

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1197 be amended to read as follows:

- 1 Page 1, line 8, delete "A" and insert "**(a) Except as provided in**
- 2 **subsection (b), and subject to subsection (d), a**".
- 3 Page 1, line 10, delete "one (1)" and insert "**one-half (1/2)**".
- 4 Page 1, line 10, after "boundary of" insert "**a municipality.**
- 5 **(b) Subsection (a) does not apply to construction that:**
- 6 **(1) is:**
 - 7 **(A) an expansion of an existing confined feeding operation**
 - 8 **or CAFO; or**
 - 9 **(B) construction of a new confined feeding operation or**
 - 10 **CAFO proposed to be located within one-half (1/2) mile of**
 - 11 **the boundary of a municipality that is located within**
 - 12 **one-half (1/2) mile of a confined feeding operation or**
 - 13 **CAFO that:**
 - 14 **(i) existed; or**
 - 15 **(ii) was under construction;**
 - 16 **on March 1, 2007; and**
 - 17 **(2) is proposed by a person that has not committed in the five**
 - 18 **(5) years that immediately precede the date referred to in**
 - 19 **subsection (c) a violation of:**
 - 20 **(A) the environmental management laws; or**
 - 21 **(B) a rule adopted by the board;**
 - 22 **as determined by the department.**
 - 23 **(c) The date referred to in subsection (b)(2) is the applicable**
 - 24 **date as follows:**

- 1 **(1) The date the department of environmental management**
 2 **approves the initial construction or expansion construction of**
 3 **a confined feeding operation or a CAFO under section 1 of**
 4 **this chapter.**
- 5 **(2) With respect to a CAFO to which subdivision (1) does not**
 6 **apply, either of the following:**
- 7 **(A) The date the department of environmental**
 8 **management approves a NPDES permit for the initial**
 9 **construction or expansion construction of the CAFO under**
 10 **327 IAC 5.**
- 11 **(B) The date a notice of intent is filed for general NPDES**
 12 **permit coverage for the initial construction or expansion**
 13 **construction of the CAFO under 327 IAC 15.**
- 14 **(d) A person that proposes construction as described in**
 15 **subsection (a) may appeal to:**
- 16 **(1) the local zoning authority that has jurisdiction where the**
 17 **facility is to be located; or**
- 18 **(2) the county executive if the facility is to be located in a**
 19 **county that does not zone under IC 36-7-4;**
- 20 **for an exemption from the one-half (1/2) mile limitation under**
 21 **subsection (a). The person must specify in the appeal petition the**
 22 **reasons that justify the exemption.**
- 23 **(e) A local zoning authority or county executive that receives an**
 24 **appeal petition under subsection (d) shall do the following:**
- 25 **(1) Publish notice under IC 5-3-1 of a public hearing on the**
 26 **appeal. The public hearing must be held not later than**
 27 **forty-five (45) days after the date of filing of the appeal**
 28 **petition under subsection (d).**
- 29 **(2) Hold the public hearing, taking testimony from the**
 30 **appellant and the public on the appeal.**
- 31 **(3) Conduct any inquiry or investigation that the local zoning**
 32 **authority or county executive considers necessary before**
 33 **making a determination.**
- 34 **(f) A local zoning authority or county executive may grant an**
 35 **appeal under subsection (d) for exemption from the one-half (1/2)**
 36 **mile limitation under subsection (a) only if the local zoning**
 37 **authority or county executive determines that granting the appeal**
 38 **is consistent with the public health, safety, and welfare.**
- 39 **(g) After a public hearing held under subsection (e), the local**
 40 **zoning authority or county executive shall:**
- 41 **(1) make a written determination on the appeal petition; and**
 42 **(2) give notice of the determination to:**
- 43 **(A) the appellant; and**
 44 **(B) the department;**
- 45 **not later than thirty (30) days after the date of the public**
 46 **hearing, unless the local zoning authority or county executive**
 47 **and the appellant agree to a longer time."**

- 1 Page 1, delete lines 11 through 16.
- 2 Page 2, line 11 delete "if the limitation in section" and insert "if:
- 3 (A) the limitation in section 1.5(a) of this chapter applies
- 4 to; or
- 5 (B) an appeal is pending under section 1.5(d) of this
- 6 chapter with respect to;
- 7 the facility that is the subject of the application."
- 8 Page 2, delete lines 12 through 13.
- 9 Page 4, between lines 26 and 27, begin a new paragraph and insert:
- 10 "SECTION 9. IC 13-18-10-11 IS ADDED TO THE INDIANA
- 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 12 [EFFECTIVE JULY 1, 2007]: Sec. 11. If:
- 13 (1) a court action is brought against an owner or operator of
- 14 a confined feeding operation, including a CAFO, by a person
- 15 other than a political subdivision or a state agency; and
- 16 (2) the action includes a complaint against any aspect of the
- 17 construction or operation of the confined feeding operation or
- 18 CAFO;
- 19 the party prevailing in the action is entitled to recover the costs of
- 20 the action, including reasonable attorney's fees as determined by
- 21 the court.
- 22 SECTION 10. IC 13-18-10-12 IS ADDED TO THE INDIANA
- 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 24 [EFFECTIVE JULY 1, 2007]: Sec. 12. The department shall revoke
- 25 an approval or permit under which a person is allowed to construct
- 26 or operate a confined feeding operation, including a CAFO, at the
- 27 time of the third occurrence of either of the following:
- 28 (1) The person is convicted under IC 13-30-6.
- 29 (2) A civil penalty is imposed on the person under IC 13-30-4,
- 30 except for a civil penalty for a minor violation as described in
- 31 IC 13-30-4-3(a)."
- 32 Renumber all SECTIONS consecutively.
- (Reference is to HB 1197 as printed February 16, 2007.)

Representative Stutzman