

JAN 19 2005
Agriculture

HOUSE FILE 77
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SMITH and KUHN

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

A BILL FOR

1 An Act relating to confinement feeding operations by providing
2 for the construction of structures associated with the
3 operations.

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

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1 Section 1. Section 331.304A, Code 2005, is amended to read
2 as follows:

3 331.304A LIMITATIONS ON COUNTY LEGISLATION -- CONFINEMENT
4 FEEDING OPERATION SITING ORDINANCES.

5 1. As used in this section:

6 a. "Aerobic structure", "animal", "animal feeding
7 operation", "animal feeding operation structure", and
8 "confinement feeding operation", "confinement feeding
9 operation structure", "manure", and "small animal feeding
10 operation" mean the same as defined in section 459.102.

11 b. "County legislation" means any ordinance, motion,
12 resolution, or amendment adopted by a county pursuant to
13 section 331.302.

14 2. a. Except as provided in paragraph "b", a county
15 shall not adopt or enforce county legislation regulating a
16 condition or activity occurring on land used for the
17 production, care, feeding, or housing of animals unless the
18 regulation of the production, care, feeding, or housing of
19 animals is expressly authorized by state law. County
20 legislation adopted in violation of this section is void and
21 unenforceable and any enforcement activity conducted in
22 violation of this section is void. A condition or activity
23 occurring on land used for the production, care, feeding, or
24 housing of animals includes but is not limited to the
25 construction, operation, or management of an animal feeding
26 operation, an animal feeding operation structure, or aerobic
27 structure, and to the storage, handling, or application of
28 manure or egg washwater.

29 b. (1) A county may adopt a confinement feeding
30 operations siting ordinance pursuant to section 331.302. The
31 purpose of the ordinance shall be to designate areas for the
32 construction of confinement feeding operation structures
33 regardless of whether the county has adopted an ordinance
34 under chapter 335 or has filed a county construction
35 evaluation resolution with the department of natural resources

1 pursuant to section 459.304.

2 (2) The county shall adopt or amend a confinement feeding
3 operations siting ordinance only after considering the
4 recommendation of a confinement feeding operations siting
5 commission which shall be established by a county adopting or
6 amending an ordinance. The board shall appoint five persons
7 as members of the commission. Four members shall not reside
8 in a city and one member shall reside in a city. At least
9 three of the members shall be persons who are or were actively
10 engaged in animal agriculture.

11 (3) The ordinance shall apply to the siting of confinement
12 feeding operation structures that are part of confinement
13 feeding operations in which swine are kept. However, the
14 ordinance shall not apply to a small animal feeding operation.
15 The designation of sites for construction shall be based on
16 criteria required in order to preserve and protect natural
17 resources, including water sources and fragile environmental
18 locations; lessen congestion and overcrowding of confinement
19 feeding operations, especially near cities; and protect the
20 health and welfare of the public.

21 Sec. 2. Section 335.2, Code 2005, is amended to read as
22 follows:

23 335.2 FARMS AGRICULTURAL PURPOSES EXEMPT.

24 Except to-the-extent-required-to-implement as provided in
25 this section 335.27, no, an ordinance adopted under this
26 chapter applies shall not apply to an agricultural operation
27 including but not limited to land, farm-houses, farm-barns,
28 farm-outbuildings-or-other-buildings or structures which are
29 primarily adapted, by reason of nature and area, for-use for
30 an agricultural purposes purpose, while so used. However, the
31 ordinances an ordinance adopted under this chapter may apply
32 to any of the following:

33 1. The implementation of an agricultural land preservation
34 ordinance as provided in section 335.27.

35 2. The implementation of a confinement feeding operations

1 siting ordinance as provided in section 331.304A.

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

4 Sec. 3. Section 459.303, subsection 1, unnumbered
5 paragraph 1, Code 2005, is amended to read as follows:

6 The department shall approve or disapprove applications for
7 permits for the construction, including the expansion, of
8 confinement feeding operation structures, as provided by rules
9 adopted pursuant to this chapter. The department's decision
10 to approve or disapprove a permit for the construction of a
11 confinement feeding operation structure shall be based on
12 whether the application is submitted according to procedures
13 required by the department and the application meets standards
14 established by the department. The department shall not
15 approve an application for the construction of a confinement
16 feeding operation structure if the construction would be in
17 violation of a confinement feeding operations siting ordinance
18 adopted pursuant to section 331.304A that is filed with the
19 department pursuant to section 459.304. A person shall not
20 begin construction of a confinement feeding operation
21 structure requiring a permit under this section, unless the
22 department first approves the person's application and issues
23 to the person a construction permit. The department shall
24 provide conditions for requiring when a person must obtain a
25 construction permit.

26 Sec. 4. Section 459.304, subsection 2, paragraph b, Code
27 2005, is amended by adding the following new subparagraph:

28 NEW SUBPARAGRAPH. (5) Whether the construction of a
29 proposed confinement feeding operation structure violates a
30 confinement feeding operations siting ordinance adopted by the
31 county board of supervisors pursuant to section 331.304A.

32 Sec. 5. Section 459.304, Code 2005, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 2A. A county board of supervisors that
35 has adopted a confinement feeding operations siting ordinance

1 pursuant to section 331.304A shall file the most current
2 version of the ordinance with the department according to
3 procedures required by the department.

4 EXPLANATION

5 This bill enacts and amends several provisions relating to
6 confinement feeding operations regulated by the department of
7 natural resources. The bill includes amendments to provisions
8 under the "Animal Agriculture Compliance Act" that were
9 amended, enacted, and consolidated in Code chapter 459 during
10 the 2002 legislative sessions.

11 The bill amends Code sections 331.304A and 335.2, which
12 prohibit a county board of supervisors from adopting zoning
13 and other types of ordinances that restrict where a
14 confinement feeding operation structure may be constructed.
15 These structures include confinement buildings (buildings that
16 are totally roofed) and manure storage facilities. The bill
17 authorizes a county board of supervisors to adopt such an
18 ordinance regardless of whether it has adopted county zoning.
19 The ordinance is referred to as a confinement feeding
20 operations siting ordinance. It applies to confinement
21 feeding operations in which swine are kept. It does not apply
22 to small animal feeding operations. The bill provides that a
23 county board of supervisors can only adopt such an ordinance
24 after reviewing recommendations made to it by a special
25 commission.

26 The bill also amends Code section 459.303, which requires
27 the department to issue permits for the construction of
28 confinement feeding operation structures. The bill provides
29 that the department must disapprove an application for a
30 permit to construct a structure if it would violate a
31 confinement feeding operations siting ordinance. The bill
32 amends Code section 459.304 by requiring the county to file
33 its current ordinance with the department, and providing that
34 the county may submit comments to the department informing the
35 department that the application is in violation of the

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1 county's ordinance.

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