

FEB 23 2006
Agriculture

HOUSE FILE 2500
BY FALLON

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:

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HF 2500

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 and 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 an area where crop, vegetation, or forage is grown or
11 residue cover is maintained during the period that animals are
12 confined in the area.

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

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

33 c. "Animal unit capacity" means a measurement used to
34 determine the maximum number of animal units that may be
35 maintained as part of an animal feeding operation at any one

1 time.

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

5 (1) The operation includes an unformed manure storage
6 structure.

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

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

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

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

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

27		For a	
28		confinement	
29	For a	feeding	For a
30	confinement	operation	confinement
31	feeding	having an	feeding
32	operation	animal unit	operation
33	having an	capacity of	having an
34	animal unit	1,000 or	animal unit
35	capacity of	more but	capacity of

1		less than	less than	3,000 or
2		1,000	3,000	more animal
3	Type of structure	animal units	animal units	units
4	<hr/>			
5	Anaerobic lagoon	1,875	2,500	3,000
6	Uncovered earthen manure			
7	storage basin	1,875	2,500	3,000
8	Uncovered formed manure			
9	storage structure	1,500	2,000	2,500
10	Covered earthen manure			
11	storage basin	1,250	1,875	2,375
12	Covered formed manure			
13	storage structure	1,250	1,875	2,375
14	Confinement building	1,250	1,875	2,375
15	Egg washwater storage			
16	structure	1,000	1,500	2,000

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

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

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

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

1 parties negotiate. A written waiver under this paragraph
2 becomes effective only when the waiver is filed with the
3 office of the recorder of each county in which the land
4 subject to the waiver is located. The waiver shall be indexed
5 and recorded in the same manner as other instruments affecting
6 such land. The waiver shall serve as a covenant, run with the
7 land subject to the waiver, and bind the present titleholders
8 and their successors or assigns.

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

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

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

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

32 **Sec. 2. NEW SECTION. 414.27 RESIDENCES -- SETBACK**
33 **DISTANCES FROM ANIMAL FEEDING OPERATIONS.**

34 1. As used in this section:

35 a. "Animal feeding operation" means a lot, yard, corral,

1 building, or other area in which animals are confined and fed
 2 and maintained for forty-five days or more in any twelve-month
 3 period, and all structures or areas used for the storage of
 4 manure, compost, egg washwater, or settled open feedlot
 5 effluent. However, "animal feeding operation" does not
 6 include an area where crop, vegetation, or forage is grown or
 7 residue cover is maintained during the period that animals are
 8 confined in the area.

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

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

29 c. "Animal unit capacity" means a measurement used to
 30 determine the maximum number of animal units that may be
 31 maintained as part of an animal feeding operation at any one
 32 time.

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

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

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

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

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

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

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

23		For a		
24			confinement	
25			feeding	For a
26	For a	operation	confinement	confinement
27	feeding	having an	feeding	feeding
28	operation	animal unit	operation	operation
29	having an	capacity of	having an	having an
30	animal unit	1,000 or	animal unit	animal unit
31	capacity of	more but	capacity of	capacity of
32	less than	less than	3,000 or	3,000 or
33	1,000	3,000	more animal	more animal
34	Type of structure	animal units	animal units	units

35

1 Confinement feeding

2 operation structure 1,875 2,500 3,000

3 3. A person shall not construct a residence in violation
4 of this setback distance on or after the effective date of
5 this Act. The setback distance between the residence and an
6 animal feeding operation shall be measured in feet from their
7 closest points. The minimum setback distance for a residence
8 from a confinement feeding operation shall be determined from
9 the closest type of confinement feeding operation structure to
10 the rural residence.

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

13 a. The titleholder of the land where the residence is to
14 be constructed or has been constructed is also the owner of
15 the animal feeding operation from which the setback distance
16 is required.

17 b. A written waiver is executed between the titleholder of
18 the land where the residence is to be constructed or has been
19 constructed and the titleholder of the land where the animal
20 feeding operation is located. The residence shall be
21 constructed under such terms and conditions that the parties
22 negotiate. A written waiver under this paragraph becomes
23 effective only when the waiver is filed with the office of the
24 recorder of each county in which the land subject to the
25 waiver is located. The waiver shall be indexed and recorded
26 in the same manner as other instruments affecting such land.
27 The waiver shall serve as a covenant, run with the land
28 subject to the waiver, and bind the present titleholders and
29 their successors or assigns.

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

34 a. The city government shall bring an action in district
35 court for an injunction to restrain a person from violating

1 this section. The city government shall not be required to
2 post a bond.

3 b. The city government shall not provide for a variance or
4 waiver other than as provided in this section. The provisions
5 of this section shall apply regardless of whether the city
6 government has adopted a zoning ordinance pursuant to this
7 chapter or whether the animal feeding operation benefiting
8 from the setback distance is located in that city.

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

17 Sec. 3. IMPLEMENTATION OF ACT. Section 25B.2, subsection
18 3, shall not apply to this Act.

19 EXPLANATION

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

34 According to the bill, a person cannot construct a
35 residence closer than 1,250 feet from an open feedlot or a

1 confinement feeding operation having 500 animal units or less
2 (referred to as a small animal feeding operation). However,
3 special setback distances apply to confinement feeding
4 operations and small animal feeding operations which have
5 unformed manure storage structures (earthen structures or
6 anaerobic lagoons). In this case, the setback distance is
7 based on the type of structure involved and the size of the
8 neighboring confinement feeding operation (from 1,000 to 3,000
9 feet). The distances are the same that currently apply to
10 prevent a person from constructing or expanding a confinement
11 feeding operation structure in proximity to a residence as
12 required under Code section 459.202.

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

21 The bill provides that a county or city government is
22 responsible for the enforcement of the bill's provisions,
23 regardless of whether the county or city has adopted a zoning
24 ordinance. The county or city must bring an action for
25 injunctive relief and is prohibited from granting a variance
26 or waiver.

27 A person who acts in violation of the bill's provisions is
28 guilty of a county infraction or municipal infraction and is
29 subject to civil penalties. A county infraction or a
30 municipal infraction is a civil offense punishable by a civil
31 penalty of not more than \$750 for a first violation or, if the
32 infraction is a repeat offense, a civil penalty not to exceed
33 \$1,000 for each repeat offense.

34 The bill may include a state mandate as defined in Code
35 section 25B.3. The bill makes inapplicable Code section

1 25B.2, subsection 3, which would relieve a political
2 subdivision from complying with a state mandate if funding for
3 the cost of the state mandate is not provided or specified.
4 Therefore, political subdivisions are required to comply with
5 any state mandate included in the bill.

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