

MAR 10 2004
Place On Calendar

HOUSE FILE 2531
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 655)

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

A BILL FOR

1 An Act relating to setback distance requirements that apply to
2 residences which are constructed in proximity to animal
3 feeding operation structures and making penalties applicable.

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

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

HF 2531

1 Section 1. NEW SECTION. 335.26 RURAL RESIDENCES --
2 SETBACK DISTANCES FROM ANIMAL FEEDING OPERATIONS.

3 1. As used in this section:

4 a. "Animal feeding operation" means a lot, yard, corral,
5 building, or other area in which animals are confined, fed,
6 and maintained for forty-five days or more in any twelve-month
7 period, and all structures or areas used for the storage of
8 manure, compost, egg washwater, or settled open feedlot
9 effluent. However, "animal feeding operation" does not
10 include any of the following:

11 (1) An area where crop, vegetation, or forage is grown or
12 residue cover is maintained during the period that animals are
13 confined in the area.

14 (2) An area which has an animal unit capacity of less than
15 two hundred animal units.

16 b. "Animal unit" means a unit of measurement based upon
17 the product of multiplying the number of animals of each
18 category by a special equivalency factor as follows:

19 (1) Slaughter or feeder cattle	1.000
20 (2) Immature dairy cattle	1.000
21 (3) Mature dairy cattle	1.400
22 (4) Butcher or breeding swine weighing more than 23 fifty-five pounds	0.400
24 (5) Swine weighing fifteen pounds or more but not 25 more than fifty-five pounds	0.100
26 (6) Sheep or lambs	0.100
27 (7) Horses	2.000
28 (8) Turkeys weighing one hundred twelve ounces or 29 more	0.018
30 (9) Turkeys weighing less than one hundred twelve 31 ounces	0.0085
32 (10) Chickens weighing forty-eight ounces or more 33	0.010
34 (11) Chickens weighing less than forty-eight 35 ounces	0.0025

1 c. "Animal unit capacity" means a measurement used to
2 determine the maximum number of animal units that may be
3 maintained as part of an animal feeding operation at any one
4 time.

5 d. "Confinement feeding operation" means an animal feeding
6 operation in which animals are confined to areas which are
7 totally roofed, if one of the following applies:

8 (1) The operation includes an unformed manure storage
9 structure.

10 (2) The operation has an animal unit capacity of more than
11 five hundred animal units.

12 e. "Construct" means erecting a new building. It does not
13 include the expansion, repair, maintenance, or renovation of
14 an existing building.

15 f. "Rural residence" means a house, multifamily dwelling,
16 or other building, including any structure attached to the
17 building, which is located outside the incorporated limits of
18 a city and is used as a place of habitation for humans on a
19 permanent and frequent basis.

20 2. a. A rural residence constructed on or after the
21 effective date of this Act shall be located at a minimum
22 setback distance of one thousand two hundred fifty feet from
23 an animal feeding operation other than a confinement feeding
24 operation.

25 b. A rural residence constructed on or after the effective
26 date of this Act shall be located at a minimum setback
27 distance from a confinement feeding operation structure which
28 is part of the confinement feeding operation as follows:

29		For a	
30		confinement	
31	For a	feeding	For a
32	confinement	operation	confinement
33	feeding	having an	feeding
34	operation	animal unit	operation
35	having an	capacity of	having an

1	2	3	4	5
Type of structure	animal units	animal units	animal units	animal units
7 Anaerobic lagoon	1,875	2,500	3,000	
8 Uncovered earthen manure				
9 storage basin	1,875	2,500	3,000	
10 Uncovered formed manure				
11 storage structure	1,500	2,000	2,500	
12 Covered earthen manure				
13 storage basin	1,250	1,875	2,375	
14 Covered formed manure				
15 storage structure	1,250	1,875	2,375	
16 Confinement building	1,250	1,875	2,375	
17 Egg washwater storage				
18 structure	1,000	1,500	2,000	

19 3. A person shall not construct a rural residence in
 20 violation of this setback distance on or after the effective
 21 date of this Act. The setback distance between the rural
 22 residence and an animal feeding operation shall be measured in
 23 feet from their closest points. The minimum setback distance
 24 for a rural residence from a confinement feeding operation
 25 shall be determined from the closest type of confinement
 26 feeding operation structure to the rural residence.

27 4. This section shall not apply to the construction of a
 28 rural residence if any of the following applies:

29 a. The titleholder of the land where the rural residence
 30 is to be constructed or has been constructed is also the owner
 31 of the animal feeding operation from which the setback
 32 distance is required.

33 b. A written waiver is executed between the titleholder of
 34 the land where the rural residence is to be constructed or has
 35 been constructed and the titleholder of the land where the

1 animal feeding operation is located. The rural residence
2 shall be constructed under such terms and conditions that the
3 parties negotiate. The written waiver must at least include
4 all of the following:

5 (1) The animal species confined, fed, and maintained as
6 part of the animal feeding operation.

7 (2) Each type of manure storage structure which is part of
8 the animal feeding operation.

9 (3) Whether the animal feeding operation is a confinement
10 operation.

11 The titleholder of the land where the animal feeding
12 operation is located shall enter into good faith discussions
13 with the titleholder of the land where the rural residence is
14 to be constructed or has been constructed in order to execute
15 the waiver.

16 A written waiver under this paragraph becomes effective
17 only when the waiver is filed with the office of the recorder
18 of each county in which the land subject to the waiver is
19 located. The waiver shall be indexed and recorded in the same
20 manner as other instruments affecting such land. The waiver
21 shall serve as a covenant, run with the land subject to the
22 waiver, and bind the present titleholders and their successors
23 or assigns.

24 5. Notwithstanding any provision in this chapter to the
25 contrary, the county government in the county where a rural
26 residence may be constructed or has been constructed shall
27 enforce the provisions of this section.

28 a. The county government shall bring an action in district
29 court for an injunction to restrain a person from violating
30 this section. The county government shall not be required to
31 post a bond.

32 b. The county government shall not provide for a variance
33 or waiver other than as provided in this section. The
34 provisions of this section shall apply regardless of whether
35 the county board of supervisors has adopted a zoning ordinance

1 pursuant to this chapter or whether the animal feeding
2 operation benefiting from the setback distance is located in
3 that county.

4 c. If a county board of supervisors has not adopted an
5 ordinance pursuant to this chapter, or has adopted an
6 ordinance pursuant to this chapter that does not include a
7 setback distance as required in this section, the county
8 government shall impose, assess, and collect a civil penalty
9 as if it were a county infraction under chapter 331. Each day
10 that a rural residence is constructed or located in violation
11 of this section constitutes a separate violation.

12 Sec. 2. NEW SECTION. 414.27 RESIDENCES -- SETBACK
13 DISTANCES FROM ANIMAL FEEDING OPERATIONS.

14 1. As used in this section:

15 a. "Animal feeding operation" means a lot, yard, corral,
16 building, or other area in which animals are confined and fed
17 and maintained for forty-five days or more in any twelve-month
18 period, and all structures or areas used for the storage of
19 manure, compost, egg washwater, or settled open feedlot
20 effluent. However, "animal feeding operation" does not
21 include any of the following:

22 (1) An area where crop, vegetation, or forage is grown or
23 residue cover is maintained during the period that animals are
24 confined in the area.

25 (2) An area which has an animal unit capacity of less than
26 two hundred fifty animal units.

27 b. "Animal unit" means a unit of measurement based upon
28 the product of multiplying the number of animals of each
29 category by a special equivalency factor as follows:

30	(1) Slaughter or feeder cattle.....	1.000
31	(2) Immature dairy cattle	1.000
32	(3) Mature dairy cattle	1.400
33	(4) Butcher or breeding swine weighing more than	
34	fifty-five pounds	0.400
35	(5) Swine weighing fifteen pounds or more but not	

1	more than fifty-five pounds	0.100
2	(6) Sheep or lambs	0.100
3	(7) Horses	2.000
4	(8) Turkeys weighing one hundred twelve ounces or	
5	more	0.018
6	(9) Turkeys weighing less than one hundred twelve	
7	ounces	0.0085
8	(10) Chickens weighing forty-eight ounces or more	
9	0.010
10	(11) Chickens weighing less than forty-eight	
11	ounces	0.0025

12 c. "Animal unit capacity" means a measurement used to
13 determine the maximum number of animal units that may be
14 maintained as part of an animal feeding operation at any one
15 time.

16 d. "Confinement feeding operation" means an animal feeding
17 operation in which animals are confined to areas which are
18 totally roofed, if one of the following applies:

19 (1) The operation includes an unformed manure storage
20 structure.

21 (2) The operation has an animal unit capacity of more than
22 five hundred animal units.

23 e. "Construct" means erecting a new building. It does not
24 include the expansion, repair, maintenance, or renovation of
25 an existing building.

26 f. "Residence" means a house, multifamily dwelling, or
27 other building, including any structure attached to the
28 building, which is located inside the incorporated limits of a
29 city or within the extended zoning jurisdiction of a city as
30 provided in section 414.23, and which is used as a place of
31 habitation for humans on a permanent and frequent basis.

32 2. a. A residence constructed on or after the effective
33 date of this Act shall be located at a minimum setback
34 distance of one thousand two hundred fifty feet from an animal
35 feeding operation other than a confinement feeding operation.

1 b. A residence constructed on or after the effective date
 2 of this Act shall be located at a minimum setback distance
 3 from a confinement feeding operation structure which is part
 4 of the confinement feeding operation as follows:

	For a confinement feeding operation having an animal unit capacity of less than 1,000 animal units	For a feeding operation having an animal unit capacity of 1,000 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
5		For a	
6		confinement	
7		feeding	
8	For a	operation	For a
9	confinement	having an	confinement
10	feeding	animal unit	feeding
11	operation	capacity of	operation
12	having an	1,000 or	having an
13	animal unit	more but	animal unit
14	capacity of	less than	capacity of
15	less than	3,000	3,000 or
16	1,000	3,000	more animal
17	animal units	animal units	units

18 Confinement feeding
 19 operation structure 1,875 2,500 3,000

20 3. A person shall not construct a residence in violation
 21 of this setback distance on or after the effective date of
 22 this Act. The setback distance between the residence and an
 23 animal feeding operation shall be measured in feet from their
 24 closest points. The minimum setback distance for a residence
 25 from a confinement feeding operation shall be determined from
 26 the closest type of confinement feeding operation structure to
 27 the rural residence.

28 4. This section shall not apply to the construction of a
 29 residence if any of the following applies:

30 a. The titleholder of the land where the residence is to
 31 be constructed or has been constructed is also the owner of
 32 the animal feeding operation from which the setback distance
 33 is required.

34 b. A written waiver is executed between the titleholder of
 35 the land where the residence is to be constructed or has been

1 constructed and the titleholder of the land where the animal
2 feeding operation is located. The residence shall be
3 constructed under such terms and conditions that the parties
4 negotiate. The written waiver must at least include all of
5 the following:

6 (1) The animal species confined, fed, and maintained as
7 part of the animal feeding operation.

8 (2) Each type of manure storage structure which is part of
9 the animal feeding operation.

10 (3) Whether the animal feeding operation is a confinement
11 operation.

12 The titleholder of the land where the animal feeding
13 operation is located shall enter into good faith discussions
14 with the titleholder of the land where the rural residence is
15 to be constructed or has been constructed in order to execute
16 the waiver.

17 A written waiver under this paragraph becomes effective
18 only when the waiver is filed with the office of the recorder
19 of each county in which the land subject to the waiver is
20 located. The waiver shall be indexed and recorded in the same
21 manner as other instruments affecting such land. The waiver
22 shall serve as a covenant, run with the land subject to the
23 waiver, and bind the present titleholders and their successors
24 or assigns.

25 5. Notwithstanding any provision in this chapter to the
26 contrary, the city government in the city where a residence
27 may be constructed or has been constructed shall enforce the
28 provisions of this section.

29 a. The city government shall bring an action in district
30 court for an injunction to restrain a person from violating
31 this section. The city government shall not be required to
32 post a bond.

33 b. The city government shall not provide for a variance or
34 waiver other than as provided in this section. The provisions
35 of this section shall apply regardless of whether the city

1 government has adopted a zoning ordinance pursuant to this
2 chapter or whether the animal feeding operation benefiting
3 from the setback distance is located in that city.

4 c. If a city government has not adopted an ordinance
5 pursuant to this chapter, or has adopted an ordinance pursuant
6 to this chapter that does not include a setback distance as
7 required in this section, the city government shall impose,
8 assess, and collect a civil penalty as if it were a municipal
9 infraction under chapter 364. Each day that a residence is
10 constructed or located in violation of this section
11 constitutes a separate violation.

12 Sec. 3. IMPLEMENTATION OF ACT. Section 25B.2, subsection
13 3, shall not apply to this Act.

14 EXPLANATION

15 This bill amends provisions in Code chapters 335, relating
16 to county zoning, and 414, relating to city zoning, by
17 prohibiting a person from constructing or expanding a
18 residence that is in proximity to an animal feeding operation.
19 The term "animal feeding operation" is generally defined in
20 the same manner as provided in Code chapter 459 governing
21 animal feeding operations including open feedlots and
22 confinement feeding operations. The bill prohibits a person
23 from constructing a residence in proximity to certain animal
24 feeding operations and includes special separation distance
25 requirements (setback distances) which apply to structures
26 associated with confinement feeding operations. A confinement
27 feeding operation means a location where animals are kept
28 which is totally roofed.

29 According to the bill, a person cannot construct a
30 residence closer than 1,250 feet from an open feedlot or a
31 confinement feeding operation having 500 animal units or less
32 (referred to as a small animal feeding operation). However,
33 special setback distances apply to confinement feeding
34 operations and small animal feeding operations which have
35 unformed manure storage structures (earthen structures or

1 anaerobic lagoons). In this case, the setback distance is
2 based on the type of structure involved and the size of the
3 neighboring confinement feeding operation (from 1,000 to 3,000
4 feet). The distances are the same that currently apply to
5 prevent a person from constructing or expanding a confinement
6 feeding operation structure in proximity to a residence as
7 required under Code section 459.202.

8 The bill provides two exceptions. The setback requirements
9 do not apply to a residence belonging to the owner of the
10 animal feeding operation or, if a written waiver is executed
11 by the titleholder of the land where the animal feeding
12 operation is located, the land where the rural residence is to
13 be constructed. The waiver must be recorded in each county
14 where the land is located and serves as a covenant, running
15 with the land subject to its provisions.

16 The bill provides that a county or city government is
17 responsible for the enforcement of the bill's provisions,
18 regardless of whether the county or city has adopted a zoning
19 ordinance. The county or city must bring an action for
20 injunctive relief and is prohibited from granting a variance
21 or waiver.

22 A person who acts in violation of the bill's provisions is
23 guilty of a county infraction or municipal infraction and is
24 subject to civil penalties. A county infraction or a
25 municipal infraction is a civil offense punishable by a civil
26 penalty of not more than \$750 for a first violation or, if the
27 infraction is a repeat offense, a civil penalty not to exceed
28 \$1,000 for each repeat offense.

29 The bill may include a state mandate as defined in Code
30 section 25B.3. The bill makes inapplicable Code section
31 25B.2, subsection 3, which would relieve a political
32 subdivision from complying with a state mandate if funding for
33 the cost of the state mandate is not provided or specified.
34 Therefore, political subdivisions are required to comply with
35 any state mandate included in the bill.

Greiner - Chait
Manternach
Huseman
Struyk
Quitk

CU
OF 0^{CU} 2531

HSB655
Agriculture

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON DRAKE)

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

A BILL FOR

1 An Act relating to setback distance requirements that apply to
2 residences which are constructed in proximity to animal
3 feeding operation structures and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. NEW SECTION. 335.26 RURAL RESIDENCES --
2 SETBACK DISTANCES FROM ANIMAL FEEDING OPERATIONS.

3 1. As used in this section:

4 a. "Animal feeding operation" means a confinement feeding
5 operation or open feedlot as defined in section 459.102, and
6 includes but is not limited to an animal feeding operation
7 structure, a settled open feedlot effluent basin or settled
8 open feedlot effluent treatment area, all as defined in
9 section 459.102, or other compost or manure storage area.

10 b. "Construct" includes relocating or erecting a building,
11 excavating for a basement, installing footings for a building,
12 or expanding an existing building. It does not include the
13 repair, maintenance, or renovation of an existing building.

14 c. "Rural residence" means a house, multifamily dwelling,
15 or other building, including any structure attached to the
16 building, which is located outside the incorporated limits of
17 a city and is used as a place of habitation for humans on a
18 permanent and frequent basis.

19 2. A rural residence constructed on or after July 1, 2004,
20 shall be located a minimum of three thousand feet from an
21 animal feeding operation. A person shall not construct a
22 rural residence in violation of this setback distance on or
23 after July 1, 2004. The setback distance between the rural
24 residence and an animal feeding operation shall be measured in
25 feet from their closest points. However, this subsection
26 shall not apply to the construction of a rural residence if
27 any of the following applies:

28 a. The titleholder of the land where the rural residence
29 is to be constructed or has been constructed is also the owner
30 of the animal feeding operation from which the setback
31 distance is required.

32 b. A written waiver is executed between the titleholder of
33 the land where the rural residence is to be constructed or has
34 been constructed and the titleholder of the land where the
35 animal feeding operation is located. The rural residence

1 shall be constructed under such terms and conditions that the
2 parties negotiate. A written waiver under this paragraph
3 becomes effective only upon the recording of the waiver in the
4 office of the recorder of the county in which the land on
5 which the rural residence is to be constructed or has been
6 constructed is located.

7 3. Notwithstanding any provision in this chapter to the
8 contrary, the county government in the county where a rural
9 residence may be constructed or has been constructed shall
10 enforce the provisions of this section.

11 a. The county government shall bring an action in district
12 court for an injunction to restrain a person from violating
13 this section. The county government shall not be required to
14 post a bond.

15 b. The county government shall not provide for a variance
16 or waiver other than as provided in this section. The
17 provisions of this section shall apply regardless of whether
18 the county board of supervisors has adopted a zoning ordinance
19 pursuant to this chapter or whether the animal feeding
20 operation benefiting from the setback distance is located in
21 that county.

22 c. If a county board of supervisors has not adopted an
23 ordinance pursuant to this chapter, or has adopted an
24 ordinance pursuant to this chapter that does not include a
25 setback distance as required in this section, the county
26 government shall impose, assess, and collect a civil penalty
27 as if it were a county infraction under chapter 331. Each day
28 that a rural residence is constructed or located in violation
29 of this section constitutes a separate violation.

30 Sec. 2. NEW SECTION. 414.27 RESIDENCES -- SETBACK
31 DISTANCES FROM ANIMAL FEEDING OPERATIONS.

32 1. As used in this section:

33 a. "Animal feeding operation" means a confinement feeding
34 operation or open feedlot as defined in section 459.102, and
35 includes but is not limited to an animal feeding operation

1 structure, a settled open feedlot effluent basin or settled
2 open feedlot effluent treatment area, all as defined in
3 section 459.102, or other compost or manure storage area.

4 b. "Construct" includes relocating or erecting a building,
5 excavating for a basement, installing footings for a building,
6 or expanding an existing building. It does not include the
7 repair, maintenance, or renovation of an existing building.

8 c. "Residence" means a house, multifamily dwelling, or
9 other building, including any structure attached to the
10 building, which is located inside the incorporated limits of a
11 city or within the extended zoning jurisdiction of a city as
12 provided in section 414.23, and which is used as a place of
13 habitation for humans on a permanent and frequent basis.

14 2. A residence constructed on or after July 1, 2004, shall
15 be located a minimum of three thousand feet from an animal
16 feeding operation. A person shall not construct a residence
17 in violation of this setback distance on or after July 1,
18 2004. The setback distance between the residence and an
19 animal feeding operation shall be measured in feet from their
20 closest points. However, this subsection shall not apply to
21 the construction of a residence if any of the following
22 applies:

23 a. The titleholder of the land where the residence is to
24 be constructed or has been constructed is also the owner of
25 the animal feeding operation from which the setback distance
26 is required.

27 b. A written waiver is executed between the titleholder of
28 the land where the residence is to be constructed or has been
29 constructed and the titleholder of the land where the animal
30 feeding operation is located. The residence shall be
31 constructed under such terms and conditions that the parties
32 negotiate. A written waiver under this paragraph becomes
33 effective only upon the recording of the waiver in the office
34 of the recorder of the county in which the land on which the
35 residence is to be constructed or has been constructed is

655

1 located.

2 3. Notwithstanding any provision in this chapter to the
3 contrary, the city government in the city where a residence
4 may be constructed or has been constructed shall enforce the
5 provisions of this section.

6 a. The city government shall bring an action in district
7 court for an injunction to restrain a person from violating
8 this section. The city government shall not be required to
9 post a bond.

10 b. The city government shall not provide for a variance or
11 waiver other than as provided in this section. The provisions
12 of this section shall apply regardless of whether the city
13 government has adopted a zoning ordinance pursuant to this
14 chapter or whether the animal feeding operation benefiting
15 from the setback distance is located in that city.

16 c. If a city government has not adopted an ordinance
17 pursuant to this chapter, or has adopted an ordinance pursuant
18 to this chapter that does not include a setback distance as
19 required in this section, the city government shall impose,
20 assess, and collect a civil penalty as if it were a municipal
21 infraction under chapter 364. Each day that a residence is
22 constructed or located in violation of this section
23 constitutes a separate violation.

24 Sec. 3. IMPLEMENTATION OF ACT. Section 25B.2, subsection
25 3, shall not apply to this Act.

26 EXPLANATION

27 This bill prohibits a person from constructing or expanding
28 a residence that is closer than 3,000 feet from an animal
29 feeding operation (a confinement feeding operation or open
30 feedlot). The bill's prohibition applies to a rural residence
31 located outside the corporate limits of a city and to a
32 residence located within the corporate limits of a city. The
33 bill also creates several exceptions, including for a
34 residence belonging to the owner of the animal feeding
35 operation or if a written waiver is executed by the

1 titleholder of the land where the animal feeding operation is
2 located.

3 The bill provides that a county or city government is
4 responsible for the enforcement of the bill's provisions,
5 regardless of whether the county or city has adopted a zoning
6 ordinance. The county or city must bring an action for
7 injunctive relief and is prohibited from granting a variance
8 or waiver. A person who acts in violation of the bill's
9 provisions is guilty of a county infraction or municipal
10 infraction and subject to civil penalties.

11 A county infraction or a municipal infraction is a civil
12 offense punishable by a civil penalty of not more than \$750
13 for a first violation or if the infraction is a repeat
14 offense, a civil penalty not to exceed \$1,000 for each repeat
15 offense.

16 The bill may include a state mandate as defined in Code
17 section 25B.3. The bill makes inapplicable Code section
18 25B.2, subsection 3, which would relieve a political
19 subdivision from complying with a state mandate if funding for
20 the cost of the state mandate is not provided or specified.
21 Therefore, political subdivisions are required to comply with
22 any state mandate included in the bill.

23
24
25
26
27
28
29
30
31
32
33
34
35