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Agriculture

HOUSE FILE 2473

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SENG, PETERSEN, SCHRADER, CONNORS
D. TAYLOR, and WARNSTADT

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

A BILL FOR

1 An Act relating to animal feeding operations, by providing for
2 the approval of permits for the construction of animal feeding
3 operation structures associated with confinement feeding
4 operations, the application of manure based on phosphorous use
5 levels, and providing for the assessment of fees and the
6 appropriation of moneys for purposes of administration and
7 enforcement.

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

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HF 2473

1 Section 1. NEW SECTION. 335.1A DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Animal feeding operation structure" means the same as
5 defined in section 455B.161.

6 2. "Animal weight capacity" means the same as defined in
7 section 455B.161.

8 3. "Confinement feeding operation" means the same as
9 defined in section 455B.161.

10 4. "Egg washwater storage structure" means the same as
11 defined in section 455B.161.

12 5. "Farm operation" means a condition or activity which
13 occurs on farmland relating to the production of farm products
14 which may include but are not limited to any of the following:
15 the raising, harvesting, drying, or storage of crops; the care
16 or feeding of livestock; the handling or transportation of
17 crops or livestock; the storage, treatment, transportation,
18 application, or disposal of livestock manure or wastes; the
19 operation of farm machinery and irrigation pumps; ground and
20 aerial seeding and spraying; and the application of chemical
21 fertilizers, conditioners, insecticides, pesticides, and
22 herbicides.

23 6. "Farm product" means a product produced from a farm
24 operation.

25 7. "Farmland" means land and buildings used in the
26 commercial production of farm products.

27 8. "Manure storage structure" means a formed or unformed
28 manure storage structure as defined in section 455B.161.

29 9. "Small animal feeding operation" means the same as
30 defined in section 455B.161.

31 Sec. 2. Section 335.2, Code 2001, is amended to read as
32 follows:

33 335.2 FARMS-EXEMPT FARM OPERATIONS EXEMPTION.

34 1. Except to the extent required to implement section
35 335-277, no as provided in subsection 2, an ordinance adopted

1 under this chapter ~~applies~~ shall not apply to ~~land~~~~-farm~~
2 farming operations, including farmland and related structures
3 such as houses, ~~farm~~ barns, ~~farm~~ or outbuildings ~~or-other~~
4 ~~buildings-or-structures~~ which are primarily adapted, by reason
5 of nature and area, for ~~use-for~~ agricultural purposes~~-while~~
6 ~~so-used~~. However~~-the-ordinances~~

7 2. A county board of supervisors may apply-to-any adopt an
8 ordinance under this chapter which applies to any of the
9 following:

10 a. The implementation of an agricultural land preservation
11 ordinance, as provided in section 335.27.

12 b. A structure, building, dam, obstruction, deposit, or
13 excavation in or on the flood plains of any a river or stream.

14 c. The siting of a confinement feeding operation, as
15 provided in section 335.2A.

16 Sec. 3. NEW SECTION. 335.2A CONFINEMENT FEEDING
17 OPERATIONS.

18 1. Notwithstanding section 331.304A, a county may adopt a
19 confinement feeding operations siting ordinance which shall be
20 part of other regulations provided in this chapter. The
21 ordinance shall regulate the siting of confinement feeding
22 operation buildings and related manure storage structures.
23 The ordinance shall be subject to adoption by the county board
24 of supervisors, upon recommendation by the county's zoning
25 commission as provided in section 335.8. The county board of
26 supervisors shall adopt the ordinance in the same manner as
27 other regulations adopted pursuant to this chapter.

28 2. An ordinance adopted under this section shall include a
29 siting plan as follows:

30 a. The plan shall do all of the following:

31 (1) Preserve the availability of farmland for confinement
32 feeding operations.

33 (2) Encourage efficient urban development patterns that do
34 not burden farmland under the plan for confinement feeding
35 operations. The plan shall attempt to prevent congestion and

1 overcrowding of confinement feeding operations, especially
2 near cities.

3 (3) Preserve and protect natural resources, including
4 water sources, fragile environmental locations, and
5 recreational areas.

6 b. The plan may provide different regulations for
7 confinement feeding operations based on all of the following:

8 (1) The animal weight capacity of the confinement feeding
9 operation.

10 (2) The type of animal feeding operation structures
11 included within the confinement feeding operation.

12 (3) The availability of land for the application of manure
13 which originates from the confinement feeding operation.

14 3. The ordinance shall not apply to a small animal feeding
15 operation.

16 4. a. The ordinance shall not violate any requirement of
17 chapter 455B, or rules adopted by the department of natural
18 resources pursuant to that chapter. However, the ordinance
19 may provide for separation distance requirements that exceed
20 the requirements of chapter 455B, division II, part 2, or
21 section 455B.204. The separation distance requirement may be
22 based on guidelines established by the department of natural
23 resources pursuant to sections 455B.165 and 455B.204 and shall
24 to every extent practicable be based on the methodology
25 established by the department pursuant to those sections.

26 b. The ordinance shall be consistent with the county's
27 comprehensive plan as required by section 335.5, and other
28 regulations adopted pursuant to this chapter.

29 c. The ordinance shall not prohibit the operation of
30 confinement feeding operations constructed prior to the
31 effective date of the ordinance.

32 5. The ordinance shall provide for review and approval or
33 disapproval of proposals to construct confinement feeding
34 operations, including the construction of a confinement
35 building or related manure storage structures.

1 a. The ordinance shall provide for methods and procedures
2 required for timely submission, review, and approval or
3 disapproval of proposals. The ordinance shall also provide
4 procedures for forwarding proposals as part of applications
5 for construction permits to the department of natural
6 resources for consideration or appeal as provided in this
7 section and section 455B.200A.

8 b. The ordinance shall require the planning and zoning
9 commission to review each proposal and recommend to the board
10 of supervisors that the proposal be approved or disapproved.
11 The board of supervisors shall approve or disapprove the
12 proposal after considering all relevant information, including
13 the commission's recommendation. The commission's
14 recommendation and the board's decision shall be based solely
15 on whether the proposal satisfies the requirements of the
16 ordinance.

17 6. If the board receives an application for the
18 construction of an animal feeding operation structure that is
19 part of a confinement feeding operation as provided in section
20 455B.200A, the board shall consider the proposal as part of
21 the application. Within thirty days from the date that the
22 application is acted upon by the board, the county shall
23 forward the application to the department of natural
24 resources. Regardless of the board's decision to approve or
25 disapprove the application, the board may submit comments to
26 the department regarding compliance by the applicant with the
27 requirements for the construction of the animal feeding
28 operation structure as provided in this section and chapter
29 455B. If the board disapproves the application, the board
30 shall endorse the disapproval upon the application for
31 submission to the department.

32 Sec. 4. Section 335.8, Code 2001, is amended to read as
33 follows:

34 335.8 ZONING COMMISSION APPOINTED.

35 1. In-order-to-avail-itself-of-the-powers-conferred-by

1 ~~this chapter, the~~ The board of supervisors shall appoint
2 establish a zoning commission, a. The board shall appoint
3 members to the commission. A majority of whose the members
4 shall reside within the county but outside the corporate
5 limits of any city, ~~to be known as the county zoning~~
6 ~~commission, to recommend.~~ The zoning commission shall do all
7 of the following:

8 a. Recommend the boundaries of ~~the various~~ original
9 districts, and appropriate regulations and restrictions to be
10 enforced ~~therein~~ within those districts. Such The commission
11 shall, with due diligence, prepare a preliminary report and
12 hold public hearings ~~thereon~~ on the preliminary report before
13 submitting ~~its~~ a final report, and the. The board of
14 supervisors shall not hold ~~its~~ public hearings or take action
15 until ~~it~~ the board has received the final report ~~of such~~
16 ~~commission.~~ After the adoption of such regulations,
17 restrictions, and boundaries of districts, the zoning
18 commission may, from time to time, recommend to the board of
19 supervisors amendments, supplements, changes, or
20 modifications.

21 b. Provide for the siting of confinement feeding
22 operations as follows:

23 (1) The zoning commission shall prepare a confinement
24 feeding operations siting ordinance including a plan for
25 siting for recommendation to the board of supervisors as
26 provided in section 335.2A. The zoning commission shall
27 prepare and recommend the ordinance or any amendments,
28 supplements, changes, or modifications to the ordinance, in
29 the same manner as other regulations pursuant to paragraph
30 "a". The zoning commission shall not make a recommendation
31 without holding a public hearing in the same manner as
32 provided in section 335.6.

33 (2) The zoning commission shall review and recommend the
34 approval or disapproval of a proposal for the construction of
35 a confinement feeding operation as provided in section 335.2A

1 based on compliance with the confinement feeding operations
2 siting ordinance.

3 2. The zoning commission, with the approval of the board
4 of supervisors, may contract with professional consultants,
5 regional planning commissions, the Iowa department of economic
6 development, the department of natural resources, or the
7 federal government, for local planning assistance.

8 PART 2

9 ANIMAL FEEDING OPERATIONS

10 Sec. 5. NEW SECTION. 455B.121 DEFINITIONS.

11 As used in this part, unless the context otherwise
12 requires:

13 1. "Animal agriculture compliance fee" or "compliance fee"
14 means the animal agriculture compliance fee established in
15 section 455B.122.

16 2. "Animal agriculture compliance fund" or "compliance
17 fund" means the animal agriculture compliance fund created in
18 section 455B.124.

19 3. "Animal feeding operation" means the same as defined in
20 section 455B.161.

21 4. "Animal unit of capacity" means the same as defined in
22 section 455J.1.

23 5. "Animal weight capacity" means the same as defined in
24 section 455B.161.

25 6. "Compliance costs" means all expenditures incurred or
26 obligated by the department in administering and enforcing the
27 provisions of this chapter necessary to ensure that animal
28 feeding operations comply with all applicable requirements of
29 this chapter, including rules adopted by the department
30 pursuant to this chapter.

31 7. "Confinement feeding operation" means the same as
32 defined in section 455B.161.

33 Sec. 6. NEW SECTION. 455B.122 ANIMAL AGRICULTURE
34 COMPLIANCE FEES -- ESTABLISHMENT.

35 1. There is established an animal agriculture compliance

1 fee which shall be annually assessed against owners of
2 confinement feeding operations required to submit a manure
3 management plan pursuant to section 455B.203.

4 2. The rate for assessing compliance fees shall be
5 established and adjusted each year by the department pursuant
6 to rule, which shall be effective on the following July 1 of
7 that year. The rate shall be adjusted as provided in section
8 455B.123. The rate shall expire on the following June 30.

9 a. The rate of assessment for the compliance fee shall be
10 calculated for each animal unit of capacity for confinement
11 feeding operations.

12 b. The department may establish different schedules of
13 rates that provide for greater assessments according to the
14 size of confinement feeding operations. The department may
15 establish categories of size for confinement feeding
16 operations based on animal weight capacity in the same manner
17 provided in section 455J.3. The department may assess
18 confinement feeding operations differently based on the
19 species of animals maintained there.

20 3. a. A compliance fee is delinquent on July 10. The
21 department shall assess a delinquency penalty for fees that
22 are not timely remitted. The amount of the delinquency
23 penalty shall be considered part of the compliance fee.

24 b. The amount of the delinquency penalty shall not exceed
25 twenty-five percent of the amount due on July 1, unless the
26 compliance fee, including delinquency payment, is not paid by
27 September 1. In that event, the amount of the delinquency
28 penalty shall not exceed fifty percent of the amount due on
29 July 1.

30 c. The amount of the assessed compliance fee, including
31 the delinquency penalty, shall constitute a debt due the state
32 and become the basis of a judgment against the delinquent
33 person.

34 d. If a delinquency remains uncured after September 1, an
35 owner shall be subject to disciplinary action as provided in

1 section 455B.124.

2 4. All moneys collected from the compliance fee shall be
3 deposited in the animal agriculture compliance fund as
4 provided in section 455B.125.

5 Sec. 7. NEW SECTION. 455B.123 ANIMAL AGRICULTURE
6 COMPLIANCE FEES -- ADJUSTMENT.

7 Prior to July 1, the department shall determine the balance
8 of moneys available to completely pay compliance costs for the
9 next fiscal year by calculating the ending balance of the
10 animal agriculture compliance fund on June 30.

11 1. a. If the calculation indicates a balance of
12 unexpended and unobligated moneys expected to be available on
13 June 30 of three hundred thousand dollars or more, the
14 department shall decrease the rate of assessment for the next
15 fiscal year by an amount which will result in an ending
16 estimated balance of moneys for June 30 of the next fiscal
17 year of three hundred thousand dollars.

18 b. If the calculation indicates a balance of unexpended
19 and unobligated moneys expected to be available on June 30 of
20 less than three hundred thousand dollars, the department shall
21 increase the rate of assessment for the next fiscal year by an
22 amount which will result in an ending estimated balance of
23 such funds for June 30 of the next fiscal year of three
24 hundred thousand dollars.

25 2. The department shall not adjust the compliance fee by
26 adopting a rule that increases the average rate of assessment
27 of ten percent or more than the average rate of assessment for
28 the current fiscal year, unless the rate increase is approved
29 by the executive council prior to June 1 of the current fiscal
30 year. After that date, the assessment shall be suspended for
31 the current fiscal year, unless the department adjusts the
32 rate effective July 1 in a manner that does not require
33 executive council approval.

34 3. Notwithstanding section 17A.5, a rule adopted under
35 this section shall not become effective immediately upon

1 department or county board of supervisors acted arbitrarily,
2 capriciously, or without reasonable cause in disapproving the
3 application, the administrative law judge shall order that the
4 application be approved with any modifications or conditions
5 established by the administrative law judge. The
6 determination by the administrative law judge shall be final
7 agency action for purposes of 17A.

8 Sec. 11. Section 455B.165, Code 2001, is amended by adding
9 the following new subsection:

10 NEW SUBSECTION. 9. A separation distance requirement that
11 is provided in a confinement feeding operation siting
12 ordinance adopted by a county board of supervisors pursuant to
13 section 335.2A. The ordinance shall not include a requirement
14 providing a lesser separation distance than is provided for in
15 this part. If requested by a county, the department shall
16 provide recommendations with guidelines for increasing
17 required separation distances based on a methodology which
18 considers topographic, hydrologic, climatic, or demographic
19 factors.

20 Sec. 12. NEW SECTION. 455B.166 CLEAN AIR STANDARDS.

21 The department shall develop comprehensive plans and
22 programs for the abatement, control, and prevention of
23 airborne pollutants originating from confinement feeding
24 operations. The department shall require confinement feeding
25 operations to comply with standards necessary in order to
26 protect the public health and welfare. The department may
27 establish schedules for compliance. The standards may vary
28 based on the animal weight capacity of the confinement feeding
29 operation and the distance from an object or location for
30 which a separation distance is required pursuant to section
31 455B.162. The standards, to every extent practicable, shall
32 apply to dust and gases containing compounds which produce
33 odor or may have a deleterious effect upon human health,
34 including but not limited to hydrogen sulfide, ammonia,
35 methane, and any class of mercaptan. The standards shall not

1 apply to small animal feeding operations.

2 Sec. 13. Section 455B.200A, subsection 2, paragraph a,
3 Code 2001, is amended to read as follows:

4 a. The following fees:

5 (1) An indemnity fee for the confinement feeding operation
6 as provided in section 455J.3 which the department shall
7 deposit into the manure storage indemnity fund created in
8 section 455J.2.

9 (2) An animal agriculture compliance fee for the
10 confinement feeding operation or for any confinement feeding
11 operation owned by the person, as provided in section
12 455B.122, which the department shall deposit into the animal
13 agriculture compliance fund created in section 455B.125. If
14 the person is delinquent in remitting an animal agriculture
15 compliance fee, the person shall be subject to disciplinary
16 action as provided in section 455B.124.

17 Sec. 14. Section 455B.200A, subsections 6 and 8, Code
18 2001, are amended to read as follows:

19 6. The department shall make a determination regarding the
20 approval or ~~denial~~ disapproval of an application for a permit
21 to construct an animal feeding operation structure within
22 sixty days from the date that the department receives a
23 completed application for a permit.

24 8. a. If the application is for the construction of an
25 animal feeding operation structure which is part of a
26 confinement feeding operation other than a confinement feeding
27 operation subject to a confinement feeding operations siting
28 ordinance as provided in section 335.2A, all of the following
29 shall apply:

30 (1) The department shall notify the county board of
31 supervisors of the county where a confinement feeding
32 operation or related animal feeding operation structure
33 subject to a construction permit is proposed to be
34 constructed. The notice shall state the department's decision
35 to approve or disapprove an application for the construction

1 permit. The notice shall be delivered to the county within
2 three days following the department's decision.

3 (2) The county board of supervisors may contest the
4 decision to approve or disapprove an application by filing a
5 demand for a hearing before the commission as provided by
6 rules adopted by the department in conformance with chapter
7 17A. In contesting the decision, the county shall submit a
8 statement to the department, providing all reasons why the
9 application should be approved or disapproved according to
10 legal requirements provided in this chapter.

11 b. If the application is for the construction of an animal
12 feeding operation structure which is part of a confinement
13 feeding operation that is subject to a confinement feeding
14 operations siting ordinance as provided in section 335.2A, all
15 of the following shall apply:

16 (1) If the department does not receive an application
17 endorsed by a county board of supervisors pursuant to section
18 335.2A, the county shall be presumed to have approved of the
19 application as provided in that section.

20 (2) If the county board of supervisors in the county where
21 the structure is proposed to be constructed has forwarded a
22 proposal with a decision to disapprove the application, the
23 department shall approve or disapprove the application. If
24 the application is forwarded with a decision to approve the
25 proposal or is forwarded without decision, the department
26 shall either approve or disapprove the application.

27 (3) Once the department decides to approve or to
28 disapprove an application, the department shall notify the
29 county board of supervisors and the applicant of the
30 application's status, including an approval or disapproval by
31 the county and the department. If the department or county
32 has disapproved the application, the notice shall inform the
33 applicant that the applicant has a right to appeal under
34 section 455B.130. The department shall return any indemnity
35 fee submitted with an application that is not approved.

1 Sec. 15. Section 455B.203, subsection 2, Code 2001, is
2 amended to read as follows:

3 2. A person shall not remove manure from a manure storage
4 structure which is part of a confinement feeding operation for
5 which a manure management plan is required under this section,
6 unless the department approves a manure management plan
7 submitted by the owner of the confinement feeding operation as
8 provided by the department on forms prescribed by the
9 department.

10 a. The department may adopt rules allowing a person to
11 remove manure from a manure storage structure until the manure
12 management plan is approved or disapproved by the department
13 according to terms and conditions required by rules adopted by
14 the department.

15 b. The department shall approve or disapprove a manure
16 management plan within sixty days of the date that the
17 department receives a completed plan. However, the department
18 shall not approve a manure management plan submitted by the
19 owner of a confinement feeding operation unless the owner
20 submits an animal agriculture compliance fee as provided in
21 section 455B.122. If the owner is delinquent in remitting the
22 compliance fee, the person shall be subject to disciplinary
23 action as provided in section 455B.124.

24 c. The department shall not issue a permit for the
25 construction of a confinement feeding operation or a related
26 animal feeding operation structure unless the applicant
27 submits a manure management plan together with an application
28 as provided in section 455B.200A.

29 Sec. 16. Section 455B.203, subsection 3, paragraph a, Code
30 2001, is amended to read as follows:

31 a. Calculations necessary to determine the land area
32 required for the application of manure from a confinement
33 feeding operation. The calculations shall be based on
34 nitrogen and phosphorus use levels in order to obtain optimum
35 crop yields according to a crop schedule specified in the

1 plan, and according to requirements adopted by the department
2 after receiving recommendations from the animal agriculture
3 consulting organization provided for in 1995 Iowa Acts,
4 chapter 195, section 37.

5 Sec. 17. Section 455B.204, subsection 3, Code 2001, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. c. A separation distance requirement that
8 is provided in a confinement feeding operation siting
9 ordinance adopted by a county board of supervisors pursuant to
10 section 335.2A. The ordinance shall not include a requirement
11 providing a closer separation distance than is provided for in
12 subsection 2. Upon request by a county, the department shall
13 provide recommendations to the county as provided in section
14 455B.165.

15 Sec. 18. Section 455J.1, Code 2001, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 1A. "Animal unit of capacity" means the
18 total number of animal units that may be confined in a
19 confinement feeding operation at any one time.

20 Sec. 19. DIRECTIONS TO CODE EDITOR. The Code editor is
21 directed to do all of the following:

22 1. Divide chapter 455B, division I, into two parts in
23 conformance with this Act.

24 2. Transfer Code section 455B.110 to chapter 455B,
25 division I, part 2, as created in this Act.

26 EXPLANATION

27 This bill amends provisions in Code chapter 455B providing
28 for the regulation of animal feeding operations by the
29 department of natural resources, including confinement feeding
30 operations, originally enacted in 1995 by House File 519 (1995
31 Iowa Acts, chapter 195) and amended in 1998 by House File 2494
32 (1998 Iowa Acts, chapter 1209). Provisions relating to animal
33 feeding operations appear in three places in Code chapter
34 455B: division I, which provides for the department's
35 administration of the chapter, division II, which regulates

1 air quality regulations (e.g., separation distance
2 requirements), and division III, which regulates water quality
3 (e.g., construction permit and manure management plan
4 requirements).

5 The bill amends provisions in Code chapter 335, which
6 provides for county zoning. Code section 335.2 provides that
7 county zoning does not apply to farming operations. This bill
8 amends that section to provide that county zoning does apply
9 to the siting of confinement feeding operations. The bill
10 provides that a county may adopt a confinement feeding
11 operations siting ordinance, including a siting plan, as part
12 of its zoning regulations. The plan must preserve the
13 availability of farmland for confinement feeding operations;
14 encourage efficient urban development patterns; lessen
15 congestion and overcrowding of confinement feeding operations,
16 especially near cities; and preserve and protect natural
17 resources, including water sources, fragile environmental
18 locations, and recreational areas.

19 The plan may provide different regulations for confinement
20 feeding operations based on the animal weight capacity of the
21 confinement feeding operation, the type of animal feeding
22 operation structure, and the proximity of land for the
23 application of manure which originates from the confinement
24 feeding operation. The bill provides that the ordinance does
25 not apply to small animal feeding operations. The bill
26 provides that an ordinance cannot prohibit the operation of a
27 confinement feeding operation constructed prior to the
28 effective date of the ordinance.

29 The bill also provides that the ordinance cannot violate
30 any requirement of Code chapter 455B regulating confinement
31 feeding operations by the department of natural resources.
32 However, the bill provides that the ordinance may provide for
33 distance requirements that exceed the requirements of Code
34 chapter 455B. The separation distances may be based on
35 guidelines established by the department and to every extent

1 practicable must be based on methodology established by the
2 department. Upon request by a county, the department is
3 required to provide the county with guidelines based on a
4 methodology which analyzes relevant factors relating to
5 topographic, climatic, demographic, or hydrologic conditions.
6 The bill amends a part of Code chapter 455B which regulates
7 air quality of confinement feeding operations by the
8 department of natural resources. The bill requires the
9 department to develop comprehensive plans and programs for the
10 abatement, control, and prevention of air pollutants
11 originating from confinement feeding operations. The bill
12 provides that the standards may vary based on the animal
13 weight capacity of the confinement feeding operation and the
14 distance from an object or location for which a separation
15 distance is required pursuant to Code section 455B.162, such
16 as a home, church, or park. The bill provides that the
17 standards, to every extent practicable, must apply to dust and
18 gases containing compounds which produce odor or may have a
19 deleterious effect upon human health, including but not
20 limited to hydrogen sulfide, ammonia, methane, and any class
21 of mercaptan. The bill provides that the standards do not
22 apply to small animal feeding operations. Violations of the
23 standards are subject to a civil penalty under Code section
24 455B.109 of up to \$10,000.
25 The bill provides an appeal process for applications for
26 permits for construction of animal feeding operation
27 structures that have been disapproved by the department or a
28 county. The bill provides that an administrative law judge
29 must consider such appeals, based on an appeal of the
30 disapproval by the department or a county board of
31 supervisors. The administrative law judge must conduct the
32 appeal in the same manner as provided in Code chapter 17A for
33 contested case proceedings. The parties to the appeal are the
34 department, the county board of supervisors, and the
35 applicant. If the administrative law judge determines that

1 the department or county board of supervisors acted
2 arbitrarily, capriciously, or without reasonable cause in
3 disapproving the application, the administrative law judge is
4 required to order that the application be approved. The
5 determination by the administrative law judge is a final
6 agency action for purposes of Code chapter 17A.

7 The bill amends Code section 455B.203, which provides
8 requirements for manure management plans submitted by owners
9 of confinement feeding operations or persons applying manure
10 originating from confinement feeding operations. The Code
11 section provides that the plan must include calculations
12 necessary to determine the amount of land needed for the
13 application of the manure. The calculations are currently
14 based on nitrogen use levels needed to obtain optimum crop
15 yields. This bill provides that the calculations must also be
16 based on phosphorus use levels. Generally, a person
17 submitting a manure management plan who is found in violation
18 of the terms and conditions of the plan is subject to a civil
19 penalty of not more than \$5,000.

20 The bill establishes an animal agriculture compliance fee
21 (referred to as a compliance fee) that the department must
22 annually assess against owners of confinement feeding
23 operations who are required to submit manure management plans.
24 The rate for assessing compliance fees is established and
25 adjusted annually by the department according to rule. The
26 rate becomes effective on July 1 of each year and expires the
27 following June 30. The rate of assessment for compliance fees
28 is calculated for each animal unit of capacity for confinement
29 feeding operations. An "animal unit" is defined in Code
30 section 455J.1 to mean a value assigned to an animal based on
31 the average weight of a typical animal of the same species
32 (slaughter cattle are assigned a value of 1.0 and a broiler
33 chicken is assigned a value of 0.01). The bill provides that
34 the department may establish different schedules of rates that
35 provide for greater rates of assessment based on the type of

1 animal feeding operation, its size, and the species kept
2 there. The bill provides for the assessment of a delinquency
3 penalty for payments received after July 10.

4 The bill provides that prior to July 1 of each year, the
5 department must determine the balance of moneys available to
6 pay compliance costs for the next fiscal year by calculating
7 the ending balance of the animal agriculture compliance fund,
8 as created by the bill, on June 30. The department is
9 required to increase or decrease the fees in an amount that
10 will result in an ending estimated balance of moneys for June
11 30 of the next fiscal year of \$300,000.

12 The bill establishes an animal agriculture compliance fund
13 (referred to as the compliance fund) created in the state
14 treasury under the control of the department. The compliance
15 fund is composed of moneys that may be contributed from a
16 number of sources including compliance fees collected by the
17 department. Moneys in the compliance fund are appropriated to
18 the department exclusively to pay for the administration and
19 enforcement of legal provisions applicable to animal feeding
20 operations under Code chapter 455B.

21 The bill provides that if an owner of a confinement feeding
22 operation is delinquent in remitting an animal agriculture
23 compliance fee, on September 2 following the date of
24 delinquency, the owner is subject to disciplinary action. The
25 department is prohibited from approving an application to
26 construct an animal feeding operation structure which is part
27 of a confinement feeding operation or approving a manure
28 management plan as provided. The bill provides that the
29 manure management plan for the confinement feeding operation
30 is to be automatically unapproved.

31 Code section 455B.191 provides that generally persons who
32 are in violation of division III are subject to a civil
33 penalty of not more than \$10,000.

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