

# Senate Study Bill 1328

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON KREIMAN)

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

## A BILL FOR

1 An Act relating to confinement feeding operations by providing  
2 for the review of permits involving construction, and  
3 including an applicability provision.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 2840XC 82  
6 da/gg/14

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1 1 Section 1. Section 459.303, subsection 2, Code 2007, is  
1 2 amended by striking the subsection and inserting in lieu  
1 3 thereof the following:

1 4 2. The department shall only issue a permit to construct a  
1 5 confinement feeding operation structure after the review of an  
1 6 application by the board of supervisors in the county where  
1 7 the proposed construction is to be located and by the  
1 8 department, as provided in this section and section 459.304.  
1 9 Before issuance of a permit the application must be accepted  
1 10 by the board and approved by the department. However, if an  
1 11 applicant is not required to be issued a permit, the  
1 12 department shall still review the application, and shall  
1 13 either approve the application and issue the permit or  
1 14 disapprove and terminate the application, all without county  
1 15 review, as otherwise provided in section 459.304.

1 16 Sec. 2. Section 459.304, subsection 2, unnumbered  
1 17 paragraph 1, Code 2007, is amended to read as follows:

1 18 ~~Regardless of whether the county board of supervisors has~~  
1 19 ~~adopted a construction evaluation resolution, the A county~~  
1 20 ~~board of supervisors may provide comment comments to the~~  
1 21 ~~department on regarding the department's determination to~~  
1 22 ~~approve or disapprove an application proposing to construct a~~  
1 23 ~~construction permit application for a confinement feeding~~  
1 24 ~~operation structure in the county.~~

1 25 Sec. 3. Section 459.304, subsections 3 through 8, Code  
1 26 2007, are amended to read as follows:

1 27 3. A county board of supervisors ~~may shall~~ adopt a  
1 28 construction evaluation ~~resolution ordinance~~ relating to the  
1 29 construction of a confinement feeding operation structure.

1 30 ~~a. As part of the ordinance, the board shall establish a~~  
1 31 ~~construction evaluation committee and provide for its~~  
1 32 ~~procedures. The board shall appoint persons to serve as~~  
1 33 ~~committee members as follows:~~

1 34 ~~(1) Five persons who shall serve as voting members for~~  
1 35 ~~staggered five-year terms as provided in the ordinance. The~~  
2 1 ~~members shall include the following: the county's~~  
2 2 ~~environmental health officer; a commissioner of a soil and~~  
2 3 ~~water conservation district located in the county as provided~~  
2 4 ~~in chapter 161A; a real estate broker licensed pursuant to~~  
2 5 ~~chapter 543B who resides in the county; a person who resides~~  
2 6 ~~in a city which is located in the county; and a person~~  
2 7 ~~actively engaged in the care and feeding of animals.~~

2 8 ~~(2) One member of the board who shall serve as an ex~~  
2 9 ~~officio, nonvoting member for a term as provided in the~~  
2 10 ~~ordinance.~~

2 11 ~~b. The board must shall submit such resolution the~~  
2 12 ~~construction evaluation ordinance to the department for filing~~  
2 13 ~~as required by the department. If the board has submitted~~  
2 14 ~~such resolution to the department, the board may evaluate the~~  
2 15 ~~construction permit application and submit an adopted~~  
2 16 ~~recommendation to the department to approve or disapprove a~~  
2 17 ~~construction permit application as provided in this~~

2 18 subsection.

2 19 ~~c. The board must shall make its decision to recommend~~  
2 20 ~~approval or disapproval of a decision to accept or reject the~~  
2 21 ~~permit application as provided in this subsection. follows:~~

2 22 ~~a. (1) For the expansion of a confinement feeding~~  
2 23 ~~operation that includes a confinement feeding operation~~  
2 24 ~~structure constructed prior to April 1, 2002, the board shall~~  
2 25 ~~not evaluate review a construction permit application for the~~  
2 26 ~~construction or expansion of a confinement feeding operation~~  
2 27 ~~structure if after the expansion of the confinement feeding~~  
2 28 ~~operation, its animal unit capacity is one thousand six~~  
2 29 ~~hundred sixty=six animal units or less.~~

2 30 ~~b. (2) The board must shall make its decision to accept or~~  
2 31 ~~reject an application based on the results of the master~~  
2 32 ~~matrix.~~

2 33 ~~(a) The board shall submit the application to the~~  
2 34 ~~committee for review. The committee shall conduct an~~  
2 35 ~~evaluation of the application using the master matrix as~~  
3 1 ~~provided in section 459.305. The board's recommendation may~~  
3 2 ~~be based on the master matrix or may be based on comments~~  
3 3 ~~under this section regardless of the results of the master~~  
3 4 ~~matrix. After its review, the committee shall recommend that~~  
3 5 ~~the board accept or reject the application in a manner~~  
3 6 ~~provided for by the board. The committee's recommendation~~  
3 7 ~~shall be based on a rating produced by using the master~~  
3 8 ~~matrix. The recommendation, including the completed master~~  
3 9 ~~matrix, must be contained in a written report submitted to the~~  
3 10 ~~board within thirty days after the date that the department~~  
3 11 ~~receives a complete application pursuant to section 455B.303.~~

3 12 ~~(b) The board shall consider and adopt or not adopt the~~  
3 13 ~~committee's recommendation. If the board does not adopt the~~  
3 14 ~~committee's recommendation to accept the application, the~~  
3 15 ~~board must conduct an independent evaluation of the~~  
3 16 ~~application using the master matrix. The board shall reject~~  
3 17 ~~an application that does not achieve a satisfactory rating.~~  
3 18 ~~The board shall accept an application that does achieve a~~  
3 19 ~~satisfactory score.~~

3 20 ~~e. (c) In completing the master matrix, the board county~~  
3 21 ~~shall not score criteria on a selective basis. The board~~  
3 22 ~~county must score all criteria which is part of the master~~  
3 23 ~~matrix according to the terms and conditions relating to~~  
3 24 ~~construction as specified in the application or commitments~~  
3 25 ~~for manure management that are to be incorporated into a~~  
3 26 ~~manure management plan as provided in section 459.312.~~

3 27 ~~d. The board's adopted recommendation board shall decide~~  
3 28 ~~to accept or reject an application pursuant to a motion and~~  
3 29 ~~the decision shall be submitted to the department as required~~  
3 30 ~~by the department. The board's decision shall include the~~  
3 31 ~~committee's report, any reason for not adopting the~~  
3 32 ~~recommendation submitted to the board by the committee, and a~~  
3 33 ~~statement of the board's adoption of the master matrix used by~~  
3 34 ~~the committee or the use of a master matrix used by the board~~  
3 35 ~~after conducting an independent evaluation of the application.~~

4 1 ~~The decision shall also include any other specific reasons~~  
4 2 ~~reason and any supporting documentation for the decision to~~  
4 3 ~~recommend approval or disapproval of which was used by the~~  
4 4 ~~board to accept or reject the application.~~

4 5 ~~4. The department must receive the county board of~~  
4 6 ~~supervisor's comments or evaluation for approval or~~  
4 7 ~~disapproval of an , if any, and a decision to accept or reject~~  
4 8 ~~an application for a construction permit to construct a~~  
4 9 ~~confinement feeding operation structure not later than thirty~~  
4 10 ~~sixty days following the applicant's delivery of the~~  
4 11 ~~application to the department. Regardless of whether the~~  
4 12 ~~department receives comments or an evaluation by a county~~  
4 13 ~~board of supervisors, the The department must approve or~~  
4 14 ~~disapprove an application for a construction permit issue the~~  
4 15 ~~permit or terminate the application within sixty a processing~~  
4 16 ~~period of ninety days following the applicant's delivery of~~  
4 17 ~~the application to the department. However, the applicant may~~  
4 18 ~~deliver a notice to the department and the board requesting a~~  
4 19 ~~continuance. Upon receipt of a notice, the time required for~~  
4 20 ~~the county or department to act upon the application shall be~~  
4 21 ~~suspended for the period provided in the notice, but for not~~  
4 22 ~~more than thirty days after the department's receipt of the~~  
4 23 ~~notice. The applicant may submit more than one notice.~~  
4 24 ~~However, the department may provide that an application is~~  
4 25 ~~terminated if no action is required by the county or the~~  
4 26 ~~department for one year following delivery of the application~~  
4 27 ~~to the board. The department may grant the county a~~  
4 28 ~~continuance upon request by the board when the committee or~~

4 29 the board is considering the application. The department may  
4 30 also provide for a continuance when it considers the  
4 31 application. The department shall provide notice to the  
4 32 applicant and the board of the continuance. The time required  
4 33 for the county or the department to act upon the application  
4 34 shall be suspended for the period provided in the notice, but  
4 35 for not more than thirty days. However, the department shall  
5 1 not grant more than one continuance to the county or provide  
5 2 for more than one continuance for itself.

5 3 5. a. The department shall approve an application for a  
5 4 construction permit to construct a confinement feeding  
5 5 operation structure, if the board of supervisors which has  
5 6 filed a county construction evaluation resolution submits an  
5 7 adopted recommendation to approve the construction permit  
5 8 application which may be based on a satisfactory rating  
5 9 produced by the master matrix to the department submits a  
5 10 decision to accept the application and the department  
5 11 determines that the application meets the requirements of this  
5 12 chapter. The department shall disapprove an application that  
5 13 does not satisfy the requirements of this chapter regardless  
5 14 of the adopted recommendation of decision submitted by the  
5 15 board. The department shall consider any timely filed  
5 16 comments made by the board as provided in this section to  
5 17 determine if an application meets the requirements of this  
5 18 chapter.

5 19 b. ~~if~~ The department shall not approve an application for  
5 20 a permit to construct a confinement feeding operation  
5 21 structure if the board submits to the department an adopted  
5 22 recommendation a decision to disapprove an reject the  
5 23 application, for a construction permit that is based on a  
5 24 rating produced by the master matrix, the The department may  
5 25 set aside an application that the board rejects until the  
5 26 application is terminated at the end of the processing period.  
5 27 However, at any time prior to the termination, the applicant  
5 28 may contest the board's decision or the department may  
5 29 petition the commission to review the board's decision. Upon  
5 30 notice by the applicant contesting the board's decision of a  
5 31 petition by the department to the commission of the board's  
5 32 decision, the department shall first determine if the  
5 33 application meets the requirements of this chapter as provided  
5 34 in section 459.103. The department shall disapprove an  
5 35 application that does not satisfy meet the requirements of  
6 1 this chapter regardless of any result produced by using the  
6 2 master matrix. If the application meets the requirements of  
6 3 this chapter, the department shall conduct an independent  
6 4 evaluation of the application using the master matrix. The  
6 5 department shall approve the an application if it achieves a  
6 6 satisfactory rating according to the department's evaluation  
6 7 that does meet the requirements of this chapter, conditioned  
6 8 upon the commission's resolution of all issues affecting and  
6 9 approval of the application. The department shall disapprove  
6 10 the application if it produces an unsatisfactory rating  
6 11 regardless of whether the application satisfies the  
6 12 requirements of this chapter. The department shall consider  
6 13 any timely filed comments made by the board as provided in  
6 14 this section to determine if an application meets the  
6 15 requirements of this chapter. Upon commission request, the  
6 16 department shall conduct an independent evaluation of the  
6 17 application using the master matrix for consideration by the  
6 18 commission during its review of the board's decision. At any  
6 19 time prior to the application's termination, the applicant or  
6 20 the board may contest the department's determination to  
6 21 approve or disapprove the application as provided in this  
6 22 section.

6 23 c. ~~If the county board of supervisors does not submit a~~  
6 24 ~~construction evaluation resolution to the department, fails to~~  
6 25 ~~submit an adopted recommendation, submits only comments, or~~  
6 26 ~~fails to submit comments, the department shall approve the~~  
6 27 ~~application if the application meets the requirements of this~~  
6 28 ~~chapter as provided in section 459.103.~~

6 29 6. The department may conduct an inspection of the site on  
6 30 which the construction is proposed after providing at a  
6 31 minimum twenty-four hours' notice or upon receiving consent  
6 32 from the construction permit applicant. The county board of  
6 33 supervisors that has adopted a construction evaluation  
6 34 resolution of the county in which the construction is  
6 35 proposed, may designate a county employee to accompany a  
7 1 departmental official during the site inspection. The county  
7 2 employee shall have the same right to access to the site's  
7 3 real estate as the departmental official conducting the  
7 4 inspection during the period that the county employee

7 5 accompanies the departmental official. The departmental  
7 6 official and the county employee shall comply with standard  
7 7 biosecurity requirements customarily required by the  
7 8 confinement feeding operation that are necessary in order to  
7 9 control the spread of disease among an animal population.  
7 10 7. Upon written request by a county resident, the county  
7 11 board of supervisors shall forward to the county resident a  
7 12 copy of the board's ~~adopted recommendation decision to accept~~  
7 13 ~~or reject the application, the report or related documentation~~  
7 14 ~~used by the construction evaluation committee, any county~~  
7 15 ~~comments to the department on the permit application, and the~~  
7 16 ~~department's responses, as provided in chapter 22.~~

7 17 8. a. The department shall deliver a notice to the  
7 18 ~~parties as follows:~~

7 19 (1) ~~To the applicant of the board's decision to accept or~~  
7 20 ~~reject the application or the department's determination to~~  
7 21 ~~approve or disapprove the application. A notice shall include~~  
7 22 ~~an explanation of the applicant's right to contest the board's~~  
7 23 ~~decision or the department's determination as provided in this~~  
7 24 ~~section. The department shall notify the board at the same~~  
7 25 ~~time. The department shall deliver the notice within three~~  
7 26 ~~days of the after the submission of the board's decision or~~  
7 27 ~~the department's determination.~~

7 28 (2) ~~To the board of the department's decision petition to~~  
7 29 ~~the commission to review the board's decision to accept or~~  
7 30 ~~reject the application or the department's determination to~~  
7 31 ~~approve or disapprove an the application for a construction~~  
7 32 ~~permit. If the board of supervisors has submitted an adopted~~  
7 33 ~~recommendation to the department for the approval or~~  
7 34 ~~disapproval of a construction permit application as provided~~  
7 35 ~~in this section, the department shall notify the board of the~~  
8 1 ~~department's decision to approve or disapprove the application~~  
8 2 ~~A notice shall include an explanation of the board's right to~~  
8 3 ~~be a party in the commission's review of the board's decision~~  
8 4 ~~to accept or reject the application or the board's right to~~  
8 5 ~~contest the department's determination to approve or~~  
8 6 ~~disapprove the application. The department shall deliver a~~  
8 7 ~~copy to the applicant at the same time.~~

8 8 b. (1) The applicant may contest the department's  
8 9 ~~determination to disapprove an application or the board's~~  
8 10 ~~decision to reject the application, by requesting demanding a~~  
8 11 ~~hearing and may elect to have the hearing conducted before an~~  
8 12 ~~administrative law judge pursuant to chapter 17A or before the~~  
8 13 ~~commission. If the applicant and a board of supervisors are~~  
8 14 ~~both contesting the department's decision determination, the~~  
8 15 ~~applicant may request that the commission presiding officer~~  
8 16 ~~conduct the hearing on a consolidated basis. The commission~~  
8 17 ~~shall hear the case according to procedures established by~~  
8 18 ~~rules adopted by the department. The commission may hear the~~  
8 19 ~~case as a contested case proceeding under chapter 17A. The~~  
8 20 ~~department, upon petition by the applicant, shall deliver to~~  
8 21 ~~the administrative law judge or the commission a copy of the~~  
8 22 ~~board of supervisors' recommendation board's decision and the~~  
8 23 ~~committee's report together with the results produced by its~~  
8 24 ~~the master matrix and used by the committee, the board, and~~  
8 25 ~~the department; any supporting data or documents submitted~~  
8 26 ~~with the results; and comments submitted by the board to the~~  
8 27 ~~department, and the department's evaluation of the application~~  
8 28 ~~including the results produced by its matrix and any~~  
8 29 ~~supporting data or documents. If the commission hears the~~  
8 30 ~~case, its decision shall be the department's final agency~~  
8 31 ~~action. The commission shall render a decision within~~  
8 32 ~~thirty-five sixty days from the date that the applicant or~~  
8 33 ~~board files a demand for a hearing.~~

8 34 (2) ~~A county board of supervisors that has submitted an~~  
8 35 ~~adopted recommendation to the department The board may contest~~  
9 1 ~~the department's decision determination by requesting a~~  
9 2 ~~hearing and may elect to have the hearing conducted before an~~  
9 3 ~~administrative law judge pursuant to chapter 17A or before the~~  
9 4 ~~commission. If the applicant and a board are both contesting~~  
9 5 ~~the department's determination, the applicant may request that~~  
9 6 ~~the presiding officer conduct the hearing on a consolidated~~  
9 7 ~~basis. The commission shall hear the case according to~~  
9 8 ~~procedures established by rules adopted by the department.~~  
9 9 ~~The commission may hear the case as a contested case~~  
9 10 ~~proceeding under chapter 17A. The board may request that the~~  
9 11 ~~department submit a copy of the department's evaluation of the~~  
9 12 ~~application including the results produced by its matrix and~~  
9 13 ~~any supporting data or documents. The decision by the~~  
9 14 ~~commission shall be the department's final agency action. The~~  
9 15 ~~commission shall render a decision within thirty-five sixty~~

9 16 days from the date that the board initiates the proceeding.  
9 17 (3) The department may petition the commission to review  
9 18 the board's decision to reject the application by requesting a  
9 19 hearing and the commission may elect to have the hearing  
9 20 conducted before an administrative law judge pursuant to  
9 21 chapter 17A. If the applicant is contesting the board's  
9 22 decision to reject the application or the department's  
9 23 determination to disapprove the application, or the board is a  
9 24 party to the hearing reviewing the board's decision to accept  
9 25 or reject the application, the department, board, or applicant  
9 26 may request that the presiding officer consolidate all matters  
9 27 as part of the same hearing. The commission shall hear the  
9 28 case according to procedures established by rules adopted by  
9 29 the department. The commission may hear the case as a  
9 30 contested case proceeding under chapter 17A. The decision by  
9 31 the commission shall be the department's final agency action.  
9 32 The commission shall render a decision within thirty-five days  
9 33 from the date that the department initiates the proceeding.

9 34 c. Judicial review of the decision of either the  
9 35 department or the commission may be sought in accordance with  
10 1 the terms of chapter 17A.

10 2 Sec. 4. APPLICABILITY. This Act applies to applications  
10 3 for the issuance of permits involving the construction,  
10 4 including expansion, of confinement feeding operation  
10 5 structures which have been filed with the department of  
10 6 natural resources on or after the effective date of this Act.

#### 10 7 EXPLANATION

10 8 CURRENT LAW. This bill amends several Code provisions  
10 9 which provide for county participation in the approval of  
10 10 permits for the construction of confinement feeding operation  
10 11 structures (e.g., confinement buildings and manure storage  
10 12 structures) by the department of natural resources.  
10 13 Currently, counties are prohibited from adopting or enforcing  
10 14 county legislation regulating a condition or activity  
10 15 occurring on land used for the production, care, feeding, or  
10 16 housing of animals unless the regulation is expressly  
10 17 authorized by state law (Code section 331.304A). One  
10 18 exception allows a county to provide comments to the  
10 19 department regarding the issuance of a permit for construction  
10 20 of confinement feeding operation structures under Code chapter  
10 21 459 (the animal agriculture compliance Act). A second  
10 22 exception allows a county to participate in the scoring of a  
10 23 master matrix. The purpose of the master matrix is to provide  
10 24 a comprehensive assessment mechanism in order to produce a  
10 25 statistically verifiable basis for determining whether to  
10 26 approve or disapprove an application for a construction  
10 27 permit. A county board of supervisors may adopt a  
10 28 construction evaluation resolution in order to use a master  
10 29 matrix. If the board submits a resolution to the department,  
10 30 the board may evaluate a construction permit application and  
10 31 submit a recommendation to the department to approve or  
10 32 disapprove the application. The department must approve an  
10 33 application if the board submits a recommendation to approve  
10 34 the application, and the department determines that the  
10 35 application meets the requirements of Code chapter 459. The  
11 1 department must disapprove an application that the department  
11 2 determines does not satisfy the requirements of Code chapter  
11 3 459 regardless of the recommendation from the board. If the  
11 4 board submits a recommendation to disapprove the application,  
11 5 the department must first determine if the application meets  
11 6 the requirements of Code chapter 459. If the application  
11 7 meets the requirements of the chapter, the department must  
11 8 conduct an independent evaluation of the application using the  
11 9 master matrix. The department must approve the application if  
11 10 it achieves a satisfactory rating according to the  
11 11 department's evaluation. The department must disapprove the  
11 12 application if it produces an unsatisfactory rating regardless  
11 13 of whether the application satisfies the requirements of Code  
11 14 chapter 459. Both the applicant and the board may contest the  
11 15 department's decision to the environmental protection  
11 16 commission. The applicant may also contest the decision as a  
11 17 contested case proceeding before an administrative law judge.

11 18 PROPOSED CHANGES. The bill amends Code sections 459.303  
11 19 relating to the issuance of permits and 459.304 providing for  
11 20 county participation, by providing that the department shall  
11 21 only issue a permit to construct a confinement feeding  
11 22 operation structure after the review of an application by the  
11 23 board of supervisors in the county where the proposed  
11 24 construction is to be located. In lieu of a county evaluation  
11 25 resolution, the board of supervisors must adopt a county  
11 26 evaluation ordinance. As part of the ordinance, the board

11 27 must establish a construction evaluation committee. The  
11 28 committee is composed of five persons including the county's  
11 29 environmental health officer (sanitarian), a commissioner of a  
11 30 soil and water conservation district located in the county, a  
11 31 real estate broker, a person who resides in a city, and a  
11 32 person actively engaged in the care and feeding of animals.  
11 33 The committee must also include one member of the board who  
11 34 serves as a nonvoting, ex officio member. The committee must  
11 35 recommend that the board accept or reject the application  
12 1 based on the rating produced by using the master matrix. The  
12 2 board must either adopt or not adopt the committee's  
12 3 recommendation. If the board does not adopt the committee's  
12 4 recommendation, the board must conduct an independent  
12 5 evaluation of the application using the master matrix.  
12 6 The department must receive the board's comments or  
12 7 decision to accept or reject an application within 60, instead  
12 8 of 30, days following the applicant's delivery of the  
12 9 application to the department, and must issue or not issue the  
12 10 permit within 90, instead of 60, days following the  
12 11 applicant's delivery of the application to the department.  
12 12 The department shall not approve an application for a  
12 13 permit to construct a confinement feeding operation structure  
12 14 if the county rejects the application, unless the applicant  
12 15 contests the board's decision or the department petitions the  
12 16 commission to review the board's decision. In that case, the  
12 17 department must conduct an evaluation of the application to  
12 18 determine if it complies with the requirements of Code chapter  
12 19 459. The department must disapprove the application or  
12 20 approve the application pending the outcome of the  
12 21 commission's resolution of the matter. The commission may  
12 22 also request that the department conduct an independent  
12 23 evaluation of the application using the master matrix.  
12 24 The bill applies to applications for the issuance of  
12 25 permits which have been filed with the department on or after  
12 26 the effective date of the bill.  
12 27 LSB 2840XC 82  
12 28 da:nh/gg/14