 adopt an ambient standard for a source or class of
  - 6 ~~sources~~ for which the United States environmental".
- By** DAVID JOHNSON

**S-5175** FILED MARCH 30, 2004

## HOUSE FILE 2523

## S-5227

1 Amend House File 2523, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1, the  
4 following:

5 "Section 1. Section 455B.133, subsection 3, Code  
6 2003, is amended to read as follows:

7 3. Adopt, amend, or repeal ambient air quality  
8 standards for the atmosphere of this state on the  
9 basis of providing air quality necessary to protect  
10 the public health and welfare and to reduce emissions  
11 contributing to acid rain pursuant to Title IV of the  
12 federal Clean Air Act Amendments of 1990. However,  
13 the commission shall not adopt, amend, or repeal an  
14 ambient standard for which the United States  
15 environmental protection agency has not promulgated a  
16 standard."

17 2. Page 1, by striking lines 10 and 11, and  
18 inserting the following: "January 1, 1991. This does  
19 not prohibit the commission from adopting a an  
20 emission standard for a source or class".

By DAVID JOHNSON

S-5227 FILED MARCH 31, 2004

ADOPTED

## HOUSE FILE 2523

## S-5232

1 Amend House File 2523, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, line 32, by inserting before the word  
4 "HEALTH" the following: "ODOR".

5 2. Page 1, line 35, by striking the words "a  
6 health" and inserting the following: "an odor  
7 health".

8 3. Page 2, by striking lines 31 through 34 and  
9 inserting the following: "business."

10 4. Page 3, line 28, by inserting after the word  
11 "assembly" the following: "and the commission".

12 5. Page 4, line 1, by inserting after the word  
13 "assembly" the following: "and the commission".

14 6. Page 4, by striking line 7 and inserting the  
15 following: "final report, and a statute that".

16 7. By striking page 5, line 30, through page 7,  
17 line 2, and inserting the following:

18 "\_\_\_\_. a. The minimal risk levels for an airborne  
19 pollutant that is hydrogen sulfide are as follows:

20 (1) The short-term minimal risk level is one of  
21 the following:

22 (a) A concentration dose exceeding seventy parts  
23 per billion for the duration of two consecutive valid  
24 sampling weeks.

25 (b) A sum of the hourly average concentration  
26 doses exceeding twenty-three and fifty-two hundredths  
27 parts per million-hour for two consecutive valid  
28 sampling weeks, reduced by seven hundredths parts per  
29 million-hour for each hour for which there is no valid  
30 hourly average.

31 (2) The long-term minimal risk level is one of the  
32 following:

33 (a) A concentration dose exceeding thirty parts  
34 per billion for the duration of twelve consecutive  
35 valid sampling months.

36 (b) A sum of the hourly average concentration  
37 doses exceeding two hundred sixty-two and eight  
38 hundredths parts per million-hour for twelve  
39 consecutive valid sampling months, reduced by three  
40 hundredths parts per million-hour for each hour for  
41 which there is no valid hourly average.

42 b. The minimal risk levels for an airborne  
43 pollutant that is ammonia are as follows:

44 (1) The short-term minimal risk level is one of  
45 the following:

46 (a) A concentration dose exceeding one thousand  
47 seven hundred parts per billion for the duration of  
48 two consecutive valid sampling weeks.

49 (b) A sum of the hourly average concentration  
50 doses exceeding five hundred seventy-one and two-

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Page 2

1 tenths parts per million-hour for two consecutive  
2 valid sampling weeks, reduced by one and seven-tenths  
3 parts per million-hour for each hour for which there  
4 is no valid hourly average.

5 (2) The long-term minimal risk level is one of the  
6 following:

7 (a) A concentration dose exceeding three hundred  
8 parts per billion for the duration of twelve  
9 consecutive valid sampling months.

10 (b) A sum of the hourly average concentration  
11 doses exceeding two thousand six hundred twenty-eight  
12 parts per million-hour for each hour for which there  
13 is no valid hourly average.

14 c. A valid sampling day, valid sampling week, and  
15 valid sampling month for purposes of this subsection  
16 shall be determined as provided in this paragraph.  
17 Hourly averages must first be computed by averaging  
18 all valid five-minute averages recorded by the data  
19 acquisition system in that hour. An hourly average is  
20 considered valid if at least forty-five minutes of  
21 valid five-minute averages are recorded by the data  
22 acquisition system. A sampling day consists of  
23 twenty-four nonoverlapping hours beginning from  
24 midnight on a given day to midnight on the following  
25 day. A sampling day is considered valid if at least  
26 eighteen hours of valid hourly averages have been  
27 recorded at the monitoring location. To determine the  
28 daily average, each of the valid hourly concentrations  
29 associated with a sampling day shall be averaged and  
30 truncated to one part per billion. A valid sampling  
31 day shall be computed by averaging all valid hourly  
32 averages recorded by the data acquisition system in  
33 that sampling day. A valid sampling week consists of  
34 at least six valid sampling days in a period of seven  
35 consecutive days. A valid sampling month is a  
36 calendar month in which at least seventy-five percent  
37 of the days of the month are valid sampling days."

38 8. Page 7, by striking lines 34 and 35 and  
39 inserting the following: "particular airborne  
40 pollutant, for a specific type or phase of animal  
41 production system commonly used in this state and for  
42 a specific type of manure storage or treatment system  
43 commonly used at such animal production systems if all  
44 of the".

45 9. Page 8, by striking lines 4 and 5 and  
46 inserting the following: "pollutant from that type or  
47 phase of animal production system commonly used in  
48 this state and that type of manure storage or  
49 treatment system commonly used at such animal  
50 production systems is present at separated locations

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Page 3

1 at levels".

2 10. Page 8, by striking lines 12 and 13 and  
3 inserting the following: "that the airborne pollutant  
4 from a specific type or phase of animal production  
5 system commonly used in this state and a specific type  
6 of manure storage or treatment system commonly used at  
7 such animal production systems is present at".

8 11. Page 10, by striking line 3 and inserting the  
9 following: "level. If the notice is for a violation  
10 of the short-term minimal risk level for an airborne  
11 pollutant that is hydrogen sulfide or ammonia, the  
12 notice shall expire one hundred eighty days from the  
13 date of its issuance. If the notice is for any other  
14 violation of a minimal risk level or health effect  
15 level for odor, the notice shall expire one year from  
16 the date of its".

17 12. Page 10, by inserting after line 22 the  
18 following:

19 "\_\_\_\_. The governor shall appoint members to a  
20 monitoring advisory committee to advise the department  
21 on the monitoring of airborne pollutants that are  
22 hydrogen sulfide, ammonia, and odor as required by  
23 this Act. Members shall not be representatives of the  
24 department and must have expertise in data collection  
25 and in the operation of equipment used for data  
26 collection as required by this Act. The department  
27 shall consult with members in a meeting which shall be  
28 chaired by a person appointed by the governor. The  
29 committee shall consult with the department regarding  
30 monitoring as required by this section or rules  
31 adopted pursuant to this section. The committee shall  
32 evaluate and assess protocols for data collection,  
33 data processing, and data retention as required by  
34 this section. The committee shall also evaluate  
35 instrument calibration procedures and instrument  
36 siting procedures for objective data collection, and  
37 oversee instrumentation evaluation for selection of  
38 equipment."

39 13. By renumbering as necessary.

**By** DAVID JOHNSON  
EUGENE S. FRAISE

JOHN P. KIBBIE  
MICHAEL E. GRONSTAL

**S-5232** FILED MARCH 31, 2004

ADOPTED

**Fiscal Services Division  
Legislative Services Agency  
Fiscal Note**

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HF 2523 - Health Effects Regulation (LSB 6597 HV.1)  
Analyst: Debra Kozel (Phone: (515) 281-6767) (deb.kozel@legis.state.ia.us)  
Fiscal Note Version – As Amended and Passed by the House

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**Description**

House File 2523, as amended and passed by the House, makes changes to air quality regulations related to animal feeding operations. Some of the changes include:

- Specifies that the Department of Natural Resources cannot adopt rules regulating air contaminants that exceed the standards of the federal Environmental Protection Agency (EPA).
- Specifies that a Department standard cannot be enforced if the data is not collected as outlined in the Bill.
- Creates a Health Effects Advisory Panel that will advise the Department of Natural Resources and the General Assembly about the health effects related to odor emitted from animal feeding operations. The Panel will submit a final report with recommendations to the General Assembly. The Department of Natural Resources, based on the Panel's recommendations, will establish standards.
- The Environmental Protection Commission cannot adopt a rule related to the health effect level for odor until the Advisory Panel submits the final report and a health effects level for odor is enacted.
- Department standards must be based on a health effect level for odor.
- The Department of Natural Resources must conduct a comprehensive field study of airborne pollutants for a period of at least three years.
- Violators will receive a written notice from the Department of Natural Resources and must reduce emissions during a one-year grace period.

House File 2523, as amended by the House, makes the following changes:

- Redefines the membership of the Advisory Panel.
- Specifies the final report of the Health Effects Advisory Panel should be submitted to the General Assembly by December 31, 2006.
- Allows the DNR to use valid data collected in a previous air quality study.
- Specifies there must be at least five sites monitoring air quality for each type of animal production and for each type of manure storage treatment system. The monitored sites are to be located at different geographic locations around the State.

## Assumptions

1. The Department estimates that 70 monitored sites will be needed to meet the five sites for each type of animal production or manure storage system. The following table summarizes the 70 sites:

**Summary of Monitored Sites**

<u>Animal Production</u>	<u>Number of Structures</u>	<u>Number of Systems</u>	<u>Number of Monitors</u>	<u>Multiplied by 5 Locations</u>
Hogs	3	2	6	30
Dairy	1	2	2	10
Beef	1	2	2	10
Poultry	2	2	4	20
Total	<u>7</u>	<u>8</u>	<u>14</u>	<u>70</u>

2. The cost of one hydrogen sulfide and ammonia monitor is \$60,000 and 70 sites will be monitored. Total monitoring equipment costs are estimated at \$4.2 million. Currently, air monitoring expenditures are \$500,000 per year.
3. Salaries and support for one monitored site is estimated at \$15,000 per year. For 70 sites the total cost is \$1.1 million. Currently, expenditures for salaries are \$150,000 for FY 2005 and \$200,000 for FY 2006.
4. The following table summarizes the change in costs related to HF 2523 as amended by the House:

**House File 2523 As Amended - Changes in Expenditures**

<u>Description</u>	<u>Current Law FY 2005</u>	<u>Proposed FY 2005</u>	<u>Difference</u>	<u>Current Law FY 2006</u>	<u>Proposed FY 2006</u>	<u>Difference</u>
Equipment	\$ 500,000	\$ 4,200,000	\$ 3,700,000	\$ 500,000	\$ 0	\$ (500,000)
Salaries & Support	150,000	1,050,000	900,000	200,000	1,050,000	850,000
Total Costs	<u>\$ 650,000</u>	<u>\$ 5,250,000</u>	<u>\$ 4,600,000</u>	<u>\$ 700,000</u>	<u>\$ 1,050,000</u>	<u>\$ 350,000</u>

## Fiscal Impact

The estimated fiscal impact of HF 2523, as amended and passed by the House, is an increase in expenditures of \$4.6 million for FY 2005 and \$350,000 for FY 2006 to the Department of Natural Resources. The increased expenditures would be funded from the Environment First Fund.

## Source

Department of Natural Resources

Dennis C Prouty

March 31, 2004

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The fiscal note and correctional 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 Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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**SENATE AMENDMENT TO  
HOUSE FILE 2523**

**H-8354**

- 1 Amend House File 2523, as amended, passed, and  
2 reprinted by the House, as follows:
- 3 1. Page 1, by inserting before line 1, the  
4 following:  
5 "Section 1. Section 455B.133, subsection 3, Code  
6 2003, is amended to read as follows:  
7 3. Adopt, amend, or repeal ambient air quality  
8 standards for the atmosphere of this state on the  
9 basis of providing air quality necessary to protect  
10 the public health and welfare and to reduce emissions  
11 contributing to acid rain pursuant to Title IV of the  
12 federal Clean Air Act Amendments of 1990. However,  
13 the commission shall not adopt, amend, or repeal an  
14 ambient standard for which the United States  
15 environmental protection agency has not promulgated a  
16 standard."
- 17 2. Page 1, by striking lines 10 and 11, and  
18 inserting the following: "January 1, 1991. This does  
19 not prohibit the commission from adopting a an  
20 emission standard for a source or class".
- 21 3. Page 1, line 32, by inserting before the word  
22 "HEALTH" the following: "ODOR".
- 23 4. Page 1, line 35, by striking the words "a  
24 health" and inserting the following: "an odor  
25 health".
- 26 5. Page 2, by striking lines 31 through 34 and  
27 inserting the following: "business."
- 28 6. Page 3, line 28, by inserting after the word  
29 "assembly" the following: "and the commission".
- 30 7. Page 4, line 1, by inserting after the word  
31 "assembly" the following: "and the commission".
- 32 8. Page 4, by striking line 7 and inserting the  
33 following: "final report, and a statute that".
- 34 9. By striking page 5, line 30, through page 7,  
35 line 2, and inserting the following:  
36 "\_\_\_ a. The minimal risk levels for an airborne  
37 pollutant that is hydrogen sulfide are as follows:  
38 (1) The short-term minimal risk level is one of  
39 the following:  
40 (a) A concentration dose exceeding seventy parts  
41 per billion for the duration of two consecutive valid  
42 sampling weeks.  
43 (b) A sum of the hourly average concentration  
44 doses exceeding twenty-three and fifty-two hundredths  
45 parts per million-hour for two consecutive valid  
46 sampling weeks, reduced by seven hundredths parts per  
47 million-hour for each hour for which there is no valid  
48 hourly average.  
49 (2) The long-term minimal risk level is one of the  
50 following:

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Page 2

1 (a) A concentration dose exceeding thirty parts  
2 per billion for the duration of twelve consecutive  
3 valid sampling months.

4 (b) A sum of the hourly average concentration  
5 doses exceeding two hundred sixty-two and eight  
6 hundredths parts per million-hour for twelve  
7 consecutive valid sampling months, reduced by three  
8 hundredths parts per million-hour for each hour for  
9 which there is no valid hourly average.

10 b. The minimal risk levels for an airborne  
11 pollutant that is ammonia are as follows:

12 (1) The short-term minimal risk level is one of  
13 the following:

14 (a) A concentration dose exceeding one thousand  
15 seven hundred parts per billion for the duration of  
16 two consecutive valid sampling weeks.

17 (b) A sum of the hourly average concentration  
18 doses exceeding five hundred seventy-one and two-  
19 tenths parts per million-hour for two consecutive  
20 valid sampling weeks, reduced by one and seven-tenths  
21 parts per million-hour for each hour for which there  
22 is no valid hourly average.

23 (2) The long-term minimal risk level is one of the  
24 following:

25 (a) A concentration dose exceeding three hundred  
26 parts per billion for the duration of twelve  
27 consecutive valid sampling months.

28 (b) A sum of the hourly average concentration  
29 doses exceeding two thousand six hundred twenty-eight  
30 parts per million-hour for each hour for which there  
31 is no valid hourly average.

32 c. A valid sampling day, valid sampling week, and  
33 valid sampling month for purposes of this subsection  
34 shall be determined as provided in this paragraph.  
35 Hourly averages must first be computed by averaging  
36 all valid five-minute averages recorded by the data  
37 acquisition system in that hour. An hourly average is  
38 considered valid if at least forty-five minutes of  
39 valid five-minute averages are recorded by the data  
40 acquisition system. A sampling day consists of  
41 twenty-four nonoverlapping hours beginning from  
42 midnight on a given day to midnight on the following  
43 day. A sampling day is considered valid if at least  
44 eighteen hours of valid hourly averages have been  
45 recorded at the monitoring location. To determine the  
46 daily average, each of the valid hourly concentrations  
47 associated with a sampling day shall be averaged and  
48 truncated to one part per billion. A valid sampling  
49 day shall be computed by averaging all valid hourly  
50 averages recorded by the data acquisition system in

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Page 3

1 that sampling day. A valid sampling week consists of  
2 at least six valid sampling days in a period of seven  
3 consecutive days. A valid sampling month is a  
4 calendar month in which at least seventy-five percent  
5 of the days of the month are valid sampling days."

6 10. Page 7, line 13, by striking the word  
7 "operating" and inserting the following: "operation".

8 11. Page 7, by striking lines 34 and 35 and  
9 inserting the following: "particular airborne  
10 pollutant, for a specific type or phase of animal  
11 production system commonly used in this state and for  
12 a specific type of manure storage or treatment system  
13 commonly used at such animal production systems if all  
14 of the".

15 12. Page 8, by striking lines 4 and 5 and  
16 inserting the following: "pollutant from that type or  
17 phase of animal production system commonly used in  
18 this state and that type of manure storage or  
19 treatment system commonly used at such animal  
20 production systems is present at separated locations  
21 at levels".

22 13. Page 8, by striking lines 12 and 13 and  
23 inserting the following: "that the airborne pollutant  
24 from a specific type or phase of animal production  
25 system commonly used in this state and a specific type  
26 of manure storage or treatment system commonly used at  
27 such animal production systems is present at".

28 14. Page 10, by striking line 3 and inserting the  
29 following: "level. If the notice is for a violation  
30 of the short-term minimal risk level for an airborne  
31 pollutant that is hydrogen sulfide or ammonia, the  
32 notice shall expire one hundred eighty days from the  
33 date of its issuance. If the notice is for any other  
34 violation of a minimal risk level or health effect  
35 level for odor, the notice shall expire one year from  
36 the date of its".

37 15. Page 10, by inserting after line 22 the  
38 following:

39 "\_\_\_\_. The governor shall appoint members to a  
40 monitoring advisory committee to advise the department  
41 on the monitoring of airborne pollutants that are  
42 hydrogen sulfide, ammonia, and odor as required by  
43 this Act. Members shall not be representatives of the  
44 department and must have expertise in data collection  
45 and in the operation of equipment used for data  
46 collection as required by this Act. The department  
47 shall consult with members in a meeting which shall be  
48 chaired by a person appointed by the governor. The  
49 committee shall consult with the department regarding  
50 monitoring as required by this section or rules

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Page 4

1 adopted pursuant to this section. The committee shall  
2 evaluate and assess protocols for data collection,  
3 data processing, and data retention as required by  
4 this section. The committee shall also evaluate  
5 instrument calibration procedures and instrument  
6 siting procedures for objective data collection, and  
7 oversee instrumentation evaluation for selection of  
8 equipment."

9 16. By renumbering, relettering, or redesignating  
10 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

**H-8354** FILED MARCH 31, 2004

*Greiner Chr.  
Klemme  
Hogg*

Success  
SF 02523

HSB 695

ENVIRONMENTAL PROTECTION

HOUSE FILE \_\_\_\_\_

BY (PROPOSED COMMITTEE ON  
ENVIRONMENTAL PROTECTION  
BILL BY CHAIRPERSON  
GREINER)

Passed House, Date \_\_\_\_\_

Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act providing for the regulation of air quality, and making  
2 penalties applicable.

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

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1 Section 1. Section 455B.133, subsection 4, unnumbered  
2 paragraph 1, Code 2003, is amended to read as follows:

3 Adopt, amend, or repeal emission limitations or standards  
4 relating to the maximum quantities of air contaminants that  
5 may be emitted from any air contaminant source. The standards  
6 or limitations adopted under this section shall not exceed the  
7 standards or limitations promulgated by the administrator of  
8 the United States environmental protection agency or the  
9 requirements of the federal Clean Air Act as amended through  
10 January 1, 1991. ~~This does not prohibit the~~ The commission  
11 ~~from adopting~~ shall not adopt a standard for a source or class  
12 of sources for which the United States environmental  
13 protection agency has not promulgated a standard. This ~~also~~  
14 section does not prohibit the commission from adopting an  
15 emission standard or limitation for infectious medical waste  
16 treatment or disposal facilities which exceeds the standards  
17 or limitations promulgated by the administrator of the United  
18 States environmental protection agency or the requirements of  
19 the federal Clean Air Act as amended through January 1, 1991.  
20 The commission shall not adopt an emission standard or  
21 limitation for infectious medical waste treatment or disposal  
22 facilities prior to January 1, 1995, which exceeds the  
23 standards or limitations promulgated by the administrator of  
24 the United States environmental protection agency or the  
25 requirements of the federal Clean Air Act, as amended through  
26 January 1, 1991, for a hospital, or a group of hospitals,  
27 licensed under chapter 135B which has been operating an  
28 infectious medical waste treatment or disposal facility prior  
29 to January 1, 1991. The commission shall not adopt or enforce  
30 rules under this section that apply to an animal feeding  
31 operation as provided in chapter 459.

32 Sec. 2. NEW SECTION. 455B.133A HEALTH EFFECT ADVISORY  
33 PANEL.

34 Concurrent with the field study conducted pursuant to  
35 section 459.207, a health effect advisory panel shall be

1 convened as provided in this section.

2 1. a. The director shall request interested organizations  
3 to appoint voting members to the panel as follows:

4 (1) The national research council of the national  
5 academies, which may appoint up to three members.

6 (2) The agency for toxic substances and disease registry,  
7 which may appoint one member.

8 (3) The university of Iowa or the national institutes of  
9 health, which may appoint one member.

10 (4) Iowa State university, which may appoint one member.

11 (5) The Iowa department of public health, which may  
12 appoint one member.

13 (6) The United States department of agriculture, which may  
14 appoint one member.

15 (7) The department of agriculture and land stewardship,  
16 which may appoint one member.

17 Each organization that appoints a member to the panel may  
18 also appoint an alternate who shall serve as the  
19 organization's representative on the panel if the principal  
20 appointee is unable to attend.

21 b. The director shall appoint the following persons who  
22 shall serve on the panel as ex officio, nonvoting members:

23 (1) A person who owns a confinement feeding operation that  
24 includes a structure which stores liquid manure, other than a  
25 small animal feeding operation.

26 (2) A person who owns a confinement feeding operation that  
27 includes a structure which stores manure exclusively on a dry-  
28 matter basis, other than a small animal feeding operation.

29 (3) A person who resides within one mile of a confinement  
30 feeding operation, other than a small animal feeding  
31 operation.

32 (4) A person who is actively engaged in a manufacturing  
33 business, other than the manufacturing of anhydrous ammonia.

34 (5) A person who is actively engaged in a business  
35 involved in the manufacturing, storage, or delivery of

1 anhydrous ammonia.

2 (6) A person who represents a municipality in this state  
3 and is actively engaged in operating a wastewater treatment  
4 facility.

5 (7) A person who is employed by the department.

6 Each ex officio member may appoint an alternate who shall  
7 serve in place of the principal member appointed by the  
8 director whenever the principal member is unable to attend a  
9 meeting.

10 2. a. The voting members of the panel shall elect a  
11 chairperson from the panel's membership. Meetings may be  
12 called by the chairperson or a majority of the voting members.  
13 A majority of the panel's voting members constitutes a quorum.  
14 An affirmative vote of a majority of the entire voting  
15 membership is necessary for the panel to take a substantive  
16 action other than adjourning a meeting.

17 b. The voting members shall serve without per diem, but  
18 shall be reimbursed by the department for actual and necessary  
19 expenses. The ex officio members shall serve without per diem  
20 expenses.

21 3. Upon request by the panel, the department shall provide  
22 clerical and technical staffing, materials, and meeting rooms  
23 necessary for the panel's operations.

24 4. The panel is a government body for purposes of chapters  
25 21 and 22.

26 5. a. The panel may advise the department and shall  
27 submit interim reports and a final report to the general  
28 assembly regarding health effect levels as defined in section  
29 459.207, if any, for odor. The report shall include a  
30 determination whether a health effect level for odor is  
31 determinable based on a reasonable degree of scientific  
32 certainty. If the panel finds that it is determinable, the  
33 report shall contain findings and recommendations regarding  
34 the health effect levels of odor.

35 b. The panel shall submit an interim report to the general

1 assembly on or before January 15 of each year. The panel's  
2 final report shall contain findings and recommendations.

3 c. The commission shall not adopt a rule providing a  
4 health effect level for odor until after the panel submits its  
5 final report to the general assembly and a statute that  
6 provides for the health effect level for odor is enacted.

7 Sec. 3. Section 459.207, Code 2003, is amended by striking  
8 the section and inserting in lieu thereof the following:

9 459.207 ANIMAL FEEDING OPERATIONS -- AIRBORNE POLLUTANTS  
10 CONTROL.

11 1. As used in this section:

12 a. "Airborne pollutant" means hydrogen sulfide, ammonia,  
13 or odor.

14 b. "Health effect level" means a level and duration of  
15 exposure that causes a material and verifiable physical  
16 disease when humans are exposed to an airborne pollutant for  
17 periods consistent with the average exposure periods and  
18 levels recorded at a separated location. For hydrogen sulfide  
19 and ammonia, the health effect levels are the doses and  
20 durations as defined in subsection 4.

21 c. "Separated location" means a location or object from  
22 which a separation distance is required under section  
23 455B.134, subsection 3, paragraph "f", section 459.202, or  
24 section 459.204, other than a public thoroughfare.

25 2. The department shall conduct a comprehensive field  
26 study to monitor the level of airborne pollutants from animal  
27 feeding operations in this state, including but not limited to  
28 each type of confinement feeding operation structure. The  
29 field study as to each airborne pollutant shall be conducted  
30 and shall continue for a period of not less than three years.  
31 The monitoring period shall begin with the start of the  
32 collection of data for such airborne pollutant. The field  
33 study shall include a statistically significant sample of each  
34 type of confinement feeding operation structure located in  
35 this state.

1 3. The department shall collect monitoring data only from  
2 separated locations as provided in this subsection.

3 Monitoring data collected at locations other than as provided  
4 in this subsection shall be invalid.

5 a. For purposes of measuring hydrogen sulfide and ammonia,  
6 monitoring data is considered to be taken at a separated  
7 location if the monitor is located within three hundred feet  
8 of the following:

9 (1) A structure that constitutes the separated location.

10 (2) The boundaries of a public use area.

11 However, in no event shall monitoring data be collected at  
12 a distance closer than the required minimum separation  
13 distance that applies to the manure application or confinement  
14 feeding operation structure.

15 b. For purposes of measuring odor, monitoring data is  
16 considered to be taken at a separated location if the  
17 monitoring data is collected at a location that is not closer  
18 than the required minimum separation distance that applies to  
19 the manure application or confinement feeding operation  
20 structure.

21 4. a. For an airborne pollutant that is hydrogen sulfide,  
22 the health effect levels are as follows:

23 (1) The acute health effect level is a concentration dose  
24 exceeding seventy parts per billion for the duration of  
25 fourteen consecutive days.

26 (2) The chronic health effect level is a concentration  
27 dose exceeding thirty parts per billion for the duration of  
28 three hundred sixty-four consecutive days.

29 b. For an airborne pollutant that is ammonia, the health  
30 effect levels are as follows:

31 (1) The acute health effect level is a concentration dose  
32 exceeding one thousand seven hundred parts per billion for the  
33 duration of fourteen consecutive days.

34 (2) The chronic health effect level is a concentration  
35 dose exceeding three hundred parts per billion for the

1 duration of three hundred sixty-five or more consecutive days.  
 2 c. A consecutive day for purposes of this subsection shall  
 3 be determined as provided in this paragraph. Hourly averages  
 4 must first be computed by averaging all valid five-minute  
 5 averages recorded by the data acquisition system in that hour.  
 6 An hourly average is considered valid if at least forty-five  
 7 minutes of valid five-minute averages are recorded by the data  
 8 acquisition system. A sampling day consists of twenty-four  
 9 nonoverlapping hours beginning from midnight on a given day to  
 10 midnight on the following day. A day of continuous monitoring  
 11 data is valid if at least eighteen hours of valid hourly  
 12 averages have been recorded at the monitoring location. To  
 13 determine the daily average, each of the valid hourly  
 14 concentrations associated with a sampling day shall be  
 15 averaged and truncated to one part per billion. The daily  
 16 average shall be used to compare with the appropriate health  
 17 effect level to determine whether the requisite number of  
 18 consecutive daily averages exceeds the applicable  
 19 concentration dose.

20 5. After completion of the field study, the commission may  
 21 adopt rules pursuant to chapter 17A, except section 17A.4,  
 22 subsection 2, and section 17A.5, subsection 2, paragraph "b",  
 23 to do any of the following:

24 a. Establish recommended best management practices,  
 25 mechanisms, processes, or infrastructure designed to reduce  
 26 airborne pollutants from animal feeding operations in  
 27 accordance with this section. The recommended best management  
 28 practices, mechanisms, processes, or infrastructure may be  
 29 developed for a particular air pollutant and for a specific  
 30 type of confinement feeding operating structure if the data  
 31 from the field study demonstrates to a reasonable degree of  
 32 scientific certainty that a particular airborne pollutant from  
 33 that type of confinement feeding operation structure is  
 34 present at the separated location at a level exceeding a  
 35 health effect level. The department shall consult with the

1 department of agriculture and land stewardship, Iowa state  
2 university college of agriculture, and livestock producers who  
3 may be impacted before establishing recommended best  
4 management practices, mechanisms, processes, or  
5 infrastructure. The department shall provide a procedure for  
6 the approval of alternative or experimental airborne control  
7 strategies to reduce the airborne pollutant from the  
8 confinement feeding operation.

9 b. Establish rules for the enforcement of a health effect  
10 level only in accordance with this subsection. The commission  
11 may adopt rules providing for the enforcement of a health  
12 effect level for a particular airborne pollutant for a  
13 specific type of confinement feeding operation structure if  
14 all of the following apply:

15 (1) The data from the field study demonstrates to a  
16 reasonable degree of scientific certainty that the airborne  
17 pollutant from that type of confinement feeding operation  
18 structure is present at separated locations at levels  
19 exceeding the health effect level.

20 (2) A statute that provides for the health effect level is  
21 enacted.

22 The commission shall not adopt rules if the data does not  
23 demonstrate to a reasonable degree of scientific certainty  
24 that the airborne pollutant from a specific type of  
25 confinement feeding operation structure is present at  
26 separated locations at levels that exceed the health effect  
27 level.

28 6. If the commission adopts rules under subsection 5, the  
29 department may monitor the level of airborne pollutants at a  
30 separated location in accordance with subsection 3. However,  
31 the department shall not monitor the level of airborne  
32 pollutants unless a written complaint is received from the  
33 owner or occupant of the separated location. The department  
34 shall monitor the level of airborne pollutants by collecting  
35 data at the separated location owned or occupied by the person

1 making the complaint. In providing for the enforcement of the  
2 health effect level, the department shall take all  
3 measurements at the separated location in accordance with  
4 subsection 3.

5 a. In using monitoring equipment to collect data for  
6 hydrogen sulfide, equipment shall incorporate a thermal  
7 oxidizer and a reference method for the measurement of ambient  
8 concentrations of sulfur dioxide that meet all calibrations,  
9 standards, and testing requirements established by the United  
10 States environmental protection agency. In using monitoring  
11 equipment to collect data for ammonia, the equipment shall  
12 incorporate a thermal oxidizer and a reference method for the  
13 measurement of ambient concentrations of nitrogen dioxide that  
14 meet all calibrations, standards, and testing requirements  
15 established by the United States environmental protection  
16 agency.

17 b. The department shall not enforce a rule adopted  
18 pursuant to this section based on data, if any of the  
19 following apply to the collection of such data:

20 (1) The data is collected from a site other than a  
21 separated location as provided in this section.

22 (2) The data collected exceeds the health effect level but  
23 is within the monitoring equipment's margin of error as  
24 established pursuant to rules which shall be adopted by the  
25 commission.

26 (3) The monitoring equipment used to collect data for  
27 hydrogen sulfide or ammonia does not meet the specifications  
28 for such equipment as required by this section or rules  
29 adopted by the commission.

30 c. If the department determines that a violation of a  
31 health effect level exists, the department shall conduct an  
32 investigation to trace the source of the airborne pollutant  
33 after the department has collected data measuring an airborne  
34 pollutant from a separated location. The department may enter  
35 the premises of a confinement feeding operation in compliance

1 with section 455B.103. The department shall comply with  
2 standard biosecurity requirements customarily required by the  
3 confinement feeding operation that are necessary to control  
4 the spread of disease among an animal population.

5 d. If the department determines that a violation of a  
6 health effect level is caused by an airborne pollutant from a  
7 confinement feeding operation structure, the department shall  
8 issue a written notice to the owner of the confinement feeding  
9 operation. The notice shall require that the owner reduce the  
10 emission of the airborne pollutant to meet the health effect  
11 level. The notice shall expire one year from the date of its  
12 issuance. The owner shall not be in violation of state law  
13 for failing to comply with the notice during its effective  
14 period. If the department determines that a violation of a  
15 health effect level is caused by an airborne pollutant from  
16 the confinement feeding operation structure after the notice  
17 has expired, the department may commence an enforcement action  
18 as provided in this chapter. However, the owner shall not be  
19 subject to an enforcement action for the period that the  
20 department's notice is in effect, and shall not be subject to  
21 the imposition of penalties based on a violation during that  
22 period.

23 7. The commission's rules providing for a health effect  
24 level shall not exceed a standard or limitation applying to  
25 the same health effect level pursuant to the requirements of  
26 the federal Clean Air Act as amended through January 1, 1991,  
27 or regulations promulgated by the United States environmental  
28 protection agency. This section shall supersede the  
29 commission's authority under section 455B.133.

30 EXPLANATION

31 GENERAL. This bill amends provisions in Code chapters 455B  
32 and 459, regulating air quality administered by the department  
33 of natural resources. Code chapter 455B, division II,  
34 provides general air quality regulatory authority to the  
35 department, and Code chapter 459 specifically regulates animal

1 feeding operations and especially confinement feeding  
2 operations.

3 REGULATION OF AIR CONTAMINANTS. Code section 455B.133  
4 authorizes the department to adopt rules that establish  
5 standards for air contaminants that may be emitted from any  
6 source. The standards cannot exceed those promulgated by the  
7 United States environmental protection agency, but the Code  
8 section does authorize the department to adopt standards for  
9 emissions from other sources. The bill provides that the  
10 commission is prohibited from adopting a standard for these  
11 other sources. The bill also provides that the department  
12 cannot adopt rules that apply to animal feeding operations  
13 other than as provided in Code chapter 459. That Code chapter  
14 provides authority to the department to regulate animal  
15 feeding operations, including the emission of airborne  
16 pollutants.

17 HEALTH EFFECT ADVISORY PANEL. The bill creates new Code  
18 section 455B.133A, which requires the establishment of a  
19 health effect advisory panel. The panel must be composed of a  
20 number of persons representing public and private  
21 organizations, including regulators, the scientific community,  
22 animal agriculture, rural residents, and industry. The  
23 purpose of the panel is to advise the department and to issue  
24 interim reports and a final report to the general assembly  
25 regarding health effect levels of airborne pollutants. The  
26 department of natural resources is prohibited from adopting  
27 standards for a health effect level before the panel submits  
28 its final report to the general assembly and a health effect  
29 level is established by statute.

30 AIR POLLUTANTS EMITTED FROM ANIMAL FEEDING OPERATIONS.  
31 Current Code section 459.207 requires the department to  
32 conduct a comprehensive field study to monitor the level of  
33 airborne pollutants (defined as hydrogen sulfide, ammonia, or  
34 odor) emitted from animal feeding operations. The Code  
35 section provides that plans and programs established by the

1 department cannot provide for the enforcement of an air  
2 quality standard prior to December 1, 2004. The Code section  
3 also provides that any air quality standard established by the  
4 department must be based on, and enforced at, distances  
5 measured from a confinement feeding operation structure to a  
6 separated location defined as a residence, school, church,  
7 business, or public use area (but not public thoroughfare).  
8 In providing for enforcement, the department must take all  
9 initial measurements at the separated location. If the  
10 department determines that a violation of a standard exists,  
11 it may conduct an investigation to trace the source of the  
12 airborne pollutant.

13 The bill rewrites Code section 459.207. The bill provides  
14 that departmental standards must be based on a "health effect  
15 level" that is at a level and duration of exposure that causes  
16 a material and verifiable physical disease consistent with the  
17 average exposure periods and levels recorded at a separated  
18 location.

19 The bill provides that the department must conduct a  
20 comprehensive field study to monitor the level of airborne  
21 pollutants emitted from animal feeding operations for a period  
22 of at least three years. The bill establishes minimum  
23 separation distances for monitoring hydrogen sulfide and  
24 ammonia, and odor (if such measurements may be scientifically  
25 taken). The bill provides specific concentrations for  
26 hydrogen sulfide and ammonia which constitute health effect  
27 levels.

28 The bill requires the department to establish best  
29 management practices, mechanisms, processes, or infrastructure  
30 designed to reduce airborne pollutants. The department must  
31 also provide a procedure for the approval of alternative or  
32 experimental airborne control strategies. The bill prescribes  
33 how the department may monitor the level of airborne  
34 pollutants at particular locations.

35 The bill establishes technical standards for equipment used

1 to measure airborne pollutants, including a thermal oxidizer  
 2 and a reference method for the measurement of ambient  
 3 concentrations as set out by the United States environmental  
 4 protection agency. The bill restricts enforcement of a  
 5 standard if data are not collected as required in the bill.  
 6 It also provides that if the department determines that a  
 7 violation of a health effect level exists, it must provide the  
 8 owner of the confinement feeding operation with a one-year  
 9 grace period in order to comply with the department's  
 10 standards. The department's rules cannot exceed a standard  
 11 adopted by the United States environmental protection agency.

12 A person who violates a provision of the bill is subject to  
 13 a civil penalty which is established, assessed, and collected  
 14 in the same manner as provided in Code section 455B.109. That  
 15 Code section requires the department to establish a schedule  
 16 of penalties for violations. A civil penalty may be up to  
 17 \$10,000 and each day of a violation constitutes a separate  
 18 offense.

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VETO

April 13, 2004

The Honorable Christopher Rants  
Speaker of the House  
State Capitol Building  
L O C A L

Dear Speaker Rants:

I hereby transit **House File 2523**, an Act providing for the regulation of air quality, and making penalties applicable.

Although **House File 2523** was touted as the "air quality bill" by legislators, the fact is that the Minimal Risk Levels established in this bill fail to adequately protect the health of Iowans. The levels established in the bill misrepresent the Center for Disease Control's recommendations by allowing exposures for longer time periods than recommended and by failing to require immediate responses to exceedences of those standards.

The health levels in this bill for hydrogen sulfide and ammonia are many times less protective of health than those imposed in surrounding states where livestock agriculture continues to thrive. Missouri, Minnesota, and Nebraska all have standards that allow violations at most for two days out of any five, and generally not more than twice a year. This bill would require fourteen consecutive days of violations under one provision before exceeding the standard. Setting such a lenient standard, as designated in this bill, does not address the problem and threatens to undermine the credibility of the livestock industry in Iowa.

This bill would also relinquish authority for establishing and amending ambient air quality standards to the federal government. This approach is problematic because it prevents the Environmental Protection Commission from developing an ambient standard to address issues that may be unique to Iowa and may not compel the Environmental Protection Agency (EPA) to take action. It is appropriate for states to maintain this authority given the unique circumstances states face and given the problems with a one-size-fits-all approach that is often pursued by the EPA. Without ambient standards, it is impossible to appropriately balance the need to protect public health with the practical and financial burdens of requiring emissions controls.

Just two years ago, the legislature worked with my administration on a balanced policy regulating livestock confinements, including air quality. I am disappointed in the

legislature's unwillingness to continue that consensus work this year by refusing my offer to develop a regulatory standard that protects human health. At a time when Iowans should be coming together to solve difficult problems, majority legislators have chosen to drive a political wedge in this already divisive issue.

For the above reasons, I hereby respectfully disapprove **House File 2523**. I remain confident that we can develop air quality standards that maintain a strong livestock industry and protect the health of all Iowans, including those most susceptible to respiratory problems. I commit my administration to striking that balance.

I direct the Department of Natural Resources to move forward with establishing an administrative standard, monitoring, and developing best management practices. I believe the Department of Public Health has developed a balanced recommendation for hydrogen sulfide at 30 ppb over a 60-minute average, allowing for seven exceedences on an annual basis. An air quality standard at this level will protect the health of Iowans and maintain a healthy livestock industry, and I urge the Environmental Protection Commission to give serious consideration to this recommendation.

Sincerely,

Thomas J. Vilsack  
Governor

TJV:jmc

cc: Secretary of the Senate  
Chief Clerk of the House

File



VETO

HOUSE FILE 2523

AN ACT  
PROVIDING FOR THE REGULATION OF AIR QUALITY, AND MAKING  
PENALTIES APPLICABLE.

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

Section 1. Section 455B.133, subsection 3, Code 2003, is amended to read as follows:

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare and to reduce emissions contributing to acid rain pursuant to Title IV of the federal Clean Air Act Amendments of 1990. However, the commission shall not adopt, amend, or repeal an ambient standard for which the United States environmental protection agency has not promulgated a standard.

Sec. 2. Section 455B.133, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Adopt, amend, or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. This does not prohibit the commission from adopting a an emission standard for a source or class of sources for which the United States environmental protection agency has not promulgated a standard. This also section does not prohibit the commission from adopting an emission standard or limitation for infectious medical waste treatment or disposal facilities which exceeds the standards or limitations

promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. The commission shall not adopt an emission standard or limitation for infectious medical waste treatment or disposal facilities prior to January 1, 1995, which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act, as amended through January 1, 1991, for a hospital, or a group of hospitals, licensed under chapter 135B which has been operating an infectious medical waste treatment or disposal facility prior to January 1, 1991. The commission shall not adopt or enforce rules under this section that apply to an animal feeding operation as provided in chapter 459.

**Sec. 3. NEW SECTION. 455B.133A ODOR HEALTH EFFECT ADVISORY PANEL.**

Concurrent with the field study conducted pursuant to section 459.207, an odor health effect advisory panel shall be convened as provided in this section.

1. a. The director shall request interested organizations to appoint voting members to the panel as follows:

(1) The national research council of the national academies, which may appoint up to three members who reside in this state or in states contiguous to this state.

(2) The university of Iowa, which may appoint one member.

(3) Iowa state university, which may appoint one member.

(4) The Iowa department of public health, which may appoint one member.

(5) The United States department of agriculture, which may appoint one member.

(6) The department of agriculture and land stewardship, which may appoint one member.

Each organization that appoints a member to the panel may also appoint an alternate who shall serve as the organization's representative on the panel if the principal appointee is unable to attend.

b. The director shall appoint the following persons who shall serve on the panel as ex officio, nonvoting members:

(1) A person who owns a confinement feeding operation that includes a structure which stores liquid manure, other than a small animal feeding operation.

(2) A person who owns a confinement feeding operation that includes a structure which stores manure exclusively on a dry-matter basis, other than a small animal feeding operation.

(3) A person who resides within one mile of a confinement feeding operation, other than a small animal feeding operation.

(4) A person who is actively engaged in a manufacturing business.

(5) A person who represents a municipality in this state and is actively engaged in operating a wastewater treatment facility.

(6) A person who is employed by the department.

Each ex officio member may appoint an alternate who shall serve in place of the principal member appointed by the director whenever the principal member is unable to attend a meeting.

2. a. The voting members of the panel shall elect a chairperson from the panel's membership. Meetings may be called by the chairperson or a majority of the voting members. A majority of the panel's voting members constitutes a quorum. An affirmative vote of a majority of the entire voting membership is necessary for the panel to take a substantive action other than adjourning a meeting.

b. The voting members shall serve without per diem, but shall be reimbursed by the department for actual and necessary expenses. The ex officio members shall serve without per diem expenses.

3. Upon request by the panel, the department shall provide clerical and technical staffing, materials, and meeting rooms necessary for the panel's operations.

4. The panel shall consult with the agency for toxic substances and disease registry as to the health effect levels as defined in section 459.207, if any, for odor.

5. The panel is a government body for purposes of chapters 21 and 22.

6. a. The panel shall submit interim reports and a final report to the general assembly and the commission regarding health effect levels as defined in section 459.207, if any, for odor. The report shall include a determination whether a health effect level for odor is determinable based on a reasonable degree of scientific certainty. If the panel finds that it is determinable, the report shall contain findings and recommendations regarding the health effect levels of odor.

b. The panel shall submit an interim report to the general assembly and the commission on or before January 15 of each year. The panel's final report shall be submitted no later than December 31, 2006. The final report shall contain findings and, if appropriate, recommendations.

c. The commission shall not adopt a rule providing a health effect level for odor until after the panel submits its final report, and a statute that provides for the health effect level for odor is enacted.

Sec. 4. Section 459.207, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

459.207 ANIMAL FEEDING OPERATIONS -- AIRBORNE POLLUTANTS CONTROL.

1. As used in this section:

a. "Airborne pollutant" means hydrogen sulfide, ammonia, or odor.

b. "Health effect level" means a level and duration of exposure to odor that causes a material and verifiable physical disease when humans are exposed to an airborne pollutant for periods consistent with the average exposure periods and levels recorded at a separated location.

c. "Minimal risk level" means the concentration dose and duration of exposure to hydrogen sulfide or ammonia as provided in subsection 4 as recorded at a separated location.

d. "Separated location" means a location or object from which a separation distance is required under section 455B.134, subsection 3, paragraph "f", section 459.202, or section 459.204, other than a public thoroughfare.

2. The department shall conduct a comprehensive field study to monitor the level of airborne pollutants from animal feeding operations in this state, including but not limited to each type of confinement feeding operation structure. The field study as to each airborne pollutant shall be conducted and shall continue for a period of not less than three years. The monitoring period for an airborne pollutant shall begin with the start of collection of valid data for such airborne pollutant, including but not limited to the collection of valid data prior to the effective date of this Act. The field study shall include monitoring data from at least five confinement feeding operations for each type or phase of animal production system commonly used in this state and for each type of manure storage or treatment system commonly used at such animal production systems. The confinement feeding operations monitored shall, to every extent practicable, be located in different geographic locations in the state.

3. The department shall collect monitoring data only from separated locations as provided in this subsection. Monitoring data collected at locations other than as provided in this subsection shall be invalid.

a. For purposes of measuring hydrogen sulfide and ammonia, monitoring data is considered to be taken at a separated location if the monitor is located within three hundred feet of the following:

- (1) A structure that constitutes the separated location.
- (2) The boundaries of a public use area.

However, in no event shall monitoring data be collected at a distance closer than the required minimum separation distance that applies to the manure application or confinement feeding operation structure.

b. For purposes of measuring odor, monitoring data is considered to be taken at a separated location if the monitoring data is collected at a location that is not closer than the required minimum separation distance that applies to the manure application or confinement feeding operation structure.

4. a. The minimal risk levels for an airborne pollutant that is hydrogen sulfide are as follows:

(1) The short-term minimal risk level is one of the following:

(a) A concentration dose exceeding seventy parts per billion for the duration of two consecutive valid sampling weeks.

(b) A sum of the hourly average concentration doses exceeding twenty-three and fifty-two hundredths parts per million-hour for two consecutive valid sampling weeks, reduced by seven hundredths parts per million-hour for each hour for which there is no valid hourly average.

(2) The long-term minimal risk level is one of the following:

(a) A concentration dose exceeding thirty parts per billion for the duration of twelve consecutive valid sampling months.

(b) A sum of the hourly average concentration doses exceeding two hundred sixty-two and eight hundredths parts per million-hour for twelve consecutive valid sampling months, reduced by three hundredths parts per million-hour for each hour for which there is no valid hourly average.

b. The minimal risk levels for an airborne pollutant that is ammonia are as follows:

(1) The short-term minimal risk level is one of the following:

(a) A concentration dose exceeding one thousand seven hundred parts per billion for the duration of two consecutive valid sampling weeks.

(b) A sum of the hourly average concentration doses exceeding five hundred seventy-one and two-tenths parts per million-hour for two consecutive valid sampling weeks, reduced by one and seven-tenths parts per million-hour for each hour for which there is no valid hourly average.

(2) The long-term minimal risk level is one of the following:

(a) A concentration dose exceeding three hundred parts per billion for the duration of twelve consecutive valid sampling months.

(b) A sum of the hourly average concentration doses exceeding two thousand six hundred twenty-eight parts per million-hour for each hour for which there is no valid hourly average.

c. A valid sampling day, valid sampling week, and valid sampling month for purposes of this subsection shall be determined as provided in this paragraph. Hourly averages must first be computed by averaging all valid five-minute averages recorded by the data acquisition system in that hour. An hourly average is considered valid if at least forty-five minutes of valid five-minute averages are recorded by the data acquisition system. A sampling day consists of twenty-four nonoverlapping hours beginning from midnight on a given day to midnight on the following day. A sampling day is considered valid if at least eighteen hours of valid hourly averages have been recorded at the monitoring location. To determine the daily average, each of the valid hourly concentrations associated with a sampling day shall be averaged and truncated to one part per billion. A valid sampling day shall be computed by averaging all valid hourly averages recorded by the data acquisition system in that sampling day. A valid sampling week consists of at least six valid sampling days in a period of seven consecutive days. A valid sampling month is a calendar month in which at least seventy-five percent of the days of the month are valid sampling days.

5. After completion of the field study, the commission may adopt rules pursuant to chapter 17A, except section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to do any of the following:

a. Establish recommended best management practices, mechanisms, processes, or infrastructure designed to reduce airborne pollutants from animal feeding operations in accordance with this section. The recommended best management practices, mechanisms, processes, or infrastructure may be developed for a particular air pollutant and for a specific type of confinement feeding operation structure if the data from the field study demonstrates to a reasonable degree of scientific certainty that a particular airborne pollutant from that type of confinement feeding operation structure is present at the separated location at a level exceeding a minimal risk level for hydrogen sulfide or ammonia, or as applicable a health effect level for odor. The department shall consult with the department of agriculture and land stewardship, Iowa state university college of agriculture, and livestock producers who may be impacted before establishing recommended best management practices, mechanisms, processes, or infrastructure. The department shall provide a procedure for the approval of alternative or experimental best management practices, mechanisms, processes, or infrastructure designed to reduce an airborne pollutant from an animal feeding operation.

b. Establish rules for the enforcement of a minimal risk level or health effect level only in accordance with this subsection. The commission may adopt rules providing for the enforcement of a minimal risk level for hydrogen sulfide or ammonia, or as applicable a health effect level for odor for a particular airborne pollutant, for a specific type or phase of animal production system commonly used in this state and for a specific type of manure storage or treatment system commonly used at such animal production systems if all of the following apply:

(1) The data from the field study demonstrates to a reasonable degree of scientific certainty that the airborne pollutant from that type or phase of animal production system commonly used in this state and that type of manure storage or treatment system commonly used at such animal production systems is present at separated locations at levels exceeding the minimal risk level for hydrogen sulfide or ammonia, or as applicable a health effect level for odor.

(2) A statute that provides for the health effect level is enacted.

The commission shall not adopt rules if the data does not demonstrate to a reasonable degree of scientific certainty that the airborne pollutant from a specific type or phase of animal production system commonly used in this state and a specific type of manure storage or treatment system commonly used at such animal production systems is present at separated locations at levels that exceed the minimal risk level for hydrogen sulfide or ammonia, or as applicable the health effect level for odor.

6. If the commission adopts rules under subsection 5, the department may monitor the level of airborne pollutants at a separated location in accordance with subsection 3. However, the department shall not monitor the level of airborne pollutants unless a written complaint is received from the owner or occupant of the separated location. The department shall monitor the level of airborne pollutants by collecting data at the separated location owned or occupied by the person making the complaint. In providing for the enforcement of the minimal risk level for hydrogen sulfide or ammonia, or as applicable the health effect level for odor, the department shall take all measurements at the separated location in accordance with subsection 3.

a. In using monitoring equipment to collect data for hydrogen sulfide, equipment shall incorporate a thermal oxidizer and a reference method for the measurement of ambient concentrations of sulfur dioxide that meet all calibrations,

standards, and testing requirements established by the United States environmental protection agency. In using monitoring equipment to collect data for ammonia, the equipment shall incorporate a thermal oxidizer and a reference method for the measurement of ambient concentrations of nitrogen dioxide that meet all calibrations, standards, and testing requirements established by the United States environmental protection agency.

b. The department shall not enforce a rule adopted pursuant to this section based on data, if any of the following apply to the collection of such data:

(1) The data is collected from a site other than a separated location as provided in this section.

(2) The data collected exceeds the minimal risk level or health effect level but is within the monitoring equipment's margin of error as established pursuant to rules which shall be adopted by the commission.

(3) The monitoring equipment used to collect data for hydrogen sulfide or ammonia does not meet the specifications for such equipment as required by this section or rules adopted by the commission.

c. If the department determines that a violation of a minimal risk level or health effect level exists, the department shall conduct an investigation to trace the source of the airborne pollutant after the department has collected data measuring an airborne pollutant from a separated location. The department may enter the premises of a confinement feeding operation in compliance with section 455B.103. The department shall comply with standard biosecurity requirements customarily required by the confinement feeding operation that are necessary to control the spread of disease among an animal population.

d. If the department determines that a violation of a minimal risk level or health effect level is caused by an airborne pollutant from a confinement feeding operation structure, the department shall issue a written notice to the

owner of the confinement feeding operation. The notice shall require that the owner reduce the emission of the airborne pollutant to meet the minimal risk level or health effect level. If the notice is for a violation of the short-term minimal risk level for an airborne pollutant that is hydrogen sulfide or ammonia, the notice shall expire one hundred eighty days from the date of its issuance. If the notice is for any other violation of a minimal risk level or health effect level for odor, the notice shall expire one year from the date of its issuance. The owner shall not be in violation of state law for failing to comply with the notice during its effective period. If the department determines that a violation of a minimal risk level or health effect level is caused by an airborne pollutant from the confinement feeding operation structure after the notice has expired, the department may commence an enforcement action as provided in this chapter. However, the owner shall not be subject to an enforcement action for the period that the department's notice is in effect, and shall not be subject to the imposition of penalties based on a violation during that period.

7. The commission's rules providing for a minimal risk level or health effect level shall not exceed a standard or limitation applying to the same minimal risk level or health effect level pursuant to the requirements of the federal Clean Air Act as amended through January 1, 1991, or regulations promulgated by the United States environmental protection agency. This section shall supersede the commission's authority under section 455B.133.

8. The governor shall appoint members to a monitoring advisory committee to advise the department on the monitoring of airborne pollutants that are hydrogen sulfide, ammonia, and odor as required by this Act. Members shall not be representatives of the department and must have expertise in data collection and in the operation of equipment used for data collection as required by this Act. The department shall consult with members in a meeting which shall be chaired by a

person appointed by the governor. The committee shall consult with the department regarding monitoring as required by this section or rules adopted pursuant to this section. The committee shall evaluate and assess protocols for data collection, data processing, and data retention as required by this section. The committee shall also evaluate instrument calibration procedures and instrument siting procedures for objective data collection, and oversee instrumentation evaluation for selection of equipment.

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CHRISTOPHER C. RANTS  
Speaker of the House

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JEFFREY M. LAMBERTI  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2523, Eightieth General Assembly.

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MARGARET THOMSON  
Chief Clerk of the House

Approved \_\_\_\_\_, 2004

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THOMAS J. VILSACK  
Governor