

Senate File 2278 - Introduced

SENATE FILE 2278

BY ZAUN

A BILL FOR

1 An Act relating to animal feeding operations, by providing
2 for certain air and water quality regulations, including
3 when two or more related confinement feeding operations
4 are deemed to be a single operation, making penalties
5 applicable, and including effective date and applicability
6 provisions.

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

1 Section 1. Section 459.102, Code 2018, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 8A. *a.* "*Business entity*" means a person
4 organized as any form of partnership, limited partnership, or
5 limited liability limited partnership described in chapter
6 488; limited liability company as described in chapter 489;
7 a corporation as described in chapter 490, 491, or 504; an
8 association as described in chapter 497, 498, and 499; a
9 cooperative described in chapter 501; a cooperative association
10 described in chapter 501A; an agricultural cooperative
11 association as defined in section 502.102; an unincorporated
12 nonprofit association as described in chapter 502; or any other
13 entity commonly referred to as an investment company, joint
14 stock company, joint stock association, or trust, including but
15 not limited to a business trust.

16 *b.* "*Business entity*" includes a person described in
17 paragraph "*a*" regardless of whether the person is organized
18 in this state under any of those provisions referred to in
19 paragraph "*a*" or is otherwise authorized to transact business
20 in this state under any of those provisions referred to in
21 paragraph "*a*".

22 NEW SUBSECTION. 41A. "*Operation of law*" means a transfer
23 by inheritance, devise or bequest, court order, dissolution
24 decree, order in bankruptcy, insolvency, replevin, foreclosure,
25 execution sale, the execution of a judgment, the foreclosure
26 of a real estate mortgage, the forfeiture of a real estate
27 contract, or a transfer resulting from a decree for specific
28 performance.

29 Sec. 2. Section 459.201, subsection 1, Code 2018, is amended
30 by striking the subsection and inserting in lieu thereof the
31 following:

32 1. Two or more animal feeding operations under common
33 ownership or management are deemed to be a single animal
34 feeding operation if they are adjacent or utilize a common
35 system for manure storage. In addition, two or more related

1 confinement feeding operations are deemed to be a single
2 confinement feeding operation as provided in section 459.201A.

3 Sec. 3. Section 459.201, subsection 3, Code 2018, is amended
4 to read as follows:

5 3. a. In calculating the animal unit capacity of a
6 confinement feeding operation, the animal unit capacity shall
7 include the animal unit capacity of all confinement feeding
8 operation buildings which are part of the confinement feeding
9 operation, unless a confinement feeding operation building has
10 been abandoned.

11 b. Unless expressly stated otherwise in this subchapter,
12 the animal units of all confinement feeding operations that are
13 related and deemed to be a single confinement feeding operation
14 shall be combined when calculating the animal unit capacity of
15 any one of the confinement feeding operations.

16 Sec. 4. **NEW SECTION. 459.201A Special terms — related**
17 **confinement feeding operations.**

18 1. Two or more confinement feeding operations are related
19 and deemed to be a single confinement feeding operation, if all
20 of the following apply:

21 a. A confinement feeding operation structure that is part
22 of one confinement feeding operation is separated by less than
23 two thousand five hundred feet from a confinement feeding
24 operation structure that is part of the other confinement
25 feeding operation.

26 b. Any of the following apply:

27 (1) The confinement feeding operations utilize a common
28 system for manure storage or common area or system for manure
29 disposal.

30 (2) The confinement feeding operations both utilize any of
31 the following:

32 (a) A privately owned road capable of use by a motor vehicle
33 having a gross weight of six tons or more.

34 (b) A private water well regardless of whether the water
35 well is used to access water for human consumption.

1 (c) A utility connection that directly connects the
2 confinement feeding operations.

3 (d) Any other personal property owned or used by the
4 confinement feeding operations as provided by rule adopted by
5 the department.

6 (3) The same person holds an interest in the real property
7 where the confinement feeding operations are sited. The person
8 may hold a legal interest or equitable interest in the real
9 property.

10 (a) In determining whether the same person holds an
11 interest in the real property where the two confinement feeding
12 operations are sited, an interest in the real property may be
13 held by the person in any of the following forms:

14 (i) Legal title, including as a joint tenant or tenant in
15 common, or the holder of an interest for life or term of years.

16 (ii) Leasehold, including as a lessor or lessee.

17 (iii) Real estate contract, including in cases in which the
18 person is a vendor or vendee.

19 (iv) Equitable title, including as a settlor, trustee, or
20 beneficiary.

21 (v) Easement, including as the owner of the dominant estate
22 or servient estate.

23 (b) If the person is a business entity, the business
24 entity's interest in the real property is attributable to any
25 of the following:

26 (i) A partner, limited partner, shareholder, member,
27 settlor, trustee, beneficiary, or other equity holder of the
28 business entity.

29 (ii) Any officer, manager, or employee of the business
30 entity.

31 (c) A person's real property interest is attributable to
32 the person's spouse, parent, grandparent, lineal ascendant of
33 a grandparent or spouse and any other lineal descendant of
34 the grandparent or spouse, or a person acting in a fiduciary
35 capacity for a related person.

1 (d) A subsidiary or affiliate of a business entity shall be
2 deemed to be the same business entity.

3 (e) A person's interest in a fixture that is attached to the
4 real property where a confinement feeding operation is sited,
5 including a confinement feeding operation structure, shall be
6 deemed to be an interest in the confinement feeding operation.

7 (f) A person's property interest does not include the
8 acquisition of property by any of the following:

9 (i) Operation of law.

10 (ii) A bona fide encumbrance taken for purposes of security,
11 including but not limited to a mortgage or deed of trust.

12 (iii) Under a contract in which the other party is a
13 government entity.

14 Sec. 5. Section 459.203, unnumbered paragraph 1, Code 2018,
15 is amended to read as follows:

16 A confinement feeding operation constructed or expanded
17 prior to the date that a distance requirement became effective
18 under [section 459.202](#) and which does not comply with the
19 section's distance requirement may continue to operate
20 regardless of the distance requirement. The In addition and
21 except as provided in section 459.203A, such confinement
22 feeding operation may be expanded by the construction or
23 expansion of a confinement feeding operation structure, if any
24 of the following applies:

25 Sec. 6. NEW SECTION. **459.203A Related confinement**
26 **feeding operations deemed to be the same operation expansion of**
27 **confinement feeding operations.**

28 1. If two or more confinement feeding operations are
29 related and deemed to be a single confinement feeding operation
30 pursuant to sections 459.201 and 459.201A, neither confinement
31 feeding operation shall be expanded by the construction or
32 expansion of a confinement feeding operation structure on or
33 after the effective date of this Act, unless the confinement
34 feeding operation structure complies with the distance
35 requirements applying to that structure as provided in section

1 459.202, subsections 4 and 5.

2 2. Notwithstanding subsection 1, a confinement feeding
3 operation structure may be expanded by replacing one or more
4 unformed manure storage structures with one or more formed
5 manure storage structures, if all of the following apply:

6 a. The animal weight capacity or animal unit capacity,
7 whichever is applicable, is not increased for that portion of
8 the confinement feeding operation that utilizes all replacement
9 formed manure storage structures.

10 b. The use of each replaced unformed manure storage
11 structure is discontinued within one year after the
12 construction of the replacement formed manure storage
13 structure.

14 c. The capacity of all replacement formed manure storage
15 structures does not exceed the capacity required to store
16 manure produced by that portion of the confinement feeding
17 operation that had utilized all replaced unformed manure
18 storage structures.

19 d. The replacement formed manure storage structure is not
20 closer to an object or location benefiting from a separation
21 distance than the separation distance between the replaced
22 unformed manure storage structure and the same object or
23 location as required in section 459.202.

24 Sec. 7. Section 459.205, subsection 1, Code 2018, is amended
25 to read as follows:

26 1. A confinement feeding operation structure, if the
27 structure is part of a confinement feeding operation ~~which~~ that
28 qualifies as a small animal feeding operation. However, this
29 subsection shall not apply ~~if~~ to any of the following:

30 a. ~~confinement feeding operation structure is an~~ An unformed
31 manure storage structure.

32 b. Two or more animal feeding operations that are deemed to
33 be a single animal feeding operation under section 459.201, if
34 the combined animal unit capacity of the confinement feeding
35 operations is more than five hundred animal units.

1 c. Two or more related confinement feeding operations that
2 are deemed to be a single confinement feeding operation under
3 sections 459.201 and 459.201A, if the combined animal unit
4 capacity of the related confinement feeding operations is more
5 than five hundred animal units.

6 Sec. 8. Section 459.301, subsection 1, Code 2018, is amended
7 by striking the subsection and inserting in lieu thereof the
8 following:

9 1. Two or more animal feeding operations under common
10 ownership or management are deemed to be a single animal
11 feeding operation if they are adjacent or utilize a common
12 area or system for manure application. In addition, two or
13 more related confinement feeding operations are deemed to be
14 a single confinement feeding operation in the same manner as
15 two confinement feeding operations are determined to be related
16 under section 459.201A.

17 Sec. 9. Section 459.301, subsection 3, Code 2018, is amended
18 by adding the following new paragraph:

19 NEW PARAGRAPH. c. Unless expressly stated otherwise
20 in this subchapter, the animal units of all confinement
21 feeding operations that are related and deemed to be the
22 same confinement feeding operation shall be combined when
23 calculating the animal unit capacity of any one of the
24 confinement feeding operations.

25 Sec. 10. Section 459.312, subsection 2, Code 2018, is
26 amended to read as follows:

27 2. a. Not more than one confinement feeding operation shall
28 be covered by a single manure management plan.

29 b. If two or more confinement feeding operations are deemed
30 to be a single confinement feeding operation under section
31 459.301, the department may require that a separate manure
32 management plan cover each confinement feeding operation.

33 Sec. 11. Section 459.317, subsection 1, paragraph b, Code
34 2018, is amended by striking the paragraph.

35 Sec. 12. EFFECTIVE DATE. This Act, being deemed of

1 immediate importance, takes effect upon enactment.

2 Sec. 13. APPLICABILITY. This Act shall not apply to a
3 person who has begun construction of a confinement feeding
4 operation structure prior to the effective date of this Act.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8 BILL'S PROVISIONS — GENERAL. This bill amends the "Animal
9 Agriculture Compliance Act" (Code chapter 459) which part
10 provides for the regulation of animal feeding operations where
11 agricultural animals are maintained for at least 45 days in
12 any 12-month period and includes open feedlots and confinement
13 feeding operations (operations) including associated
14 confinement feeding operation structures (structures), such
15 as buildings or manure storage structures. The Code chapter
16 is administered and enforced by the department of natural
17 resources (DNR). Generally, regulations vary based on the size
18 of an operation measured by its animal unit capacity (AUC).

19 BILL'S PROVISIONS — RELATED CONFINEMENT FEEDING OPERATIONS.
20 The bill provides that for purposes of administering and
21 enforcing Code chapter 459, subchapter II, providing for
22 air quality regulations and Code chapter 459, subchapter
23 III, providing for water quality regulations, two or more
24 operations are deemed to be a single operation if they are
25 related. The operations are related if a structure that is
26 part of one operation is separated by less than 2,500 feet from
27 a structure that is part of the other operation and certain
28 alternative conditions apply. The first condition occurs
29 if the confinement feeding operations utilize some common
30 method of manure storage or common area or system for manure
31 disposal. The second condition occurs when the confinement
32 feeding operations utilize a common item or service such as a
33 private road, private water well, utility connection, or other
34 personal property described by DNR rule. The third condition
35 occurs when the same person holds a legal or equitable interest

1 in the real property where the operations are located. If the
2 person is a business entity, the business entity's interest is
3 attributable to any person who owns an interest in the entity
4 or who is an employee, manager, or officer of the entity. A
5 person's interest is also attributable to a relative (e.g.,
6 spouse, child, or brother or sister). A person's interest
7 does not include the acquisition of property by a number of
8 devices including by operation of law, an encumbrance taken as
9 a security, or under contract with a government entity.

10 BACKGROUND — CURRENT LAW — ADJACENCY. For purposes of air
11 quality regulation, two or more animal feeding operations under
12 common ownership or management are deemed to be a single animal
13 feeding operation if they are adjacent or utilize a common
14 system for manure storage and are separated within a minimum
15 distance from each other based on the size of the operation.
16 For purposes of water quality regulation, two or more animal
17 feeding operations under common ownership or management are
18 deemed to be a single operation if they are adjacent or utilize
19 a common area or system for manure disposal and are separated
20 by another set of separation distances again based on the size
21 of the operation.

22 BACKGROUND — AUC. AUC refers to a measurement used to
23 determine the maximum number of animal units that may be
24 maintained as part of an animal feeding operation at any one
25 time. In calculating AUC, a special equivalency factor is
26 assigned for each classification of confined animal.

27 BACKGROUND — ENFORCEMENT AND APPLICABLE CIVIL PENALTIES.
28 Compliance with a statutory regulation under the Code chapter
29 includes compliance with a rule adopted by DNR (Code section
30 459.103). Code section 459.602 provides for civil penalties
31 that may be assessed for violations of Code chapter 459,
32 subchapter II (air quality regulations). A violator is subject
33 to Code section 455B.109, which provides for the administrative
34 assessment of civil penalties of up to \$10,000. Code section
35 459.603 provides for civil penalties that may be assessed for

1 violations of Code chapter 459, subchapter III (water quality
2 regulations). A violator is subject to either Code section
3 455B.109 providing for the administrative assessment of civil
4 penalties or Code section 455B.191, which provides for a
5 general civil penalty assessed judicially of up to \$5,000.
6 EFFECTIVE DATE. The bill, if enacted, takes effect upon
7 enactment.