A BILL FOR

1 An Act prohibiting the construction of confinement feeding
2 operation structures that are part of confinement feeding
3 operations located in certain subwatersheds, making
4 penalties applicable, and including effective date
5 provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
Section 1. NEW SECTION. 459.104 Moratorium — confinement feeding operations — impaired waters.

1. As used in this section, unless the context otherwise requires:
   a. "Section 303(d) list" means the same as defined in section 455B.171.
   b. "Subwatershed" means the same as defined in section 466B.2.

2. a. A person shall not construct, including expand, a confinement feeding operation structure, if the confinement feeding operation structure would be located in a subwatershed that drains into a water body or water segment that has been placed on the department's section 303(d) list, regardless of whether a total maximum daily load for that water body or water segment has been developed.
   b. The department shall not file or approve an application for a permit to construct, including expand, a confinement feeding operation structure, if the person could not construct the confinement feeding operation structure under paragraph "a".

3. Subsection 2 does not apply to prevent a person from constructing, including expanding, a confinement feeding operation structure as otherwise provided in this subchapter, if the confinement feeding operation structure is located in a subwatershed that drains into a water body or water segment, and the department does all of the following:
   a. Removes the water body or water segment from the section 303(d) list.
   b. Determines that the water body or water segment is classified for a primary contact recreational use as provided in 567 IAC 61.3.

4. Nothing in this section shall prohibit a person from completing construction, including expansion, of a confinement feeding operation structure, if prior to the effective date of this Act, the person has begun construction, including
expansion, of the confinement feeding operation structure as otherwise allowed under this chapter.

Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

EXPLANATION

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

BILL'S PROVISIONS — GENERAL. This bill amends the "Animal Agriculture Compliance Act" (Code chapter 459) which in large part provides for the regulation of confinement feeding operations (operations) including associated confinement feeding operation structures (structures) such as buildings or manure storage structures. The Code chapter is regulated and enforced by the department of natural resources (DNR) which also enforces provisions of other environmental regulations such as the federal Clean Water Act under the supervision of the United States environmental protection agency (EPA).

BILL'S PROVISIONS — MORATORIUM. The bill prohibits the construction of a structure, if the structure's operation is located in a subwatershed that includes a water body or water segment that has been placed on a list of impaired waters. The prohibition would no longer apply once the water was removed from the list and DNR determined that the water meets the state surface water classification for primary contact recreational use.

BACKGROUND. DNR's list of impaired waters is approved by EPA according to federal and state requirements (33 U.S.C. §1313 and Code sections 455B.194 and 455B.195). DNR is also required to develop a plan for restoring the impaired waters, including by identifying its total maximum daily loads; commonly referred to as TMDL that calculates the amount of contaminants that a water body may receive and still meet federal water quality standards (40 C.F.R. §130.7(b)(4)). Based on these measurements, the department classifies surface waters for a number of designated uses including primary contact...
recreational use which means that the water is considered safe for uses that may result in a person's prolonged and direct contact with the water, including by ingestion while swimming (33 U.S.C. §1251(a)(2) and 567 IAC 61.3).

APPLICABLE PENALTIES. Under Code chapter 459, different civil penalties apply to violations involving water quality. A person who violates a provision regulating water quality is subject to an administratively assessed civil penalty of not more than $10,000, or a judicially assessed amount of not more than $5,000 per each day of the violation (Code section 459.603 referring to Code sections 455B.109 and 455B.191).

EFFECTIVE DATE. The bill, if enacted, would take effect upon enactment.