

FEB 22 2001

HOUSE FILE 380

ENVIRONMENTAL PROTECTION

BY WITT

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to environmental protection, by providing for a
2 risk-based analysis of operations, providing for financial
3 incentives, and making penalties applicable.

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

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HF 380

1 Section 1. Section 455B.200A, Code 2001, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 4A. The department shall approve or
4 disapprove a permit for the construction of a confinement
5 feeding operation or related animal feeding operation
6 structure, based on rules adopted by the department which
7 include consideration of the risk-based siting analysis
8 established pursuant to section 455B.200C.

9 Sec. 2. Section 455B.200A, subsection 7, Code 2001, is
10 amended by adding the following new paragraph after paragraph
11 a:

12 NEW PARAGRAPH. aa. A county which has adopted an
13 ordinance establishing a confinement feeding operation siting
14 review board as provided in section 455B.200D shall forward
15 the application to the review board for further consideration.
16 The process for determining siting shall proceed as provided
17 in section 455B.200D. The county board of supervisors may
18 submit the report of the confinement feeding operation siting
19 review board to the department.

20 Sec. 3. Section 455B.200A, subsection 7, paragraph d, Code
21 2001, is amended to read as follows:

22 d. The department shall consider and respond to ~~comments~~
23 ~~submitted~~ submissions delivered to the department by the
24 county board of supervisors regarding compliance by the
25 applicant with the legal requirements for approving the
26 construction permit as provided in this chapter, including
27 rules adopted by the department pursuant to section 455B.200,
28 if the ~~comments~~ submissions are delivered to the department
29 within thirty days after receipt of the application by the
30 county board of supervisors. Upon written request by a county
31 resident, the county board of supervisors shall forward a copy
32 of the ~~board's-comments~~ submissions and the department's
33 responses to the county resident as provided in chapter 22.

34 Sec. 4. NEW SECTION. 455B.200C SITING BASED ON RISK-
35 BASED ANALYSIS.

1 1. The department shall adopt rules establishing a risk-
2 based siting analysis according to recommendations made to the
3 department by a technical advisory committee established
4 pursuant to this section. The technical advisory committee
5 shall compile data and develop, review, and update the siting
6 analysis used to determine appropriate locations to construct
7 an animal feeding operation structure which is partly a
8 confinement feeding operation, including its orientation to
9 other objects or locations for which separation distances are
10 required pursuant to sections 455B.162 and 455B.204. The
11 siting analysis shall provide a calculation of risks to the
12 natural environment and the public health, comfort, and
13 safety. The analysis shall be created as a computer model
14 which shall account for topography, surface water drainage
15 characteristics, seasonal air flow, suitability of the soils
16 and the hydrology or hydrogeology of the site, the population
17 density of the area, the character of residential development
18 in the area, and factors related to land use planning. The
19 analysis shall be designed to allow the department or a county
20 confinement feeding operation siting review board to determine
21 the appropriateness of the siting based on degrees of risk to
22 the natural environment or the use of property by neighbors to
23 the confinement feeding operation, including the degree to
24 which the establishment of a conservation practice as provided
25 in section 455B.207 may mitigate the risk. The analysis shall
26 be used to determine whether a high, medium, or de minimus
27 risk is present.

28 2. The technical advisory committee shall be composed of
29 all of the following:

30 a. The presidents of the university of Iowa, Iowa state
31 university, and the university of northern Iowa or their
32 designees.

33 b. The director of public health or a designee.

34 c. The director of the soil conservation division of the
35 department of agriculture and land stewardship or a designee.

1 d. The director of the center for agricultural health and
2 safety at the university of Iowa or a designee.

3 e. The administrator of the energy and geological
4 resources division of the department of natural resources or a
5 designee who is responsible for the administration of the
6 geological survey.

7 f. The administrator of the environmental protection
8 division of the department of natural resources or a designee
9 who is responsible for administering air quality regulations
10 for the department.

11 g. The head of the Iowa waste reduction center for the
12 safe and economic management of solid waste and hazardous
13 substances at the university of northern Iowa or a designee.

14 h. A person representing the United States department of
15 agriculture natural resources conservation service, if
16 appointed by the service.

17 i. The president of the Iowa groundwater association or
18 the president's designee who is a ground water professional
19 pursuant to section 455G.18.

20 j. The chairperson of the Iowa environmental council or
21 the chairperson's designee.

22 k. An engineer employed by a city or county who is
23 appointed jointly by the Iowa league of cities and Iowa state
24 association of counties.

25 l. The titular head or the head's designee of an
26 organization serving agricultural producers generally as
27 recognized by the governor.

28 3. The members of the technical advisory committee shall
29 be reimbursed for their actual expenses for performing the
30 official duties of the advisory committee.

31 Sec. 5. NEW SECTION. 455B.200D COUNTY CONFINEMENT
32 FEEDING OPERATION SITING REVIEW BOARD.

33 1. Notwithstanding section 331.304A, a county may adopt an
34 ordinance to establish a confinement feeding operation siting
35 review board. The purpose of the board shall be to review the

1 appropriateness of siting an animal feeding operation
2 structure which is part of a confinement feeding operation at
3 a proposed site in the county, prior to the approval of a
4 permit by the department for the construction of the
5 structure, as provided in section 455B.200A.

6 2. The board shall be composed of all of the following:

- 7 a. A commissioner of the soil and water conservation
8 district in the county who shall be appointed by the
9 commissioners. If more than one district is located in the
10 county, the board of supervisors for the county shall
11 designate the district to be represented on a rotating basis.
12 b. Two members of the board of supervisors of the county
13 who shall be appointed by the county board of supervisors.
14 c. The county engineer for the county or a designee.
15 d. The head of the local board of health for the county or
16 a designee, who may be the county sanitarian.
17 e. The titular head or the head's designee of an
18 organization serving agricultural producers generally having a
19 presence in the county as recognized by the county's board of
20 supervisors.

21 3. In performing the siting analysis, the board shall
22 determine whether the siting of the animal feeding operation
23 structure presents a high, medium, or de minimus risk to the
24 natural environment or the use of property by neighbors to the
25 confinement feeding operation.

26 a. If the board determines that a high risk is present,
27 the board shall reject the proposed siting which determination
28 shall not be reversed by the department, unless the department
29 finds that the determination is unreasonable, arbitrary,
30 capricious, or otherwise beyond the authority delegated to the
31 board under this section.

32 b. If the board determines that a medium risk is present,
33 the board shall reject the proposed siting which determination
34 may be reversed by the department, if the department applies
35 the siting analysis and determines that only a de minimus risk

1 is present. The board is not required to report its
2 determination to the county board of supervisors if the board
3 agrees to review an amended siting proposal submitted by the
4 applicant. If an amended siting proposal is submitted by the
5 applicant, the board and the applicant must execute an
6 agreement to suspend the time limits for delivering
7 submissions by the county to the department and for
8 departmental approval or disapproval of a construction permit
9 as required by section 455B.200A. The county shall deliver
10 the agreement to the department according to procedures
11 required by the department. The time limits as provided in
12 section 455B.200A shall be suspended according to the terms
13 and conditions provided in the agreement. The review board
14 may consider amendments which provide a different site, the
15 change in the orientation or size of the animal feeding
16 operation structure, or the establishment and maintenance of
17 conservation practices as provided in section 455B.207. The
18 board shall not approve an amended proposal unless the board
19 determines that only a de minimus risk is present.

20 c. If the board determines that a de minimus risk is
21 present, the board shall approve the proposed siting, which
22 determination may be reversed by the department, if the
23 department finds that the determination is unreasonable,
24 arbitrary, capricious, or otherwise beyond the authority
25 delegated to the board under this section.

26 Sec. 6. NEW SECTION. 455B.207 CONSERVATION PRACTICES
27 PROGRAM -- COST-SHARE MONEYS.

28 1. The division of soil conservation of the department of
29 agriculture and land stewardship shall establish and
30 administer a program to provide financial incentives to
31 support conservation practices on land where confinement
32 feeding operations are located. A landowner who chooses to
33 participate in the program must establish the conservation
34 practice according to an agreement in which the landowner
35 promises to establish and maintain the conservation practice

1 in return for financial incentives.

2 2. A conservation practice includes any practice that is
3 designed to protect environmental quality from activities
4 associated with a confinement feeding operation, including all
5 of the following:

6 a. Water quality practices designed to protect water
7 sources, including but not limited to the establishment of
8 stream buffer strips, erosion control structure construction,
9 the establishment of permanent grass and buffer zones, filter
10 strips, and erosion control structures, and practices to
11 mitigate the effects of concentrated contamination on surface
12 and subsurface water quality from manure originating from
13 confinement feeding operations.

14 b. Air quality practices, including but not limited to the
15 establishment of stands of fast growing trees or wind barriers
16 around confinement feeding operations and agricultural land
17 where manure is stored or applied.

18 3. The financial incentives shall be allocated by the
19 division on a cost-share basis which does not exceed fifty
20 percent of the estimated cost of establishing the practices,
21 or fifty percent of the actual cost, whichever is less.

22 4. The division shall adopt rules necessary to administer
23 this section.

24 Sec. 7. STUDY. The university of Iowa, Iowa state
25 university, and the university of northern Iowa, under the
26 direction of the state board of regents, shall cooperate in
27 performing a study of the social and economic impacts
28 associated with the expansion of confinement feeding
29 operations in this state. The universities shall prepare and
30 submit a report to the general assembly not later than January
31 1, 2003.

32 EXPLANATION

33 This bill amends Code chapter 455B, which generally
34 regulates environmental protection in the state by the
35 department of natural resources. The bill amends current

1 provisions providing for the regulation of confinement feeding
2 operations, including Code section 455B.200A, which provides
3 for departmental issuance of permits for the construction of
4 animal feeding operation structures that are part of
5 confinement feeding operations (e.g., confinement buildings
6 and manure storage structures). The section provides for the
7 siting of these structures with some participation by
8 counties. Generally, under Code section 331.304A, a county is
9 prohibited from establishing locations for confinement feeding
10 operations.

11 The bill provides that the department must establish a
12 risk-based siting analysis according to recommendations made
13 to the department by a technical advisory committee. The
14 committee is responsible for compiling data and developing,
15 review, and updating the siting analysis used to determine
16 appropriate locations to construct an animal feeding operation
17 structure associated with a confinement feeding operation.
18 The analysis is to provide a calculation of risks to the
19 natural environment and the public health, comfort, and safety
20 based on computer modeling which accounts for a number of
21 factors (e.g., topography, surface water drainage
22 characteristics, seasonal air flow, soil conditions, hydrology
23 or hydrogeology, population density, and the character of
24 residential development in the area). The analysis is used to
25 determine whether a high, medium, or de minimus risk is
26 present.

27 The bill provides that, notwithstanding Code section
28 331.304A, a county may adopt an ordinance to establish a
29 confinement feeding operation siting review board. The
30 purpose of the board is to review the appropriateness of
31 siting an animal feeding operation structure associated with a
32 confinement feeding operation at a proposed site in the
33 county, prior to the approval of a permit by the department
34 for the construction of the structure. In performing the
35 siting analysis, the board is required to determine whether

1 the siting of the animal feeding operation presents a high,
2 medium, or de minimus risk to the natural environment or the
3 use of property by neighbors to the confinement feeding
4 operation.

5 If the board determines that there is a high risk, the
6 board must reject the proposed siting which determination
7 shall not be reversed by the department, unless the department
8 finds that the determination is unreasonable, arbitrary,
9 capricious, or otherwise beyond the authority delegated to the
10 board. If the board determines that there is a medium risk,
11 the board must reject the proposed siting which determination
12 may be reversed by the department, if the department applies
13 the siting analysis and determines that only a de minimus risk
14 is present. The board and the applicant may execute an
15 agreement to suspend the time limits for delivering
16 submissions by the county to the department and for
17 departmental approval or disapproval of a construction permit.
18 If the board determines that only a de minimus risk is
19 present, the board must approve the proposed siting, which
20 determination may be reversed by the department, if the
21 department finds that the determination is unreasonable,
22 arbitrary, capricious, or otherwise beyond the authority
23 delegated to the board.

24 Generally under Code chapter 455B, a person who violates a
25 provision regulating animal feeding operations is subject to a
26 civil penalty. This bill amends water quality provisions. A
27 person violating a water quality provision is subject to a
28 civil penalty of up to \$5,000.

29 The bill requires the division of soil conservation of the
30 department of agriculture and land stewardship to establish
31 and administer a program to provide financial incentives to
32 support conservation practices on land where confinement
33 feeding operations are located. A landowner who chooses to
34 participate in the program must establish the conservation
35 practice according to an agreement in which the landowner

1 promises to establish and maintain the conservation practice
2 in return for financial incentives. A conservation practice
3 includes any practice which is designed to protect
4 environmental quality from activities associated with a
5 confinement feeding operation, including practices related to
6 air and water quality. The bill provides that the financial
7 incentives are awarded on a cost-share basis.

8 The bill also provides for a study to be conducted by the
9 university of Iowa, Iowa state university, and the university
10 of northern Iowa, who are required to cooperate to consider
11 the social and economic impacts associated with the expansion
12 of confinement feeding operations in this state.

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