

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WITHDRAWN	Noes _____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 (c), a**".
- 3 Page 1, delete line 13.
- 4 Page 1, line 14, delete "(B)" and insert "(A)".
- 5 Page 1, line 15, delete "(C)" and insert "(B)".
- 6 Page 1, between lines 16 and 17, begin a new paragraph and insert:
- 7 "**(b) Subsection (a) does not apply to construction that:**
- 8 **(1) is:**
- 9 **(A) an expansion of an existing confined feeding operation**
- 10 **or CAFO; or**
- 11 **(B) construction of a new confined feeding operation or**
- 12 **CAFO proposed to be located within one (1) mile of a**
- 13 **boundary referred to in subsection (a) of an entity**
- 14 **described in subsection (a)(1) or (a)(2) that located within**
- 15 **one (1) mile of a confined feeding operation or CAFO that:**
- 16 **(i) existed; or**
- 17 **(ii) was under construction;**
- 18 **on March 1, 2007; and**
- 19 **(2) is proposed by a person that has not committed a violation**
- 20 **of:**
- 21 **(A) environmental management laws; or**
- 22 **(B) a rule adopted by the board;**
- 23 **as determined by the department.**
- 24 **(c) A person that proposes construction as described in**

1 subsection (a) may appeal to:
 2 (1) the local zoning authority that has jurisdiction where the
 3 facility is to be located; or
 4 (2) the county executive if the facility is to be located in a
 5 county that does not zone under IC 36-7-4;
 6 for an exemption from the one (1) mile limitation under subsection
 7 (a). The person must specify in the appeal petition the reasons that
 8 justify the exemption.

9 (d) A local zoning authority or county executive that receives an
 10 appeal petition under subsection (c) shall do the following:

- 11 (1) Publish notice under IC 5-3-1 of a public hearing on the
 12 appeal. The public hearing must be held not later than
 13 forty-five (45) days after the date of filing of the appeal
 14 petition under subsection (c).
- 15 (2) Hold the public hearing, taking testimony from the
 16 appellant and the public on the appeal.
- 17 (3) Conduct any inquiry or investigation that the local zoning
 18 authority or county executive considers necessary before
 19 making a determination.

20 (e) A local zoning authority or county executive may grant an
 21 appeal under subsection (c) for exemption from the one (1) mile
 22 limitation under subsection (a) only if the local zoning authority or
 23 county executive determines that granting the appeal is consistent
 24 with the public health, safety, and welfare.

25 (f) After a public hearing held under subsection (d), the local
 26 zoning authority or county executive shall:

- 27 (1) make a written determination on the appeal petition; and
- 28 (2) give notice of the determination to:
 29 (A) the appellant; and
 30 (B) the department;
 31 not later than thirty (30) days after the date of the public
 32 hearing, unless the local zoning authority or county executive
 33 and the appellant agree to a longer time."

34 Page 2, line 11, delete "if the limitation in section" and insert "if:
 35 (A) the limitation in section 1.5(a) of this chapter applies
 36 to; or
 37 (B) an appeal is pending under section 1.5(c) of this
 38 chapter with respect to;
 39 the facility that is the subject of the application."

40 Page 2, delete lines 12 through 13.

41 Page 4, between lines 26 and 27, begin a new paragraph and insert:
 42 "SECTION 9. IC 13-18-10-11 IS ADDED TO THE INDIANA
 43 CODE AS A NEW SECTION TO READ AS FOLLOWS
 44 [EFFECTIVE JULY 1, 2007]: Sec. 11. If:

- 45 (1) a court action is brought against an owner or operator of
 46 a confined feeding operation, including a CAFO, by a person
 47 other than a political subdivision or a state agency; and

1 **(2) the action includes a complaint against any aspect of the**
2 **construction or operation of the confined feeding operation or**
3 **CAFO;**

4 **the party prevailing in the action is entitled to recover the costs of**
5 **the action, including reasonable attorney's fees as determined by**
6 **the court.**

7 SECTION 10. IC 13-18-10-12 IS ADDED TO THE INDIANA
8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2007]: **Sec. 12. The department shall revoke**
10 **an approval or permit under which a person is allowed to construct**
11 **or operate a confined feeding operation, including a CAFO, at the**
12 **time of the third occurrence of either of the following:**

- 13 **(1) The person is convicted under IC 13-30-6.**
14 **(2) A civil penalty is imposed on the person under IC 13-30-4,**
15 **except for a civil penalty for a minor violation as described in**
16 **IC 13-30-4-3(a)."**

17 Renumber all SECTIONS consecutively.
 (Reference is to HB 11197 as printed February 16, 2007.)

Representative Stutzman