

FINAL REPORT

ANIMAL AGRICULTURE INTERIM STUDY COMMITTEE

February 1995

AUTHORIZATION AND APPOINTMENT

The Animal Agriculture Interim Study Committee was established by the Legislative Council in 1994 and authorized to hold four days of meetings. The Committee held three meetings and five public hearings.

MEMBERSHIP

The Committee consists of the following members:

Senator Berl E. Priebe, Co-chairperson
Representative James A. Meyer, Co-chairperson
Senator Brad Banks
Senator Emil Husak
Senator Patty Judge
Senator Derryl McLaren
Representative Teresa Garman
Representative Sandra Greiner
Representative Deo A. Koenigs
Representative Norman Mundie
Mr. Tim L. Cappucian
Ms. Caye Chelesvig
Ms. Ellen Hansen
Mr. Malcolm McGregor
Mr. Dick Shoenhair
Ms. Ramona Timm

CHARGE

The Committee was charged to review animal agriculture in Iowa and its impact upon the environment and nonagricultural uses of land, and report its findings and recommendations to the General Assembly.

PROCEEDINGS

The Committee held an organizational meeting on October 13, 1994; public hearings on November 22, 1994, December 8, 1994, and the morning of December 16, 1994; a second meeting on the afternoon of December 16, 1994; and a final meeting on the morning of January 30, 1995.

MEETING -- OCTOBER 13, 1994

The first meeting of the Animal Agriculture Study Committee was held on Thursday, October 13, 1994. The Committee elected Senator Berl Priebe and Representative Jim Meyer as Co-chairpersons. The Committee heard testimony from a number of persons, including the following:

PRODUCER ORGANIZATIONS. Representatives of producer organizations discussed animal agriculture in the state. Representatives included Mr. Lee Farris, President of the Iowa Cattlemens Association; Mr. Tom Floy, Iowa Pork Producers Association; and Ms. Angela DeGooyer, Iowa Poultry Association. The panel discussed the changing structure of livestock production. The speakers discussed the need to encourage competitive expansion. Mr. Floy and Ms. DeGooyer acknowledged that environmental protection and quality of life issues are important. Mr. Floy urged statewide solutions to issues affecting livestock production.

HEALTH RISKS. Kelley J. Donham, DVM, Department of Preventative Medicine, University of Iowa, testified regarding human health risks associated with confinement feeding operations. Dr. Donham discussed various occupation-related diseases and methods to reduce the incidence of respiratory hazards.

GOVERNOR'S COMMITTEE. Mr. Harold Trask presented information regarding the Governor's Environmental Agriculture Committee. Mr. Trask discussed a number of issues related to manure management and odor control regulation, including the storage and application of manure.

ECONOMIC ASPECTS. Dr. John Lawrence, Professor of Economics, Iowa State University, discussed the changing structure of animal agriculture in Iowa. He discussed Iowa's leading role as a swine producer, and its impact upon the state's economy. Dr. Lawrence discussed salary and benefit packages offered by large swine producers.

NUISANCE LAWS. Mr. Greg Andrews, Staff Attorney, Agricultural Law Center, Drake University, discussed agricultural nuisance laws in Iowa, including common law aspects as developed by Iowa courts, and statutory protections against nuisance suits enacted by the General Assembly.

REGULATION. Mr. Don Paulin, Deputy Director, Department of Natural Resources, and Mr. Ubbo Agena, also representing the Department, presented information regarding environmental protection regulations affecting livestock production, including permits required to construct and operate certain animal feeding operations. Mr. Ubbo also discussed regulatory schemes adopted by other states. According to Mr. Ubbo, Iowa's regulations fall in the middle of a spectrum when compared to other states.

NEIGHBOR CONCERNS. Ms. Teresa Thompson, private citizen, testified about problems that she has encountered as a neighbor to a large swine production operation near Greenfield. According to Ms. Thompson, a lagoon from the operation was located near her residence and caused the pollution of her water well.

SCIENTIFIC INFORMATION. Dr. Stewart Melvin, Professor of Agricultural and Biosystems Engineering, Iowa State University, and Mr. John George, President Agricultural Engineering Associates, Uniontown, Kansas, provided scientific information and opinions to the Committee. Dr. Melvin discussed the transmission of odors and methods to reduce their impact upon neighboring properties. Mr. George discussed the need to base regulation upon scientific information, and criticized governmental approaches. He expressed the opinion that animal feeding operations do not impose significant risks to water sources.

PRODUCERS. Mr. Bill Brenton, representing Brenton Brothers, Inc. (a custom cattle feeding operation), and Dr. Chad Hagon, representing Iowa Select Farms (a large swine production facility), presented testimony regarding their operations. Both speakers expressed the opinion that the animal feeding industry is rapidly changing and that Iowa needs to encourage expansion.

FUTURE ACTION. The Committee discussed a number of issues. The Committee decided to form two subcommittees and hold public hearings around the state. The Committee then decided to devote their two remaining days to discussing comments from the public hearings, meeting with representatives of the Governor's committee, and making recommendations.

PUBLIC HEARINGS -- NOVEMBER 22, 1994

A subcommittee of the Animal Agriculture Study Committee held two public hearings on Tuesday, November 22, 1994. The public hearings were held in Spencer beginning at 1:00 p.m. and in Forest City beginning at 7:00 p.m.

SPENCER PUBLIC HEARING. The first public hearing was held in the City Hall Council Chambers in Spencer. A number of persons commented regarding expansion of the livestock industry in the state, in particular swine confinement operations. Several persons discussed odor created from large scale facilities. Other persons expressed concern that livestock production would soon become dominated by large corporate operations. Several persons discussed economic opportunities available for individuals interested in livestock production, and

expressed support for agricultural areas. There was discussion regarding state regulations imposed on animal waste storage facilities. Several persons noted the importance of involving local governments in the regulatory process. Several persons stated that statewide environmental standards would be appropriate.

FOREST CITY PUBLIC HEARING. The second public hearing was held in the Campus Center at Waldorf College in Forest City. A number of persons stated that the expansion of large livestock production operations threatens family farm agriculture in the state. Several persons recommended that the state impose a moratorium upon granting permits for further construction of larger facilities. Persons discussed the role of the Department of Natural Resources in granting construction and operating permits. A number of persons recommended the adoption of more stringent regulations for confinement operations. At least one person opposed efforts to impose more regulations upon operations. Several persons discussed the discretion of counties to approve or deny a petition granting agricultural areas. One person discussed nuisance suits as a method of protecting property rights.

PUBLIC HEARINGS -- DECEMBER 8, 1994

A subcommittee of the Animal Agriculture Study Committee held two public hearings on Thursday, December 8, 1994. The public hearings were held in Sioux City beginning at 9:30 a.m. and in Jefferson beginning at 3:30 p.m.

SIOUX CITY PUBLIC HEARING. The third public hearing was held at the Western Iowa Technical Community College in Sioux City. Persons supported the imposition of distance requirements between animal production facilities and residences, requirements for waste management plans, and the creation of an indemnity fund to provide counties with money to clean up abandoned facilities. Others discussed the impact of large animal feeding operations upon the state's environment and economy. Persons also discussed whether regulations should be adopted on a statewide basis. Persons voiced support for creating agricultural areas and the need to protect farmers from nuisance actions. Persons expressed concerns about the nature of regulations and the need for flexibility. Persons discussed the role of Iowa State University in transferring technology to producers. There was a concern expressed regarding whether large production facilities should be eligible for tax increment financing to train employees.

JEFFERSON PUBLIC HEARING. The fourth public hearing was held in the Greene County Courthouse in Jefferson. A number of persons stated that the expansion of large livestock production operations threatens the state's environment and family farm agriculture in the state. Several persons recommended the adoption of more stringent regulations imposed upon confinement operations. Other persons expressed concern regarding the extent of regulatory proposals. One person recommended that corporate farming laws be relaxed to allow farmers to belong to several corporations. Several persons criticized the practices of Iowa Select Farms. Persons supported and opposed local government regulation of facilities. Persons expressed support for the agricultural area law. There was a discussion regarding the use of tax

increment financing and the Iowa Industrial New Jobs Training Act to fund the costs of training employees for large production operations.

PUBLIC HEARING AND MEETING -- DECEMBER 16, 1994

The Animal Agriculture Study Committee held its fifth public hearing in the morning of Friday, December 16, 1994, and then convened at the Capitol building in the afternoon.

PUBLIC HEARING. The Animal Agriculture Study Committee held its fifth public hearing on Friday, December 16, 1994, from approximately 9:00 a.m. to 11:00 a.m. at the Clarke Rural Electric Cooperative (REC) Building in Osceola. A number of interested persons appeared with comments regarding the expansion of the livestock industry in the state, particularly swine confinement operations. Several persons stated that the current regulatory scheme is adequate, and questioned the need for stricter application requirements for manure than for commercial fertilizer. Several persons stated that a manure management plan requirement has merit. One person expressed a concern that Iowa agriculture is being "franchised," and expressed concern that large producers would eventually form a food cartel. One person expressed a concern that farmers are being replaced by corporations, resulting in the deterioration of surrounding communities. Several persons discussed the competitive advantages enjoyed by larger producers. Several persons noted that some producers should be further regulated. There was a general discussion regarding corporate farming laws, and the increasing concentration of production among fewer producers. One person discussed how corporations may be used to benefit local family producers. There was a discussion regarding the need to retain the livestock industry in Iowa, and the impact of the industry upon Iowa's grain markets. Several persons discussed whether counties or the state should have the authority to regulate confinement operations.

MEETING. The Committee held a meeting at 1:00 p.m. in Room 116 of the State Capitol. The Committee heard testimony from several persons. Mr. Robert Aukes, President, AG Finance Inc., discussed the importance of the livestock industry to Iowa and the engineering challenges of constructing facilities with reduced odor. He encouraged the Committee not to become distracted by issues regarding the size of operations and the business organization form persons adopt to own the operations. Dean David Topel of Iowa State University, Chair of the Governor's Environmental Agriculture Committee, discussed that committee. Dean Topel discussed a number of factors relating to the Committee's recommendations, including providing requirements for waste management plans, separation distances between operations and residences or environmentally sensitive areas, the rate of manure application on fields, the control of odors from livestock facilities, enforcement of regulations by the Department of Natural Resources, and the creation of a state indemnity fund to assist counties to clean up sites which have been abandoned.

DECISIONS. The Committee considered materials comparing recommendations received by the Committee during the course of the interim. The Committee also considered the impact of livestock operations upon the administration of the state's drainage districts. The

Committee voted to meet again during January in order to make final recommendations. The Committee voted to act independently of the Governor's Environmental Agriculture Committee.

MEETING -- JANUARY 30, 1995

The Committee held its third and final meeting on Monday January 30, 1995, in Room 116 of the State Capitol beginning at 9:00 a.m.

BILL DRAFT. The Committee considered a bill draft proposal, LSB 1763YC, providing for the regulation of animal feeding operations, providing for fees, and providing for penalties. The proposal is attached. The Committee did not review the entire bill, but voted to make the following amendments:

1. Page 1, line 8, by striking the figure "0.5" and inserting the following: "0.4".
2. Page 3, line 30, by striking the word "less" and inserting the following: "more".
3. By striking page 1, line 1 through page 5, line 28.

The Committee agreed to allow the members to express opinions on these issues and not to pursue the bill draft.

COMMENTS. The Committee made a number of comments expressed only for purposes of discussion:

1. Representative Koenigs suggested that the Committee consider placing a cap on the number of swine that any single producer can own, that the state adopt a good neighbor policy, that county boards of supervisors be provided authority to approve or modify agricultural areas established pursuant to section 352.6 of the Iowa Code, and that the Department of Natural Resources conduct random tests of 10 animal feeding operations to determine whether the operations pose a threat to water quality. Representative Koenigs noted that the creation of agricultural areas is a zoning decision which redistributes rights among property owners. He supported granting the authority to boards of supervisors to modify the boundaries of an agricultural area.

2. Senator Husak suggested that the Committee consider Iowa State University's use of manure guns, and noted complaints that the Committee had heard regarding the University's manure disposal practices. Senator Husak stated that the Committee should consider subjecting the storage and treatment of manure from large confinement feeding operations to rules which, to every extent practical, incorporate current and generally accepted methods for the treatment and stabilization of sewage originating from human populations. Senator Husak's amendment is attached.

3. Representative Garman made a number of comments for the Committee's consideration. She distributed information regarding regulation in Scotland County, North Carolina, which applies to swine facilities with more than 250 head. The regulations require that producers submit a design plan for buildings and lagoons, and that facilities be at least 1,500 feet from homes and businesses and at least 2,500 feet from schools and churches. The regulations require the removal and disposal of sludge when a lagoon closes, and that owners obtain a surety bond or provide other evidence of financial security equaling \$2,000 per acre foot of capacity, to pay the cost of cleanup.

Representative Garman offered a number of specific suggestions for the consideration of the Committee, including the following:

a. All producers who are required to have a construction permit for their facilities must have waste management plans established with the local office of the Natural Resources Conservation Service of the United States Department of Agriculture.

b. Tile lines should not be disrupted if drainage is affected.

c. All surface wells should have capped intakes, in order to ensure that surface water cannot enter into the well or contaminate the aquifer.

d. The distance of a confinement building to a neighboring residence must be not less than 1,250 feet.

e. Irrigation guns used for applying waste onto fields should be discontinued after December 1, 1995, except for waste originating from the second stage of a two-stage anaerobic lagoon, unless approved by the county board of supervisors where the land is located.

f. A facility that is required to receive a construction permit from the Department of Natural Resources must post a bond of \$1,000,000.

g. Regulations which apply to contracts should be adopted using Minnesota as a model. The requirements should provide for all of the following:

(1) The recovery of investments. According to Representative Garman, the regulations would provide that when a producer is required to make an investment in buildings or equipment that cost \$100,000 or more and have a useful life of five or more years, the contractor is prohibited from terminating or canceling the contract until there is a notice sent to the producer at least 180 days prior to the termination or cancellation.

(2) The right to cure a breach of contract. Representative Garman suggested that the regulations provide that if a producer breaches the contract, the contractor must give the producer 90 days' notice before terminating the contract and must provide the producer 60 days to correct the breach.

(3) The liability by a parent company and any subsidiary company licensed to purchase commodities. Representative Garman observed that companies would be liable to a seller for the amount of any unpaid claim or contract performance claim if the contractor fails to pay or perform according to the terms of the contract.

(4) An implied promise of good faith which applies when interpreting all contracts.

(5) That to be considered a contractee subject to available protections, a person must own the facilities and must contract for a guaranteed fee per pound of grain.

h. Increase the penalties for not filing reports required under chapter 9H, the corporate farming law. According to Representative Garman, the penalty would be increased to \$5,000 for failing to file a report as required in the chapter, if a report was not filed as required in the previous year. She explained that if a report is not filed in the two previous years, a court would order the person required to file the report to cease and desist operations.

i. Amend Iowa's corporate farming law, chapter 9H of the Iowa Code, in a manner similar to Nebraska law, including adding private rights of action to enforce the chapter's provisions. Representative Garman suggested that cooperative associations should not be exempt from the provisions in chapter 9H. She also noted that an alternative approach could also be considered. Representative Garman stated that chapter 9H could be amended to provide that all shareholders, members, and partners of any authorized or family farm corporation, authorized limited liability company, or authorized limited partnership engaged in farming or owning farm land would be personally liable for all debts and obligations of the entity.

j. The right of members of a cooperative to withdraw their equity invested in a cooperative association, if the cooperative association engages in, invests in, or manages production agriculture.

k. Amend Iowa law to provide restrictions upon the production and processing of livestock. Representative Garman noted that the provisions could be based upon chapter 192A, which regulates the marketing of dairy products. Representative Garman also noted that the law should require the public disclosure of pricing information and that provision be made for enforcement through a private right of action.

l. Amend section 9H.2, which provides restrictions upon the right of processors to own or control swine prior to slaughter. Representative Garman suggested that the section should be amended to provide that a processor could not contract for the purchase of swine, unless the swine were purchased for slaughter within 20 days of the date of the purchase. She noted that cattle producers should be consulted to determine if the requirement is applicable to the cattle industry.

m. Eliminate programs that provide training to employees of pork production facilities.

n. Amend provisions relating to animal feeding operations.

o. Representative Garman made a number of suggestions for the Committee's consideration, including the following:

(1) Establish an Organic Nutrient Management Advisory Council. According to Representative Garman, the council would be composed of members of the General Assembly, agricultural producers, and other persons interested in the environment. She explained that the council would advise the Environmental Protection Commission and make recommendations regarding manure application, manure management planning, use of water quality monitoring wells, and other matters related to the environmental impact of animal feeding operations. She stated that the council could play an important role in assisting the Department of Natural Resources in adapting the state's environmental regulatory process to ongoing developments in manure management technology.

(2) Require manure management planning. Representative Garman noted that operators of animal feeding operations required to obtain construction permits could also be required to develop manure management plans. She stated that the plan could include a determination regarding how much manure nutrient is produced, how the material will be applied to land, and the extent of ongoing recordkeeping. She stated that the Department should require periodic manure management training for operators who are required to develop a plan. She also commented that the requirement should include a separate plan for the long-term management of sludge from anaerobic lagoons. She noted that the Department of Natural Resources should be authorized to require the submission of a plan by any operation which is determined to be in violation of state environmental regulations. She stated that the Department of Natural Resources should adopt rules in order to implement these regulations.

(3) Increase penalties for violators. Representative Garman suggested that the Department of Natural Resources be provided discretion to increase the amount of civil penalties imposed upon habitual violators, based upon the number of occurrences.

(4) Allow the Department of Natural Resources to require water quality monitoring wells around earthen waste storage structures in cases where an extraordinary potential for water quality contamination exists. Representative Garman suggested that the Department could rely upon recommendations by the Organic Nutrient Management Advisory Council to determine when such a potential exists.

(5) Add separation distances to certain animal feeding operation structures, including confinement buildings and manure storage structures. Representative Garman stated that setback distances should be required between these structures and private residences, municipalities, and public use areas such as parks. Representative Garman noted that the law should grandparent in the continuation of existing smaller facilities. She stated that separation distances could be waived upon the consent of affected neighbors.

(6) Establish a cleanup indemnity fund within the Department of Agriculture and Land Stewardship. According to Representative Garman, the fund would be used to reimburse a county government which makes a claim to the Department for the cost of emptying permitted manure storage structures which the county has acquired through nonpayment of property taxes. The fund should be subject to a cap.

4. Ms. Chelesvig noted that farmers are good stewards of the land, and regulations should not limit the rights of good farmers. She expressed support for waste management plans. Ms. Chelesvig proposed that the Iowa Administrative Code be amended to ensure that the Department of Natural Resources consults with drainage district trustees during the process of approving construction permits for structures related to animal feeding operations. She advocated amending 567 IAC section 65.6 to read as follows:

The department shall determine from the permit application that the county board of supervisors or the drainage district trustees, whichever governing entity is responsible for drainage on the site of the proposed livestock confinement facility, has reviewed and approved construction plans for compliance with Iowa drainage laws as set out in chapter 468 of the Iowa Code. A notice, stating that the review and approval process has been completed, should be signed by the chairperson of the board of supervisors or drainage district trustees and included in the department's permit application packet.

5. Representative Mundie made a number of comments for the consideration of the Committee, including the following: that Iowa is the leading pork producer in the nation because of independent producers, that small independent producers are not to blame for the current controversy, that the agricultural area law (chapter 352) should be fine-tuned to ensure that county boards of supervisors are not blamed for approving areas which the law requires them to approve, that swine production appears to be the major cause of concern, methods of disposal should be regulated, separation distances should be required, the concentration of production operations is difficult to regulate, operations should be required to develop management plans, drainage laws must be enforced and the Department of Natural Resources must cooperate with drainage district trustees; and the Department must cooperate with offices of the Natural Resources Conservation Service of the United States Department of Agriculture.

6. Mr. Shoenhair commented that manure treated on a dry matter basis does not produce the level of odor associated with liquid manure, and should not be subject to the same level of regulation. He noted the importance of site selection, and the need for operators to be good neighbors. He supported harsher penalties imposed upon habitual violators. Mr. Shoenhair also expressed support for manure management plans.

7. Mr. McGregor noted that the issue of odor principally affects the swine industry. He also noted that there is no evidence that animal feeding operations threaten groundwater sources.

8. Mr. Cappucian noted that animal agriculture is important to Iowa, and supported the concept of manure management planning.

9. Senator McLaren stated that the concentration of livestock production has raised a number of issues, but that it is impossible to regulate economic forces. He noted that waste management requirements may be appropriate in certain circumstances, but expressed concern that overregulation will do greater harm to small producers. Senator McLaren stated that no evidence exists that operations threaten groundwater sources.

10. Senator Banks expressed support for improving manure management practices and ensuring that governing bodies of drainage districts are involved in the process of granting construction permits. He noted the need for operators to rely upon local sources of expertise such as soil conservation offices and the Iowa State University Extension Service. He suggested supporting cleanup activities by using general appropriations in lieu of fees imposed upon producers.

11. Co-chairperson Priebe expressed support for section 8 of the bill draft considered by the Committee, which provides that the Department of Natural Resources shall not initiate an enforcement action in response to a violation by an animal feeding operation or in a rule adopted by the Department, or request the commencement of legal action by the Attorney General, unless the Environmental Protection Commission has approved the intended action. He also noted that the Committee should consider sections 21 through 26 of the bill, which provide for the certification of manure plan managers, manure management practices, requirements for manure management plans, the imposition of penalties for habitual offenders, and nuisance suit protections for operators who comply with federal and state laws.

12. Co-chairperson Meyer noted the importance of agricultural areas and the livestock industry to Iowa. He noted that producers must be good neighbors and that operations must be environmentally friendly. He also noted that the state must promote livestock promotion. Co-chairperson Meyer noted that regulations are necessary in order to protect society from the two percent of persons who are not good neighbors. He noted that the interim was organized to sort out the facts involving the issues. He stated that it is impossible to regulate economic forces. Co-chairperson Meyer encouraged members to consider the bill draft.

RECOMMENDATIONS

The Committee made no recommendations.

HOUSE FILE _____

BY _____

DRAFT
FOR DISCUSSION PURPOSES
ONLY

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act providing for the regulation of animal feeding operations,
2 providing for fees, and providing for penalties.

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

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1 Section 1. NEW SECTION. 204.1 DEFINITIONS.

2 1. "Animal unit" means a unit of measurement used to
3 determine the animal capacity of an animal feeding operation,
4 based upon the product of multiplying the number of animals of
5 each species by the following:

6	a. Slaughter and feeder cattle	1.0
7	b. Mature dairy cattle	1.4
8	c. Butcher and breeding swine	0.5
9	d. Sheep or lambs	0.1
10	e. Horses	2.0
11	f. Turkeys	0.018
12	g. Broiler or layer chickens	0.01

13 2. "Annual fee" means the fee provided in section 204.3.

14 3. "Confinement feeding operation" means a confinement
15 feeding operation as defined in section 455B.160.

16 4. "Construction fee" means the fee provided in section
17 204.3.

18 5. "Fund" means the manure storage indemnity fund created
19 in section 204.2.

20 6. "Manure storage structure" means a structure used to
21 store manure as part of a confinement feeding operation
22 required to be constructed pursuant to a permit issued by the
23 department of natural resources pursuant to section 455B.173.

24 7. "Permittee" means a person required to obtain a permit
25 for the construction of a confinement feeding operation, if a
26 manure storage structure is connected to the confinement
27 feeding operation.

28 Sec. 2. NEW SECTION. 204.2 MANURE STORAGE INDEMNITY
29 FUND.

30 1. A manure storage indemnity fund is created as a
31 separate fund in the state treasury under the control of the
32 department. The general fund of the state is not liable for
33 claims presented against the fund. The fund consists of
34 moneys from construction fees and annual fees remitted by
35 manure storage permittees as provided in section 204.3;

1 delinquency penalties; sums collected by the department by
2 legal action in order to collect moneys on behalf of the fund;
3 civil penalties assessed and collected by the department of
4 natural resources pursuant to section 455B.191; against
5 persons required to receive a permit for the construction of a
6 confinement feeding operation; and interest, property,
7 securities acquired through the use of moneys in the fund; or
8 moneys contributed to the fund from other sources.

9 2. The moneys collected under this section and deposited
10 in the fund shall be used exclusively to indemnify a political
11 subdivision for expenses related to removing and disposing of
12 manure from a manure storage structure, and to pay the
13 administrative costs of this chapter. The moneys in the fund
14 are appropriated to and for this purpose. Moneys in the fund
15 shall not be subject to appropriation for any other purpose.

16 3. The treasurer of state shall act as custodian of the
17 fund and disburse amounts contained in the fund as directed by
18 the department. The treasurer of state is authorized to
19 invest the moneys deposited in the fund. The income from such
20 investment shall be credited to and deposited in the fund.
21 Notwithstanding section 8.33, moneys in the fund are not
22 subject to reversion to the general fund of the state. The
23 fund shall be administered by the department which shall make
24 expenditures from the fund consistent with the purposes set
25 out in this chapter. The moneys in the fund shall be
26 disbursed upon warrants drawn by the director of revenue and
27 finance pursuant to the order of the department. The fiscal
28 year of the fund begins July 1. The finances of the fund
29 shall be calculated on an accrual basis in accordance with
30 generally accepted accounting principles. The auditor of
31 state shall regularly perform audits of the fund.

32 Sec. 3. NEW SECTION. 204.3 FEES.

33 1. A permittee shall pay a construction fee to the
34 department of natural resources before the permittee receives
35 a permit by the department of natural resources for the

1 construction of a confinement feeding operation, if the manure
2 storage structure is constructed on or after the effective
3 date of this Act. The amount of the fee shall equal five
4 cents for each animal unit of capacity for confinement feeding
5 operations housing poultry and twelve and one-half cents per
6 animal unit of capacity for confinement feeding operations
7 housing other species of animals. The department of natural
8 resources shall deposit the moneys into the fund in a manner
9 and according to procedures required by the department of
10 agriculture and land stewardship.

11 2. a. A permittee shall pay an annual fee to the
12 department of agriculture and land stewardship which shall be
13 remitted by July 1 of each year, unless the annual fee is
14 waived pursuant to subsection 3. The department shall provide
15 notice in writing to persons required to pay the fee on or
16 before June 1 of each year.

17 b. The annual fee shall equal five cents per animal unit
18 of capacity for confinement feeding operations housing poultry
19 and twelve and one-half cents per animal unit of capacity for
20 confinement feeding operations housing other species of
21 animals. The fee shall not be paid, if the confinement
22 feeding operation does not house any animals or manure on July
23 1. The permittee shall notify the department that the fee is
24 not owing by July 1.

25 c. A permittee is delinquent if the permittee fails to
26 submit the full fee when due, or if upon examination, an
27 underpayment of the fee is found by the department. The
28 permittee is subject to a penalty of ten dollars for each day
29 the permittee is delinquent or an amount equal to the amount
30 of the deficiency, whichever is less.

31 3. If, on March 1, the moneys of the fund, less the
32 department's estimate of the costs to the fund for pending or
33 unsettled claims, exceed five hundred thousand dollars, the
34 annual fee pursuant to subsection 2 shall be waived for the
35 next fiscal year and shall not be assessable or owing for that

1 year.

2 4. The department of natural resources shall provide the
3 department of agriculture and land stewardship the most
4 current available information regarding the names and
5 addresses of permittees, including the capacity of the
6 confinement feeding operations subject to the permit. The
7 information shall be delivered on or before January 1 of each
8 year.

9 Sec. 4. NEW SECTION. 204.4 COLLECTION.

10 The department in cooperation with the attorney general may
11 bring an action in court in order to collect moneys required
12 to be paid as provided in section 204.3.

13 Sec. 5. NEW SECTION. 204.5 CLAIMS AGAINST THE FUND.

14 1. A county that has acquired real estate containing a
15 manure storage structure following nonpayment of taxes
16 pursuant to section 446.19, may make a claim against the fund
17 to pay the costs of removing and disposing of the manure
18 located in a manure storage structure on the real estate.
19 Each claim shall include a bid by a qualified person, other
20 than a governmental entity, to remove and dispose of the
21 manure for a fixed amount specified in the bid.

22 2. The department shall determine if a claim is eligible
23 to be satisfied under this section, and do one of the
24 following:

25 a. Pay the fixed amount specified in the bid submitted by
26 the county upon completion of the work.

27 b. Obtain a lower fixed amount bid for the work from
28 another qualified person, other than a governmental entity,
29 and pay the fixed amount in this bid upon completion of the
30 work. The department is not required to comply with section
31 18.6 in implementing this section.

32 3. Upon a determination that the claim is eligible for
33 payment, the department shall provide for payment of one
34 hundred percent of the claim, as provided in this section, but
35 not more than three hundred thousand dollars per claimant. If

1 at any time the department determines that there are
2 insufficient moneys to make payment of all claims, the
3 department may order that payment be deferred on specified
4 claims. The department shall hold those claims for payment
5 until the department determines that the fund again contains
6 sufficient moneys.

7 4. In the event of payment of a claim under this section,
8 the fund is subrogated to the extent of the amount of the
9 payment to all rights, powers, privileges, and remedies of the
10 political subdivision regarding the payment amount. The
11 political subdivision shall render all necessary assistance to
12 assist the department in securing the rights granted in this
13 section. No action or claim initiated by a political
14 subdivision and pending at the time of payment from the fund
15 shall be compromised or settled without the consent of the

16 5. If upon disposition of the real estate the county
17 realizes an amount which exceeds the total amount due, the
18 county shall forward to the fund any excess amount which is
19 not more than the amount expended by the fund.

20 6. The department of agriculture and land stewardship
21 shall adopt administrative rules pursuant to chapter 17A to
22 implement this section.

23 Sec. 6. NEW SECTION. 204.6 NO STATE OBLIGATION.

24 This chapter does not imply any guarantee or obligation on
25 the part of the state of Iowa, or any of its agencies,
26 employees, or officials, either elective or appointive, with
27 respect to any agreement or undertaking to which this chapter
28 relates.

29 Sec. 7. NEW SECTION. 455A.7A ORGANIC NUTRIENT MANAGEMENT
30 ADVISORY COUNCIL.

31 1. An organic nutrient management advisory council is
32 established. Sections 69.16 and 69.16A apply to the
33 composition of the council. Members shall be entitled to
34 receive per diem and expenses as provided in section 7E.6.
35 The council shall consist of the following:

- 1 a. A designee of the state office of the natural resources
2 conservation service of the United States department of
3 agriculture, as appointed as a voting member by the head of
4 the state office, upon request by the governor. If a person
5 is not appointed, the director of the soil conservation
6 division of the department of agriculture and land stewardship
7 or a designee shall serve as a voting member instead.
- 8 b. Six persons appointed as voting members by the
9 governor, after consultation with the secretary of
10 agriculture, and subject to confirmation by the senate, as
11 provided in section 2.32. The persons shall include all of
12 the following:
- 13 (1) Four persons actively engaged in agricultural
14 production. Each person must be a member of a commodity
15 organization or association which represents agricultural
16 producers in this state.
- 17 (2) One person actively engaged in agricultural production
18 who is a member of an organization or association which
19 represents agricultural producers generally.
- 20 (3) One person who is interested in environmental quality
21 issues. The person must be a member of an association or
22 organization interested in the protection or preservation of
23 the natural environment.
- 24 c. Four members of the general assembly serving as voting
25 members who are two state senators, one appointed by the
26 president of the senate, after consultation with the majority
27 leader of the senate, and one appointed by the minority leader
28 of the senate, after consultation with the president of the
29 senate, from their respective parties; and two state
30 representatives appointed by the speaker, one from the
31 majority party after consultation with the majority leader of
32 the house and one from the minority party after consultation
33 with the minority leader of the house.
- 34 d. The director of the department of natural resources or
35 the director's designee and the dean of the college of

1 agriculture at Iowa state university, or a designee, who shall
2 serve as nonvoting ex officio members.

3 2. The department shall furnish the council with a meeting
4 place, staff, and all articles, supplies, and services
5 necessary to enable the council to perform its duties.

6 3. The members appointed by the governor shall serve
7 three-year terms beginning and ending as provided in section
8 69.19. However, the governor shall appoint some initial
9 members to serve for less than three years to ensure members
10 serve staggered terms. A member appointed by the governor is
11 eligible for reappointment. However, a member shall not serve
12 for more than two full consecutive terms. A vacancy on the
13 council shall be filled for the unexpired portion of the
14 regular term in the same manner as regular appointments are
15 made. The council shall elect a chairperson each year and
16 meet on a regular basis and at the call of the chairperson or
17 upon the written request to the chairperson of three or more
18 voting members. Written notice of the time and place of the
19 meeting shall be given to each member. Six voting members
20 constitute a quorum and the affirmative vote of a majority of
21 the voting members present is necessary for any substantive
22 action to be taken by the council, except that a lesser number
23 may adjourn a meeting. The majority shall not include any
24 member who has a conflict of interest and a statement by a
25 member that the member has a conflict of interest is
26 conclusive for this purpose. A vacancy in the membership does
27 not impair the duties of the council.

28 4. The council shall do all of the following:

29 a. Advise the department and the environmental protection
30 commission regarding animal feeding operations.

31 b. Study the effects of animal feeding operations and
32 recommend to the department and commission solutions and
33 policy or regulatory alternatives relating to animal feeding
34 operations, including recommendations for rulemaking by the
35 department pursuant to chapter 17A or recommendations to the

1 general assembly.

2 c. Provide advice and recommendations to the department
3 regarding all of the following:

4 (1) The need to require the installation and operation of
5 a hydrological monitoring system for an exclusively earthen
6 manure storage structure, as provided in section 455B.173.

7 (2) Manure application practices as provided in section
8 455B.201.

9 (3) The certification of manure plan managers as provided
10 in section 455B.201.

11 (4) The formulation of standards required for manure
12 management plans, as provided in section 455B.202, including
13 but not limited to sludge management subplans.

14 d. Provide other information or perform other duties which
15 may be of assistance to animal feeding operations.

16 Sec. 8. NEW SECTION. 455B.110 ANIMAL FEEDING OPERATIONS
17 -- COMMISSION APPROVAL OF ENFORCEMENT ACTIONS.

18 The department shall not initiate an enforcement action in
19 response to a violation by an animal feeding operation as
20 defined in section 455B.160 as provided in this chapter or in
21 a rule adopted by this chapter, or request the commencement of
22 legal action by the attorney general pursuant to section
23 455B.141, unless the commission has approved the intended
24 action. This section shall not apply to an order to terminate
25 an emergency issued by the director pursuant to section
26 455B.175.

27 Sec. 9. Section 455B.131, subsection 5, Code 1995, is
28 amended by striking the subsection.

29 Sec. 10. Section 455B.134, subsection 3, paragraph f, Code
30 1995, is amended by striking the paragraph.

31 SITING REQUIREMENTS -- NEW PART

32 Sec. 11. NEW SECTION. 455B.160 DEFINITIONS.

33 As used in this part, unless the context otherwise
34 requires:

35 1. "Animal feeding operation" means a lot, yard, corral,

1 building, or other area in which animals are confined and fed
2 and maintained for forty-five days or more in any twelve-month
3 period. Two or more animal feeding operations under common
4 ownership or management are deemed to be a single animal
5 feeding operation if they are adjacent or utilize a common
6 area or system for waste disposal.

7 2. "Animal weight capacity" means the actual average
8 animal weight of animals which can be confined in an animal
9 feeding operation at any one time.

10 3. "Confinement feeding operation" means a totally roofed
11 animal feeding operation in which manure is stored or removed
12 as a liquid, semiliquid, or solid.

13 4. "Confinement feeding operation structure" means a
14 structure used in conjunction with a confinement feeding
15 operation which is an open outside formed waste storage tank,
16 covered outside formed waste storage tank, egg washwater
17 lagoon, or building used to house animals.

18 5. "Earthen waste storage basin" means an uncovered
19 earthen cavity which, on a regular basis, receives waste
20 discharges from a confinement feeding operation if accumulated
21 wastes from the basin are completely removed at least twice
22 each year.

23 6. "Public use area" means an area within a park in which
24 the state or a political subdivision holds an interest, if
25 facilities are located in the area which attract the public to
26 congregate and remain in the area for significant periods of
27 time. Such areas include, but are not limited to, picnic
28 grounds, campgrounds, lodges, shelter houses, and swimming
29 beaches.

30 7. "Structure" means an anaerobic lagoon, earthen waste
31 storage basin, or confinement feeding operation structure.

32 8. "Water of the state" means any lake, river, or stream
33 within the territorial limits of this state, and the marginal
34 river areas adjacent to this state, which can support a
35 floating vessel capable of carrying one or more persons during

1 a total of a six-month period in one out of ten years,
2 excluding periods of flooding. However, "water of the state"
3 does not include a farm pond or privately owned lake, as
4 defined in section 462A.2.

5 Sec. 12. NEW SECTION. 455B.161 ANAEROBIC LAGOONS -- IN-
6 DUSTRIAL TREATMENT OF WASTEWATER FACILITIES.

7 1. An anaerobic lagoon constructed or expanded on or after
8 July 1, 1982, which is connected to an industrial treatment of
9 wastewater facility shall be located at least the following
10 distances away from a residence not owned by the owner of the
11 anaerobic lagoon or from a public use area, other than a
12 public road:

13 a. One thousand two hundred fifty feet, if the average
14 wastewater discharge flow from the anaerobic lagoon is one
15 hundred thousand gallons per day or less.

16 b. One thousand eight hundred seventy-five feet, if the
17 average wastewater discharge flow from the anaerobic lagoon is
18 greater than one hundred thousand gallons per day.

19 2. As used in this section, the term "public use area"
20 does not mean the same as defined in section 455B.160.

21 Sec. 13. NEW SECTION. 455B.162 ANIMAL FEEDING OPERATIONS
22 -- NEW CONSTRUCTION AND EXPANSION.

23 The following shall apply to structures constructed on or
24 after the effective date of this Act or to the expansion of
25 structures constructed on or after the effective date of this
26 Act:

27 1. An anaerobic lagoon or earthen waste storage basin
28 which is related to an animal feeding operation shall be
29 located at least the following distances away from a residence
30 not owned by the owner of the animal feeding operation:

31 a. One thousand two hundred fifty feet, if the animal
32 feeding operation contains the following:

33 (1) Less than six hundred twenty-five thousand pounds
34 animal weight capacity for all animal species other than beef
35 cattle.

- 1 (2) Less than one million six hundred thousand pounds
2 animal weight capacity for beef cattle.
- 3 b. One thousand eight hundred seventy-five feet, if the
4 animal feeding operation contains the following:
- 5 (1) Six hundred twenty-five thousand or more pounds animal
6 weight capacity for all animal species other than beef cattle.
- 7 (2) One million six hundred thousand or more pounds animal
8 weight capacity for beef cattle.
- 9 2. An open outside formed waste storage tank which is
10 related to a confinement feeding operation shall be located at
11 least the following distances away from a residence not owned
12 by the owner of the confinement feeding operation:
- 13 a. One thousand feet, if the confinement feeding operation
14 contains less than six hundred twenty-five thousand pounds
15 animal weight capacity of all animal species.
- 16 b. One thousand five hundred feet, if the confinement
17 feeding operation contains six hundred twenty-five thousand or
18 more pounds animal weight capacity of all animal species.
- 19 3. A building used to house animals which is related to a
20 confinement feeding operation shall be located at least the
21 following distances away from a residence not owned by the
22 owner of the confinement feeding operation:
- 23 a. Seven hundred fifty feet, if the confinement feeding
24 operation contains less than six hundred twenty-five thousand
25 pounds animal weight capacity of all animal species.
- 26 b. One thousand feet, if the confinement feeding operation
27 contains six hundred twenty-five thousand or more pounds
28 animal weight capacity of all animal species.
- 29 4. A covered outside formed waste storage tank which is
30 related to a confinement feeding operation shall be located at
31 least the following distances away from a residence not owned
32 by the owner of the confinement feeding operation:
- 33 a. Seven hundred fifty feet, if the confinement feeding
34 operation contains less than six hundred twenty-five thousand
35 pounds animal weight capacity of all animal species.

1 b. One thousand feet, if the confinement feeding operation
2 contains six hundred twenty-five thousand or more pounds
3 animal weight capacity of all animal species.

4 5. An egg washwater lagoon, which is related to a
5 confinement feeding operation, shall be located at least the
6 following distances away from a residence not owned by the
7 owner of the confinement feeding operation:

8 a. Seven hundred fifty feet, if the confinement feeding
9 operation contains less than six hundred twenty-five thousand
10 pounds animal weight capacity of all animal species.

11 b. One thousand feet, if the confinement feeding operation
12 contains six hundred twenty-five thousand or more pounds
13 animal weight capacity of all animal species.

14 6. An anaerobic lagoon or earthen waste storage basin
15 which is related to an animal feeding operation shall be
16 located at least the following distances away from a public
17 use area:

18 a. One thousand two hundred fifty feet, if the animal
19 feeding operation contains the following:

20 (1) Less than six hundred twenty-five thousand pounds
21 animal weight capacity for all animal species other than beef
22 cattle.

23 (2) Less than one million six hundred thousand pounds
24 animal weight capacity for beef cattle.

25 b. One thousand eight hundred seventy-five feet, if the
26 animal feeding operation contains the following:

27 (1) Six hundred twenty-five thousand or more pounds animal
28 weight capacity for all animal species other than beef cattle.

29 (2) One million six hundred thousand or more pounds animal
30 weight capacity for beef cattle.

31 7. A confinement feeding operation structure shall be
32 located at least the following distances away from a public
33 use area:

34 a. One thousand two hundred fifty feet, if the confinement
35 feeding operation contains less than six hundred twenty-five

1 thousand pounds animal weight capacity of all animal species.

2 b. One thousand eight hundred seventy-five feet, if the
3 confinement feeding operation contains six hundred twenty-five
4 thousand pounds or more animal weight capacity of all species.

5 8. An anaerobic lagoon, which is a part of an animal
6 feeding operation shall be located at least two hundred feet
7 from water of the state or a surface intake of an agricultural
8 drainage well.

9 9. An earthen waste storage basin which is related to a
10 confinement feeding operation shall be located at least two
11 hundred feet from water of the state or a surface intake of an
12 agricultural drainage well.

13 10. A confinement feeding operation structure which is
14 related to a confinement feeding operation shall be located at
15 least two hundred feet from water of the state or a surface
16 intake of an agricultural drainage well.

17 11. A structure which is related to a confinement feeding
18 operation shall be located at least the following distances
19 away from the corporate limits of a city:

20 a. One thousand two hundred fifty feet, if the confinement
21 feeding operation contains less than six hundred twenty-five
22 thousand pounds animal weight capacity of all animal species.

23 b. One thousand eight hundred seventy-five feet, if the
24 confinement feeding operation contains six hundred twenty-five
25 thousand pounds or more animal weight capacity of all animal
26 species.

27 Sec. 14. NEW SECTION. 455B.163 DISTANCE REQUIREMENTS FOR
28 ANIMAL FEEDING OPERATIONS -- CONSTRUCTION OR EXPANSION PRIOR
29 TO THE EFFECTIVE DATE OF THIS ACT.

30 1. An anaerobic lagoon constructed or expanded on or after
31 June 20, 1979, but prior to the effective date of this Act,
32 and an earthen waste storage basin constructed or expanded on
33 or after July 1, 1990, but prior to the effective date of this
34 Act, which is used in connection with an animal feeding
35 operation shall be located at least the following distances

1 away from a residence not owned by the owner of the animal
2 feeding operation or from a public use area other than a
3 public road:

4 a. One thousand two hundred fifty, if the animal feeding
5 operation contains the following:

6 (1) Less than six hundred twenty-five thousand pounds live
7 animal weight capacity of all animal species other than beef
8 cattle.

9 (2) Less than one million six hundred thousand pounds live
10 animal weight capacity of beef cattle.

11 b. One thousand eight hundred seventy-five feet, if the
12 animal feeding operation contains the following:

13 (1) Six hundred twenty-five thousand pounds or more live
14 animal weight capacity of all animal species other than beef
15 cattle.

16 (2) One million six hundred thousand pounds or more live
17 animal weight capacity of beef cattle.

18 2. For the purpose of this section, the determination of
19 live animal weight capacity shall be based on the average
20 animal weight during a production cycle and the maximum animal
21 capacity of the animal feeding operation.

22 3. As used in this section, the term "public use area"
23 does not mean the same as defined in section 455B.160.

24 Sec. 15. NEW SECTION. 455B.164 DISTANCE REQUIREMENTS FOR
25 CONFINEMENT FEEDING OPERATIONS -- EXPANSION OF STRUCTURES
26 CONSTRUCTED OR EXPANDED PRIOR TO THE EFFECTIVE DATE OF THE
27 ACT.

28 A confinement feeding operation, utilizing a confinement
29 feeding operation structure which is constructed or expanded
30 before July 1, 1995, may be expanded notwithstanding that
31 section, if all of the following apply:

32 1. No structure after expansion is closer to a residence,
33 public use area, water of the state, or city, than that
34 separation required under this chapter for a structure
35 constructed or expanded on or after the effective date of this

1 Act.

2 2. The animal weight capacity of the confinement feeding
3 operation as expanded is not more than double its capacity on
4 July 1, 1995, or six hundred twenty-five thousand pounds
5 animal weight capacity for all animal species, whichever is
6 less.

7 Sec. 16. NEW SECTION. 455B.165 DISTANCE MEASUREMENTS.

8 All distances between subjects provided in this part shall
9 be measured from their closest points.

10 Sec. 17. NEW SECTION. 455B.166 DISTANCE REQUIREMENTS FOR
11 CONFINEMENT FEEDING OPERATIONS -- EXEMPTIONS.

12 A separation distance requirement provided in this part
13 shall not apply to the following:

14 1. A confinement feeding operation structure, if the
15 confinement feeding operation has an animal capacity of four
16 hundred or fewer animal units, as provided in the federal
17 Water Pollution Control Act, 33 U.S.C. ch. 126, under the
18 national pollutant discharge elimination system permit
19 program.

20 2. A confinement feeding operation structure which is
21 constructed or expanded, if the titleholder of the land where
22 the structure is located executes a written waiver with the
23 titleholder of the land benefiting from the distance
24 requirement, under such terms and conditions that the parties
25 negotiate. The written waiver becomes effective only upon
26 recording in the office of the recorder of deeds of the county
27 in which the benefited land is located. The filed waiver
28 shall preclude enforcement of this part by the state.

29 Sec. 18. Section 455B.171, Code 1995, is amended by adding
30 the following new subsections:

31 NEW SUBSECTION. 1A. "Animal feeding operation" means the
32 same as defined in section 455B.160.

33 NEW SUBSECTION. 1B. "Confinement feeding operation" means
34 the same as defined in section 455B.160.

35 NEW SUBSECTION. 7A. "Manure" means excreta and other

1 commonly associated wastes of animals.

2 Sec. 19. Section 455B.173, subsection 3, unnumbered
3 paragraph 1, Code 1995, is amended to read as follows:

4 Establish, modify or repeal rules relating to the location,
5 construction, operation, and maintenance of disposal systems
6 and public water supply systems and specifying the conditions,
7 including the viability of a system pursuant to section
8 455B.174, under which the director shall issue, revoke,
9 suspend, modify, or deny permits for the operation,
10 installation, construction, addition to, or modification of
11 any disposal system or public water supply system, or for the
12 discharge of any pollutant ~~or-for-the-disposal-of-water-wastes~~
13 ~~resulting-from-poultry-and-livestock-operations~~. The rules
14 specifying the conditions under which the director shall issue
15 permits for the construction of an electric power generating
16 facility subject to chapter 476A shall provide for issuing a
17 conditional permit upon the submission of engineering
18 descriptions, flow diagrams and schematics that qualitatively
19 and quantitatively identify effluent streams and alternative
20 disposal systems that will provide compliance with effluent
21 standards or limitations.

22 Sec. 20. Section 455B.173, Code 1995, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 12. Adopt, modify, or repeal rules
25 relating to the construction of animal feeding operations.
26 The rules shall include, but are not limited to, minimum
27 manure control requirements, requirements for obtaining
28 permits, and departmental evaluations of animal feeding
29 operations. The department shall provide for the issuance of
30 a permit for the construction of an animal feeding operation,
31 if an application is submitted according to procedures
32 required by the department, and the application meets
33 standards established by the department, regardless of whether
34 the animal feeding operation is required to obtain such a
35 permit. Prior to granting a permit to a person for the

1 construction of an animal feeding operation, the department
2 may require the installation and operation of a hydrological
3 monitoring system for an exclusively earthen manure storage
4 structure, if, after an on-site inspection, the department
5 determines that the site presents an extraordinary potential
6 for groundwater pollution. A person shall not obtain a permit
7 for the construction of a confinement feeding operation,
8 unless the person develops and complies with a manure
9 management plan as provided in section 455B.202. The
10 department shall consider recommendations by the organic
11 nutrient management advisory council regarding the need to
12 require the installation and operation of a hydrological
13 monitoring system. The department shall not issue a permit,
14 if there is an alleged violation of this part of division III
15 relating to a confinement feeding operation in which the
16 person has an interest, and the department is conducting an
17 investigation or initiating or conducting a contested case
18 proceeding.

19 **CONFINEMENT FEEDING OPERATIONS**

20 **Sec. 21. NEW SECTION. 455B.200 MANURE MANAGEMENT PLAN**
21 **CERTIFICATION -- TRAINING PROGRAM.**

22 1. The department shall establish and administer a program
23 to certify persons as manure plan managers. Manure plan
24 managers shall be trained to carry out the terms and
25 conditions of a manure management plan as provided in section
26 455B.202.

27 2. In order to be certified, a person must complete four
28 hours of training in the administration of the terms and
29 conditions of the manure management plans.

30 3. A certification shall expire five years following the
31 date that the person was last certified. In order to be
32 recertified, the person must complete four additional hours of
33 training as provided in this section.

34 4. Iowa state university shall develop and administer the
35 training program in cooperation with qualified persons

1 approved by the department. The training shall be conducted
2 by Iowa state university or a qualified person approved by the
3 department. To every extent possible, training courses shall
4 be offered in each county. The state is not required to
5 compensate persons selected to teach the courses. A
6 certification fee of ten dollars shall be paid to the
7 department. The department shall collect and use the fees for
8 purposes of supporting the training of manure plan managers.

9 Sec. 22. NEW SECTION. 455B.201 MANURE MANAGEMENT
10 PRACTICES.

11 The department shall adopt rules for manure management
12 practices by persons required to obtain a permit for the
13 construction of a confinement feeding operation which shall
14 include the following:

15 1. Requirements for the submission and approval of a
16 manure management plan as provided in section 455B.202.

17 2. Manure application practices, including manure
18 application rates on land based on the production of
19 designated crops and according to crop rotation schedules.
20 The application rates shall be based on nitrogen use levels of
21 designated crops, if the land where the manure is applied does
22 not exceed soil loss limits. The department shall establish
23 manure application rates based on phosphorus use levels of
24 designated crops, if the land where the manure is applied
25 exceeds soil loss limits.

26 3. The testing and management of sludge contained in an
27 anaerobic lagoon.

28 4. The application of sludge to land based on the
29 phosphorus content of the sludge, the phosphorus needs of the
30 crops, and the phosphorus levels in the soil.

31 5. The department shall adopt rules based on
32 recommendations submitted by Iowa state university and the
33 division of soil conservation of the department of agriculture
34 and land stewardship, and after consideration of
35 recommendations submitted by the organic nutrient management

1 advisory council.

2 Sec. 23. NEW SECTION. 455B.202 CONFINEMENT FEEDING
3 OPERATIONS -- MANURE MANAGEMENT PLAN REQUIREMENTS.

4 1. a. A person shall not receive a permit for the
5 construction of a confinement feeding operation as provided in
6 section 455B.173, unless the person develops and complies with
7 a manure management plan as provided by rules which shall be
8 adopted by the department pursuant to chapter 17A. The plan
9 shall provide for the application of manure in a manner that
10 is consistent with manure management practices provided in
11 section 455B.201. The department shall adopt all rules
12 required to implement this section not later than six months
13 following the effective date of this Act.

14 b. A person issued a permit for the construction of a
15 confinement feeding operation before January 1, 1994, shall
16 submit a manure management plan to the department not later
17 than two years and six months after the effective date of this
18 Act. A person issued a permit for the construction of a
19 confinement feeding operation between January 1, 1994, and six
20 months after the effective date of this Act, shall submit a
21 manure management plan to the department not later than one
22 year after the effective date of this Act. If a person
23 required to submit a delayed plan pursuant to this paragraph
24 violates section 455B.201, the person shall be required to
25 submit the plan to the department not later than one hundred
26 twenty days following notice by the department.

27 2. The manure plan manager shall be responsible for the
28 implementation of and compliance with the plan, including any
29 sludge management subplan.

30 If a person receives a permit for the construction of a
31 confinement feeding operation between January 1, 1994, and six
32 months after the effective date of this Act, the manure plan
33 manager must be certified by one year following the effective
34 date of this Act. If a person receives a permit for the
35 construction of a confinement feeding operation before January

1 1, 1994, the manure plan manager must be certified not later
2 than two years and six months after the effective date of this
3 Act.

4 3. A manure management plan shall include, but is not
5 limited to, all of the following:

6 a. Calculations to determine the land area required for
7 application of manure from the confinement feeding operation
8 for the crop rotation specified in the plan.

9 b. The rate of manure application which shall be
10 consistent with the requirements of section 455B.201.

11 c. A crop rotation schedule for land subject to
12 application.

13 d. A sludge management subplan, if required pursuant to
14 subsection 5.

15 4. A person operating a confinement feeding operation
16 which utilizes an anaerobic lagoon shall include a sludge
17 management subplan in the manure management plan. The sludge
18 management subplan shall include, but is not limited to,
19 requirements that every five years following approval of the
20 plan by the department, the depth of sludge shall be measured,
21 the sludge shall be tested for phosphorus content, and the
22 results of the test shall be submitted to the department. The
23 department shall determine whether the person shall be
24 required to remove the sludge and apply it to land, pursuant
25 to section 455B.201, based on the information submitted by the
26 person and recommendations by Iowa state university, and after
27 consideration of recommendations submitted by the organic
28 nutrient management advisory council.

29 5. A person receiving a permit for the construction of a
30 confinement feeding operation shall maintain records
31 sufficient to demonstrate compliance with the manure
32 management plan. The person shall keep a current manure
33 management plan on file, which shall include significant
34 modifications to the person's operations. A significant
35 modification includes, but is not limited to, an increase in

1 the amount of manure generated by the confinement feeding
2 operation or a decrease in the land area available for
3 application of manure. Chapter 22 shall not apply to the
4 records which shall be kept confidential by the department and
5 its agents and employees. The contents of the records are not
6 subject to disclosure except as follows:

7 a. Upon waiver by the person receiving the permit.

8 b. In an action or administrative proceeding commenced
9 under this chapter. Any hearing shall be closed.

10 c. When required by subpoena or court order.

11 d. The disclosure to law enforcement agencies in regard to
12 the detection and prosecution of public offenses.

13 6. The department may inspect the confinement feeding
14 operation any time, during normal working hours, and may
15 inspect records required to be maintained as part of the
16 manure management plan.

17 7. A person required to submit a manure management plan
18 who is found in violation of the terms and conditions of the
19 plan shall not be subject to an enforcement action other than
20 assessment of a civil penalty pursuant to this chapter.

21 Sec. 24. Section 455B.191, Code 1995, is amended by adding
22 the following new subsections:

23 NEW SUBSECTION. 7. The department may impose an
24 additional civil penalty on a person required to receive a
25 permit for the construction of a confinement feeding
26 operation, if the person has committed more than one violation
27 of a provision of this chapter or a rule adopted by the
28 department relating to the confinement feeding operation. The
29 total amount of the additional civil penalty shall not exceed
30 five thousand dollars for each occasion that a penalty is
31 assessed.

32 NEW SUBSECTION. 8. Moneys assessed and collected in civil
33 penalties imposed pursuant to this section on a person
34 required to receive a permit for the construction of a
35 confinement feeding operation shall be deposited in the manure

1 storage indemnity fund as created in section 204.2.

2 Sec. 25. NEW SECTION. 657.11 ANIMAL FEEDING OPERATIONS.

3 1. The purpose of this section is to protect animal
4 agricultural producers who manage their operations according
5 to state and federal requirements from the cost of defending
6 potentially expensive and time-consuming nuisance suits which
7 negatively impacts upon Iowa's competitive economic position,
8 and discourages persons from entering into animal agricultural
9 production. This section is intended to promote the expansion
10 of animal agriculture in this state by protecting persons
11 engaged in the care and feeding of animals. The general
12 assembly has balanced all competing interests and declares its
13 intent to protect and preserve animal agricultural production
14 operations which comply with the requirements of this section.

15 2. If a person receives all applicable permits as required
16 in chapter 455B for the construction of an animal feeding
17 operation as defined in section 455B.160, the animal feeding
18 operation shall not be found to be a public or private
19 nuisance, regardless of the established date of the operation
20 or expansion, or whether the person is required to receive the
21 permits or has obtained the permits voluntarily. This
22 nuisance suit protection includes, but is not limited to, the
23 care or feeding of animals; the handling or transportation of
24 animals; the treatment or disposal of wastes resulting from
25 animals; the transportation and application of animal wastes;
26 and the creation of noise, odor, dust, or fumes arising from
27 an animal feeding operation.

28 3. The nuisance suit protection provided in this section
29 does not apply to an animal feeding operation, if any of the
30 following apply:

31 a. The animal feeding operation violates a federal statute
32 or regulation or state statute or rule.

33 b. The animal feeding operation is conducted in a
34 negligent manner.

35 c. The animal feeding operation causes the pollution or

1 change in condition of the waters of a stream, the overflowing
2 of the operation's land, or excessive soil erosion onto
3 another person's land, unless the injury or damage is caused
4 by an act of God.

5 d. An injury to a person or damages to property is caused
6 by the animal feeding operation before the effective date of
7 this Act. If the applicable permits are obtained on or after
8 the effective date of this Act, the nuisance protection does
9 not apply to injury or damages caused before the date the
10 applicable permits are obtained.

11 4. A plaintiff in a losing cause of action is liable to
12 the defendant for all costs and expenses incurred in the
13 defense of the action, if the cause of action is based on a
14 claim of a public or private nuisance. The costs shall
15 include but are not limited to reasonable attorney fees, court
16 costs, travel expenses, and other related incidental expenses.

17 Sec. 26. NOTICE. The department of natural resources
18 shall provide a written notice to persons required to develop
19 and comply with a manure management plan as provided in
20 section 455B.202 not later than one year after the effective
21 date of this Act. The notice shall include information from
22 section 455B.202 regarding delayed dates of compliance.

23 EXPLANATION

24 This bill provides for the regulation of animal feeding
25 operations.

26 The bill establishes an organic nutrient management
27 advisory council. The council consists of a number of
28 persons, including a designee of the state office of the
29 natural resources conservation service of the United States
30 department of agriculture, or director of the soil
31 conservation division of the department of agriculture and
32 land stewardship; six persons appointed by the governor, after
33 consultation with the secretary of agriculture, and subject to
34 confirmation by the senate, as provided in section 2.32. The
35 persons include five persons actively engaged in animal

1 agricultural production and one person who is interested in
2 environmental quality issues. The council is also composed of
3 four members of the general assembly. The council is
4 responsible for advising the department and the environmental
5 protection commission regarding animal feeding operations and
6 recommending to the department and commission solutions and
7 policy or regulatory alternatives relating to animal feeding
8 operations, including recommendations for rulemaking by the
9 department and recommendations to the general assembly.

10 The bill provides that the department of natural resources
11 is prohibited from initiating an enforcement action in
12 response to a violation by an animal feeding operation as
13 provided in the bill.

14 The bill rewrites and reorganizes existing provisions
15 relating to distance requirements that must exist between
16 anaerobic lagoons or earthen waste basins and residences and
17 public use areas. The bill provides a number of new distance
18 requirements which are applicable to animal feeding
19 operations, anaerobic lagoons, earthen waste storage basins,
20 open outside formed waste storage tanks, buildings, covered
21 outside formed waste storage tanks, and egg washwater lagoons.
22 The bill limits the expansion of a confinement feeding
23 operation, if the operation was constructed or expanded prior
24 to the effective date of the bill. The bill provides
25 exceptions when a distance requirement is not applicable,
26 including when a structure has an animal capacity of 400 or
27 fewer animal units, and in cases in which the structure is
28 constructed or expanded pursuant to a waiver by the parties
29 affected.

30 The bill provides that the department may adopt rules
31 relating to the construction of animal feeding operations.
32 The rules must include, but are not limited to, minimum manure
33 control requirements, requirements for obtaining permits, and
34 departmental evaluations of animal feeding operations. The
35 department is required to provide for the issuance of permits

1 for the construction of an animal feeding operation, if an
2 application is submitted according to procedures required by
3 the department, and the application meets standards
4 established by the department, regardless of whether the
5 animal feeding operation is required to obtain such a permit.
6 The bill requires that a person cannot obtain a permit for the
7 construction of a confinement feeding operation, unless the
8 person develops a manure management plan.

9 The bill provides that the department is required to
10 establish and administer a program to certify that persons are
11 manure plan managers qualified to apply manure as required
12 under the plan. In order to become certified, the person must
13 receive four hours of training. A certification expires five
14 years following the date that the person was last certified.
15 In order to be recertified, the person must complete four
16 additional hours of training. The bill requires Iowa state
17 university to develop and administer the training program.
18 The university may act in cooperation with qualified persons
19 approved by the department.

20 The bill requires the department to adopt rules relating to
21 manure application practices by persons required to obtain a
22 permit for the construction of confinement feeding operations.
23 The department must adopt rules based on recommendations
24 submitted by Iowa state university and the department of
25 agriculture and land stewardship, and consider recommendations
26 by the organic nutrient advisory council.

27 The bill provides for manure management plans. A person
28 cannot receive a permit for the construction of a confinement
29 feeding operation unless the person develops and complies with
30 a manure management plan as provided by rules which shall be
31 adopted by the department. The plan shall provide for the
32 application of manure in a manner that is consistent with
33 manure management practices required in the bill. The
34 department must adopt all rules required to implement this
35 provision not later than six months following the effective

1 date of the bill.

2 The bill provides for the delay in meeting these
3 requirements by persons required to obtain construction
4 permits. The bill provides that a person operating a
5 confinement feeding operation which utilizes an anaerobic
6 lagoon must include a sludge management subplan as part of the
7 manure management plan. The bill provides that a person
8 required to maintain the plan must keep records sufficient to
9 demonstrate compliance with the manure management plan. The
10 public records law does not apply to the records.

11 The bill provides that the department may impose an
12 additional civil penalty on a person required to receive a
13 permit for the construction of a confinement feeding
14 operation, if the person has committed more than one violation
15 of a provision of chapter 455B.

16 The bill provides that if a person receives all applicable
17 permits as required in chapter 455B for the construction of a
18 confinement feeding operation, the confinement feeding
19 operation shall not be found to be a public or private
20 nuisance, regardless of the established date of the operation,
21 or whether the person is required to receive the permits or
22 has obtained the permits voluntarily. The nuisance suit
23 protection does not apply to an animal feeding operation, if
24 the operation violates a federal statute or regulation or
25 state statute or rule, the operation is conducted in a
26 negligent manner, the operation causes the pollution or change
27 in condition of the waters of a stream, the overflowing of the
28 operation's land, or excessive soil erosion onto another
29 person's land, unless the injury or damage is caused by an act
30 of God. The protection also does not apply to an injury to a
31 person or damages to property caused by the operation before
32 the effective date of the bill. A plaintiff in a losing cause
33 of action is liable to the defendant for all costs and
34 expenses incurred in the defense of the action.

35 The bill establishes a manure storage indemnity fund.

1 Moneys in the fund are appropriated to and for the purposes of
2 indemnifying a political subdivision for expenses related to
3 removing and disposing of manure from a manure storage
4 structure, and to pay the administrative costs of the
5 department. The department of agriculture and land
6 stewardship controls the fund and administers the program.
7 The fund is composed of a construction fee paid before a
8 construction permit is issued by the department of natural
9 resources. An annual fee is then paid to the department of
10 agriculture and land stewardship. The amount of the fees
11 equals 5 cents for each animal unit of capacity for facilities
12 housing poultry and 12 1/2 cents per animal unit of capacity
13 for facilities housing other species of animals. If, on March
14 1, the moneys of the fund less the department's estimate of
15 the costs to the fund for pending or unsettled claims exceeds
16 \$500,000, then the annual fee is waived for the next fiscal
17 year. The bill provides for the collection of the fees. The
18 bill provides that a county that has acquired real estate
19 containing a manure storage structure following nonpayment of
20 taxes may make a claim against the fund to pay the costs of
21 removing and disposing of the manure located in a manure
22 storage structure on the real estate. The department must
23 determine if a claim is eligible, and either pay the fixed
24 amount specified in the bid submitted by the county upon
25 completion of the work or obtain a lower fixed amount bid for
26 the work from another qualified person, other than a
27 governmental entity, and pay the fixed amount in this bid upon
28 completion of the work. The department is not required to
29 comply with certain established bidding procedures. Upon a
30 determination that the claim is eligible for payment, the
31 department must provide for payment of 100 percent of the
32 claim, but not more than \$300,000 per claimant. If at any
33 time the department determines that there are insufficient
34 moneys to make payment of all claims, the department may order
35 that payment be deferred on specified claims.

LSB 1763YC

1 Amend LSB 1763 as follows:

2 1. Page 21, by inserting after line 20 the
3 following:

4 "Sec. ____ . NEW SECTION. 455B.202 LARGE
5 CONFINEMENT FEEDING OPERATIONS -- COMPLIANCE WITH
6 TREATMENT REQUIREMENTS.

7 The commission shall establish rules for the
8 treatment of manure from confinement feeding
9 operations having a capacity of two thousand five
10 hundred or more animal units as defined in section
11 204.1. The rules shall not apply to operations which
12 produce manure on a dry matter basis. The rules
13 shall, to every extent practical, incorporate current
14 and generally accepted methods and techniques for the
15 treatment and stabilization of sewage originating from
16 human populations. The type and degree of treatment
17 technology required to be installed shall be based on
18 the size of the operation. The rules shall require
19 that a confinement feeding operation subject to this
20 section and constructed on or after the effective date
21 of this Act be required to install a treatment system
22 employing bacterial action which is maintained by the
23 utilization of air or oxygen, including aeration
24 equipment. The equipment shall be installed,
25 operated, and maintained in accordance with the
26 manufacturer's instructions and the requirements of
27 the commission."

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31 PROPOSED COMMITTEE AMENDMENT

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