ANIMAL FEEDING OPERATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill enacts provisions related to large concentrated animal feeding operations.

Highlighted Provisions:

This bill:

- enacts the Large Concentrated Animal Feeding Operations Act, including:
  - defining terms;
  - requiring the Department of Agriculture and Food to establish a state master matrix;
  - authorizing adoption of a county large concentrated animal feeding operation ordinance and a county matrix;
  - addressing when an application is required and grandfathering;
  - addressing county action on an application;
  - providing for administrative remedies;
  - addressing judicial review and enforcement; and
  - providing for mediation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

17-55-101, Utah Code Annotated 1953

17-55-102, Utah Code Annotated 1953

17-55-201, Utah Code Annotated 1953

17-55-202, Utah Code Annotated 1953

17-55-203, Utah Code Annotated 1953

17-55-204, Utah Code Annotated 1953

33 **17-55-205**, Utah Code Annotated 1953
34 **17-55-301**, Utah Code Annotated 1953
35 **17-55-302**, Utah Code Annotated 1953
36 **17-55-303**, Utah Code Annotated 1953
37 **17-55-304**, Utah Code Annotated 1953
38 **17-55-305**, Utah Code Annotated 1953
39 **17-55-306**, Utah Code Annotated 1953
40 **17-55-307**, Utah Code Annotated 1953
41 **17-55-401**, Utah Code Annotated 1953
42 **17-55-402**, Utah Code Annotated 1953
43 **17-55-403**, Utah Code Annotated 1953
44 **17-55-501**, Utah Code Annotated 1953
45 **17-55-502**, Utah Code Annotated 1953
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47 *Be it enacted by the Legislature of the state of Utah:*
48 Section 1. Section **17-55-101** is enacted to read:
49 **CHAPTER 55. LARGE CONCENTRATED ANIMAL FEEDING OPERATIONS ACT**
50 **Part 1. General Provisions**
51 **17-55-101. Title.**
52 This chapter is known as the "Large Concentrated Animal Feeding Operations Act."
53 Section 2. Section **17-55-102** is enacted to read:
54 **17-55-102. Definitions.**
55 (1) "Animal confinement area" includes an open lot, housed lot, feedlot, confinement
56 house, stall barn, free stall barn, milkroom, milking center, cowyard, barnyard, medication pen,
57 walker, animal walkway, and stable.
58 (2) "Animal feeding operation" means a lot or facility where the following conditions
59 are met:
60 (a) animals have been, are, or will be stabled or confined and fed or maintained for a
61 total of 45 days or more in any 12-month period; and
62 (b) crops, vegetation, forage growth, or post-harvest residues are not sustained in the
63 normal growing season over any portion of the lot or facility.

64 (3) "Applicant" means an owner or operator that applies for a land use permit under
65 this chapter.
66 (4) (a) "Cemetery" means a space owned or managed by a political subdivision or
67 private entity that is subject to Title 8, Cemeteries, and held for the purpose of permanent
68 burial, entombment, or interment of human remains.
69 (b) "Cemetery" does not include an inactive or historic cemetery described in Section
70 9-8-203.
71 (5) (a) "Commercial enterprise" means a building:
72 (i) used as a part of a business that manufactures goods, delivers services, or sells
73 goods or services;
74 (ii) customarily and regularly used by the general public during the entire calendar
75 year; and
76 (iii) connected to electric, water, and sewer systems.
77 (b) "Commercial enterprise" does not include an agriculture operation.
78 (6) "County large concentrated animal feeding operation ordinance" means an
79 ordinance adopted in accordance with Section 17-55-203.
80 (7) "County land use authority" means the same as "land use authority" is defined in
81 Section 17-27a-103.
82 (8) "County matrix" means a matrix created by the legislative body of a county in
83 accordance with Section 17-55-203.
84 (9) "Department" means the Department of Agriculture and Food.
85 (10) (a) "Education institution" means a building in which any part is used:
86 (i) for more than three hours each weekday during a school year as a public or private:
87 (A) elementary school;
88 (B) secondary school; or
89 (C) kindergarten;
90 (ii) a state institution of higher education as defined in Section 53B-3-102; or
91 (iii) a private institution of higher education in the state accredited by a regional or
92 national accrediting agency recognized by the United States Department of Education.
93 (b) "Education institution" does not include:
94 (i) a nursery school;

95 (ii) a day care center;
96 (iii) a preschool; or
97 (iv) a home school.
98 (11) "Family member" means a person related to another person as parent, grandparent,
99 child, grandchild, sibling, or a spouse of such a related person.
100 (12) "Health care facility" means the same as that term is defined in Section 26-21-2.
101 (13) "Interest" means ownership of an animal feeding operation as a sole proprietor or
102 a 10% or more ownership interest held by a person in an animal feeding operation as a joint
103 tenant, tenant in common, shareholder, partner, member, beneficiary or other equity interest
104 holder. Ownership interest is an interest held either directly, indirectly through a spouse or
105 dependent child, or both.
106 (14) "Land application area" means land under the control of an animal feeding
107 operation owner or operator, whether it is owned, rented, leased, to which manure, litter, or
108 process wastewater from the production area is or may be applied.
109 (15) "Land use permit" means the same as that term is defined in Section 17-27a-103.
110 (16) "Large concentrated animal feeding operation" means an animal feeding operation
111 that stables or confines as many as or more than the numbers of animals specified in any of the
112 following categories:
113 (a) 700 mature dairy cows, whether milked or dry;
114 (b) 1,000 veal calves;
115 (c) 1,000 cattle other than mature dairy cows or veal calves, with "cattle" including
116 heifers, steers, bulls, and cow or calf pairs;
117 (d) 2,500 swine each weighing 55 pounds or more;
118 (e) 10,000 swine each weighing less than 55 pounds;
119 (f) 500 horses;
120 (g) 10,000 sheep or lambs;
121 (h) 55,000 turkeys;
122 (i) 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure
123 handling system;
124 (j) 125,000 chickens, other than laying hens, if the animal feeding operation uses other
125 than a liquid manure handling system;

126 (k) 82,000 laying hens, if the animal feeding operation uses other than a liquid manure
127 handling system;
128 (l) 30,000 ducks, if the animal feeding operation uses other than a liquid manure
129 handling system; or
130 (m) 5,000 ducks, if the animal feeding operation uses a liquid manure handling system.
131 (17) "Legislative body" means the same as that term is defined in Section 17-27a-103.
132 (18) "Licensed child care facility" means a facility operated by a person with a license
133 or certificate issued in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.
134 (19) "Manure" includes manure, bedding, compost, a raw material, or other material
135 commingled with manure or set aside for disposal.
136 (20) "Manure storage area" includes a lagoon, runoff pond, storage shed, stockpile,
137 under house or pit storage, liquid impoundment, static pile, and composting pile.
138 (21) "Matrix" means a comprehensive process of the type created under Section
139 17-55-201 for use by a county land use authority to determine whether to approve or
140 disapprove an application for a land use permit issued under this chapter.
141 (22) "Nutrient management plan" means a written, specific operation plan that meets
142 the requirements of 40 C.F.R. Sec. 122.42(e), applicable effluent limitations and standards,
143 including those specified in 40 C.F.R. Part 412, and rules made in accordance with Title 63G,
144 Chapter 3, Utah Administrative Rulemaking Act, related to nutrient management.
145 (23) (a) "Process wastewater" means water directly or indirectly used in the operation
146 of an animal feeding operation for any or all of the following:
147 (i) spillage or overflow from an animal or poultry watering system;
148 (ii) washing, cleaning, or flushing pen, barn, manure pit, or other animal feeding
149 operation structure;
150 (iii) direct contact swimming, washing, or spray cooling of an animal; or
151 (iv) dust control.
152 (b) "Process wastewater" includes water that comes into contact with any raw material,
153 product, or byproduct including manure, litter, feed, milk, or eggs.
154 (24) "Production area" means that part of an animal feeding operation that includes:
155 (a) the animal confinement area;
156 (b) the manure storage area;

157 (c) the raw materials storage area;
158 (d) the waste containment area;
159 (e) any egg washing or egg processing facility; and
160 (f) any area used in the storage, handling, treatment, or disposal of mortalities.
161 (25) "Public area" means land that:
162 (a) is owned by the federal government, the state, or a political subdivision with
163 facilities that attract the public to congregate and remain in the area for significant periods of
164 time, as may be defined by rules made by the department in accordance with Title 63G,
165 Chapter 3, Utah Administrative Rulemaking Act;
166 (b) (i) is part of a public park, preserve, or recreation area that is owned or managed by
167 the federal government, the state, a political subdivision, or a nongovernmental entity; and
168 (ii) has a unique scenic, cultural, archaeological, scientific, or historic significance or
169 contains a rare or valuable ecological system, including a site recognized as a National Historic
170 Site; or
171 (c) is a cemetery.
172 (26) "Raw materials storage area" includes a feed silo or other structure used for feed
173 storage, silage bunker, and bedding material.
174 (27) "Religious institution" means a building and grounds currently used at least
175 monthly for religious services or ceremonies.
176 (28) "Separation distance" means a distance established by statute or a county large
177 concentrated animal operation ordinance.
178 (29) "State master matrix" means the master matrix created under Section 17-55-201.
179 (30) "Waste containment area" includes settling basins and areas within berms and
180 diversions that separate uncontaminated storm water.
181 Section 3. Section **17-55-201** is enacted to read:
182 **Part 2. Matrix Provisions and Application Process**
183 **17-55-201. Creation of state master matrix.**
184 (1) (a) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
185 Administrative Rulemaking Act, and consistent with this chapter, to develop a state master
186 matrix.
187 (b) (i) A rule made by the department under this section is subject to review by the

188 Natural Resources, Agriculture, and Environment Interim Committee whenever the rule is
189 made, modified, or repealed.
190 (ii) Subsection (1)(b)(i) does not preclude the legislative Administrative Rules Review
191 Committee from reviewing and taking appropriate action on a rule made, amended, or repealed
192 by the department.
193 (2) The state master matrix shall be used to address the appropriate location of a large
194 concentrated animal feeding operation, including the proximity and orientation of the
195 production area to objects or locations listed in Subsection 17-55-202(1)(a) for which
196 separation distances are provided in the master matrix.
197 (3) (a) The state master matrix shall be designed to produce quantifiable results based
198 on the scoring of objective criteria according to an established value scale. The department
199 shall, by rule, assign criterion points corresponding to the value scale. The scale shall provide
200 only for scoring of positive points and may not provide for deduction of points.
201 (b) The state master matrix shall consider risks and factors mitigating risks if the large
202 concentrated animal feeding operation were constructed according to the application.
203 (c) The state master matrix shall provide for a minimum threshold score required to
204 receive a satisfactory rating. The state master matrix shall be structured to ensure that it
205 feasibly provides for a satisfactory rating.
206 (4) The state master matrix may be a computer model, except that the state master
207 matrix shall be a practical tool for use by a person when completing an application and by a
208 person when scoring an application. The state master matrix shall include criteria presented in
209 the form of questions that may be readily scored according to ascertainable data and upon
210 which reasonable persons familiar with the location of a proposed large concentrated animal
211 feeding operation would not ordinarily disagree.
212 (5) In completing a matrix, including a state master matrix, the applicant may not score
213 criteria on a selective basis. The person completing a matrix shall score the criteria that are part
214 of the matrix according to the terms and conditions specified in the application and a nutrient
215 management plan.
216 (6) If a county has not adopted a county large concentrated animal feeding operation
217 ordinance, the county land use authority shall use the state master matrix to establish conditions
218 for the construction of a large concentrated animal feeding operation and for the

219 implementation of the large concentrated animal feeding operation's nutrient management plan.
220 Section 4. Section **17-55-202** is enacted to read:
221 **17-55-202. Criteria included in a matrix.**
222 (1) A matrix shall include the following criteria:
223 (a) the ranges of distance of a production area of a large concentrated animal feeding
224 operation measured in feet from the following:
225 (i) a residence not owned by the owner of the large concentrated animal feeding
226 operation;
227 (ii) a health care facility;
228 (iii) a licensed child care facility;
229 (iv) a public use area;
230 (v) an education institution;
231 (vi) a religious institution; and
232 (vii) a commercial enterprise;
233 (b) the ranges of distance between large concentrated animal feeding operations;
234 (c) compliance with applicable federal and state water quality and drinking water
235 quality statutes or rules;
236 (d) use of landscaping, barriers, treatments, or mitigation strategies or practices to be
237 used by the large concentrated animal feeding operation to address potential noise, dust, and
238 odor from the production area;
239 (e) the applicant's animal feeding operation environmental and worker protection
240 violation history for the last five years at all facilities in which the applicant has an interest;
241 (f) size of the large concentrated animal feeding operation;
242 (g) livestock feeding and watering systems designed to reduce manure volume;
243 (h) distance from objects or locations listed in Subsection (1)(a) to the land application
244 areas identified in the large concentrated animal feeding operation's nutrient management plan;
245 (i) the proposed land application area complies with applicable federal or state water
246 quality and drinking water quality statutes or rules;
247 (j) written approval from the owners of land located within a one mile radius of the
248 large concentrated animal feeding operation;
249 (k) the applicant signs a waiver of confidentiality allowing the public to view manure

250 and process wastewater land application records;
251 (l) adds economic value based on:
252 (i) quality job development, the number of full-time equivalent positions, and
253 employment at compensation equal to or above the county's median income; or
254 (ii) the large concentrated animal feeding operation increasing the property tax base in
255 the county;
256 (m) submission of an emergency action plan, that may be developed with the assistance
257 of an agricultural association;
258 (n) submission of a closure plan, that may be developed with the assistance of an
259 agricultural association; and
260 (o) adoption and implementation of an environmental management system recognized
261 by the county or department.
262 (2) For purposes of Subsection (1)(a), different distances may be established on the
263 basis of:
264 (a) the type of manure storage used;
265 (b) the type of confinement area used; and
266 (c) animal capacity.
267 (3) For purposes of Subsection (1)(e), an environmental violation is a final
268 administrative order from an agency of this state or another state or a final court ruling against
269 the applicant for environmental violations related to a large concentrated animal feeding
270 operation.
271 Section 5. Section **17-55-203** is enacted to read:
272 **17-55-203. Adoption of a county large concentrated animal feeding operation**
273 **ordinance -- County matrix.**
274 (1) The legislative body of a county may adopt a county large concentrated animal
275 feeding operation ordinance and establish a county matrix.
276 (2) The county matrix:
277 (a) may contain all of the criteria in the state master matrix;
278 (b) shall be structured to ensure that it feasibly provides for a satisfactory rating;
279 (c) may contain different point amounts assigned to each criteria than are assigned in
280 the state master matrix; and

281 (d) may contain a different minimum points requirement than are assigned in the state
282 master matrix for the total points for the criteria to approve the location of a large concentrated
283 animal feeding operation within the county.
284 (3) In addition to adopting a county master matrix the county large concentrated animal
285 feeding operation ordinance:
286 (a) shall provide for:
287 (i) the procedure for applying for a land use permit that approves the location of a large
288 concentrated animal feeding operation within the county;
289 (ii) the fees imposed to apply for the land use permit described in Subsection (3)(a);
290 and
291 (iii) county investigation, inspection, and testing; and
292 (b) may require a large concentrated animal feeding operation provide the county land
293 use authority and the public reasonable access to the following records:
294 (i) the nutrient management plan;
295 (ii) groundwater monitoring data; and
296 (iii) an emergency action plan.
297 (4) If the county does not adopt a county large concentrated animal feeding operation
298 ordinance establishing a county matrix, the county shall apply the state master matrix in
299 determining whether to approve a land use permit for a large concentrated animal feeding
300 operation.
301 Section 6. Section **17-55-204** is enacted to read:
302 **17-55-204. When an application is required -- Grandfathering.**
303 (1) Beginning January 1, 2022, for a large concentrated animal feeding operation that is
304 not operating on January 1, 2022, before beginning operating a large concentrated animal
305 feeding operation within a county, an applicant shall obtain a land use permit from the county
306 land use authority under this chapter.
307 (2) (a) Subject to Subsection (2)(b), to issue a land use permit under Subsection (1), the
308 county land use authority shall apply the county large concentrated animal feeding operation
309 ordinance in effect at the time the application for a land use permit is filed.
310 (b) If the county has not adopted a county large concentrated animal feeding operation
311 ordinance at the time of the application for a land use permit is filed, the county land use

312 authority shall use the state master matrix in determining whether to allow the location of the
313 large concentrated animal feeding operation within the county.
314 (3) (a) Subject to Subsection (3)(b), if a county modifies the county's large
315 concentrated animal feeding operation ordinance after approving the location of the large
316 concentrated animal feeding operation within the county, the large concentrated animal feeding
317 operation is subject to the county large concentrated animal feeding operation ordinance in
318 effect at the time the application for a land use permit is filed and is not subject to the new
319 county large concentrated animal feeding operation ordinance.
320 (b) If the county had not adopted a county large concentrated animal feeding operation
321 ordinance at the time of the application for a land use permit and the county land use authority
322 used the state master matrix in determining whether to allow the location of the large
323 concentrated animal feeding operation within the county, the large concentrated animal feeding
324 operation is not subject to the new county large concentrated animal feeding operation
325 ordinance.
326 Section 7. Section **17-55-205** is enacted to read:
327 **17-55-205. Action on an application.**
328 (1) A county land use authority shall issue a land use permit upon approval of an
329 application. The county land use authority shall approve the application if:
330 (a) the application is submitted in accordance with a county large concentrated animal
331 feeding operation ordinance, if one is adopted by the county;
332 (b) the application meets the requirements of this chapter;
333 (c) the application achieves a satisfactory rating produced by the matrix used by the
334 county; and
335 (d) the applicant submits a nutrient management plan.
336 (2) The applicant may complete and submit a matrix to the county land use authority.
337 (3) (a) A county land use authority may not issue a land use permit to a person under
338 this section if an enforcement action by the department or the Department of Environmental
339 Quality is pending and relates to a violation of this chapter concerning an animal feeding
340 operation in which the person has an interest.
341 (b) A county land use authority may decline to issue a land use permit to a person
342 under this section for five years after the date of a final order in an enforcement proceeding by

343 an agency of the state or the county that finds that a violation of a county ordinance adopted
344 under this chapter or rules adopted by the department or the Department of Environment
345 Quality pertaining to animal feeding operations committed by a person or animal feeding
346 operation in which the person holds a controlling interest.
347 Section 8. Section **17-55-301** is enacted to read:
348 **Part 3. Administrative Remedies**
349 **17-55-301. Appeal authority required.**
350 (1) A county adopting a county large concentrated animal feeding operation ordinance
351 shall establish in the ordinance one or more appeal authorities to hear and decide appeals from
352 decisions applying the large county concentrated animal feeding operation ordinance. An
353 appeal authority shall be selected and function as provided in Section 17-55-302.
354 (2) An appeal authority:
355 (a) shall:
356 (i) act in a quasi-judicial manner; and
357 (ii) serve as the final arbiter of issues involving the interpretation or application of the
358 county large concentrated animal feeding operation ordinance; and
359 (b) may not entertain an appeal of a matter in which the appeal authority, or any
360 participating member, had first acted as the county land use authority.
361 (3) In the county large concentrated animal feeding operation ordinance, a county may:
362 (a) designate one or more separate appeal authorities to hear distinct types of appeals of
363 county land use authority decisions;
364 (b) require an adversely affected party to present to an appeal authority every theory of
365 relief that the party can raise in district court;
366 (c) not require an applicant or adversely affected party to pursue duplicate or
367 successive appeals before the same or separate appeal authorities as a condition of an appealing
368 party's duty to exhaust administrative remedies; and
369 (d) provide that specified types of large concentrated animal feeding operation
370 decisions may be appealed directly to the district court.
371 (4) If the county establishes a multiperson board, body, or panel to act as an appeal
372 authority, at a minimum the board, body, or panel shall:
373 (a) notify each of its members of any meeting or hearing of the board, body, or panel;

374 (b) provide each of its members with the same information and access to municipal
375 resources as any other member;
376 (c) convene only if a quorum of its members is present; and
377 (d) act only upon the vote of a majority of a quorum.
378 Section 9. Section **17-55-302** is enacted to read:
379 **17-55-302. Appealing a county land use authority's decision -- Panel of experts for**
380 **appeal.**
381 (1) An applicant, adversely affected party, or a board or officer of the county may,
382 within the time period provided by the large concentrated animal feeding operation ordinance,
383 appeal a land use decision to the appeal authority by alleging that there is an error in any order,
384 requirement, decision, or determination made by the county land use authority in the
385 administration or interpretation of the county large concentrated animal feeding operation
386 ordinance.
387 (2) (a) On an appeal from a decision of the county land use authority administering or
388 interpreting the county large concentrated animal feeding operation ordinance, the applicant
389 may within 30 days from the filing of the appeal request the county to assemble a panel of
390 qualified experts to serve as the appeal authority for purposes of determining the appeal. If the
391 applicant does not request a panel of qualified experts, the appeal authority panel shall be
392 selected as provided by county ordinance.
393 (b) If an applicant makes a request under Subsection (2)(a), the county shall assemble
394 the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the land use
395 applicant and county:
396 (i) one expert designated by the county;
397 (ii) one expert designated by the applicant; and
398 (iii) one expert chosen jointly by the county's designated expert and the large
399 concentrated animal feeding operation applicant's designated expert.
400 (c) The parties may agree that a panel of five members may be designated to serve as
401 the appeal authority. If this request is made, three members of the panel shall be selected as
402 stated in Subsection (2)(b) and the other two by the three members selected as stated in
403 Subsection (2)(b).
404 (d) A member of the panel assembled by the county under Subsection (2)(b) may not

405 be associated with the application that is the subject of the appeal.
406 (e) An applicant shall pay:
407 (i) one-half of the cost of the panel; and
408 (ii) the county's published fee for hearing of appeals as set by ordinance.
409 Section 10. Section **17-55-303** is enacted to read:
410 **17-55-303. Time to appeal.**
411 (1) The county shall provide in the county large concentrated animal feeding operation
412 ordinance a reasonable time of not less than 30 calendar days to file an appeal of a written
413 decision issued by a county land use authority related to a large concentrated animal feeding
414 operation application.
415 (2) In the absence of a county large concentrated animal feeding operation ordinance
416 establishing a reasonable time to appeal, a large concentrated animal feeding operation
417 applicant, adversely affected party, or a board or officer of the county has 30 calendar days to
418 appeal a written decision issued by a county land use authority.
419 Section 11. Section **17-55-304** is enacted to read:
420 **17-55-304. Burden of proof.**
421 The appellant has the burden of proving that the county land use authority erred.
422 Section 12. Section **17-55-305** is enacted to read:
423 **17-55-305. Due process.**
424 (1) An appeal authority shall conduct an appeal as described by the county large
425 concentrated animal feeding operation ordinance.
426 (2) An appeal authority shall respect the due process rights of each participant.
427 Section 13. Section **17-55-306** is enacted to read:
428 **17-55-306. Scope of review of factual matters on appeal -- Appeal authority**
429 **requirements.**
430 (1) The appeal authority shall review the matter de novo, without deference to the
431 county land use authority's determination of factual matters.
432 (2) If the scope of review of factual matters is on the record, the appeal authority shall
433 determine whether the record on appeal includes substantial evidence for each essential finding
434 of fact.
435 (3) The appeal authority shall:

436 (a) determine the correctness of the county land use authority's interpretation and
437 application of the plain meaning of a county large concentrated animal feeding operation
438 ordinance; and
439 (b) interpret and apply a county large concentrated animal feeding operation ordinance
440 to favor a large concentrated animal feeding operation application unless the land use
441 regulation plainly restricts the large concentrated animal feeding operation application.
442 (4) An appeal authority's land use decision is a quasi-judicial act.
443 (5) Only a decision in which a county land use authority has applied a large
444 concentrated animal feeding operation ordinance to a particular land use application, person, or
445 parcel may be appealed to an appeal authority.
446 Section 14. Section **17-55-307** is enacted to read:
447 **17-55-307. Final decision.**
448 (1) A decision of an appeal authority takes effect on the date when the appeal authority
449 issues a written decision, or as otherwise provided by local ordinance.
450 (2) A written decision, or other event as provided by ordinance, constitutes a final
451 decision under Subsection 17-55-401(2)(a) or a final action under Subsection 17-55-401(4).
452 Section 15. Section **17-55-401** is enacted to read:
453 **Part 4. Judicial Appeal and Enforcement**
454 **17-55-401. District court may not review until administrative remedies exhausted**
455 **-- Time for filing -- Tolling of time -- Standards governing court review -- Record on**
456 **review -- Staying of decision.**
457 (1) An applicant, adversely affected party, or board or officer of a county may not
458 challenge in district court a large concentrated animal feeding operation decision until that
459 person has exhausted the applicant's, adversely affected party's, or board or officer of a county's
460 administrative remedies as provided in Part 3, Administrative Remedies, if applicable.
461 (2) (a) An applicant or board or officer of the county may file a petition for review of a
462 large concentrated animal feeding operation decision with the district court within 30 days after
463 the decision is final.
464 (b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date an
465 applicant files a request for arbitration or requests mediation with the department under Section
466 17-55-501 until 30 days after:

467 (A) the arbitrator issues a final award;
468 (B) the mediator certifies in writing that the mediation concluded without resolution of
469 all issues; or
470 (C) the county gives notice that it declines participation in arbitration or mediation.
471 (ii) The time to file a petition is also tolled for the same period if the county and the
472 applicant agree in writing to a mediator or arbitrator other than the department.
473 (iii) A tolling under Subsection (2)(b)(i) operates only as to the specific issue that is the
474 subject of the request for arbitration or for mediation by the department.
475 (iv) A request for mediation filed with the department after the time under Subsection
476 (2)(a) to file a petition has expired does not affect the time to file a petition.
477 (3) (a) A court shall:
478 (i) presume that a county large concentrated animal feeding operation ordinance
479 properly enacted under the authority of this chapter is valid; and
480 (ii) determine only whether:
481 (A) the county large concentrated animal feeding operation ordinance is expressly
482 preempted by, or was enacted contrary to, state or federal law; and
483 (B) the county large concentrated animal feeding operation ordinance is consistent with
484 this chapter.
485 (b) A court shall:
486 (i) presume that a final decision of a county land use authority or an appeal authority is
487 valid; and
488 (ii) uphold the decision unless the decision is:
489 (A) arbitrary and capricious; or
490 (B) invalid.
491 (c) (i) A decision is arbitrary and capricious if the decision is not supported by
492 substantial evidence in the record.
493 (ii) A decision is invalid if the decision is:
494 (A) based on an incorrect interpretation of a large concentrated animal feeding
495 operation ordinance; or
496 (B) contrary to law.
497 (d) (i) A court may affirm or reverse the decision of a county land use authority.

498 (ii) If the court reverses a denial of a land use permit, the court shall remand the matter
499 to the county land use authority with instructions to issue an approval consistent with the
500 court's decision.
501 (4) Subsection (2)(a) applies from the date on which the county takes final action on a
502 large concentrated animal feeding operation application, if the county conformed with the
503 notice provisions of Title 17, Chapter 27a, Part 2, Notice, or for any person who had actual
504 notice of the pending decision.
505 (5) If the county has complied with Section 17-27a-205, a challenge to the enactment
506 of a county large concentrated animal operation ordinance may not be filed with the district
507 court more than 30 days after the enactment.
508 (6) A challenge to a large concentrated animal feeding operation decision is barred
509 unless the challenge is filed within 30 days after the large concentrated animal feeding
510 operation decision is final.
511 (7) (a) The county land use authority or appeal authority, as the case may be, shall
512 transmit to the reviewing court the record of the county land use authority's or appeal
513 authority's proceedings, including the minutes, findings, orders and, if available, a true and
514 correct transcript of the proceedings.
515 (b) If the proceeding was recorded, a transcript of that recording is a true and correct
516 transcript for purposes of this Subsection (7).
517 (8) (a) (i) If there is a record, the district court's review is limited to the record provided
518 by the county land use authority or appeal authority, as the case may be.
519 (ii) The court may not accept or consider any evidence outside the record of the county
520 land use authority or appeal authority, as the case may be, unless that evidence was offered to
521 the county land use authority or appeal authority, respectively, and the court determines that it
522 was improperly excluded.
523 (b) If there is no record, the court may call witnesses and take evidence.
524 (9) (a) The filing of a petition does not stay the decision of the county land use
525 authority or appeal authority, as the case may be.
526 (b) (i) Before filing a petition under this section or a request for arbitration of an issue,
527 an applicant may petition the appeal authority to stay the appeal authority's decision.
528 (ii) Upon receipt of a petition to stay, the appeal authority may order the appeal

529 authority's decision stayed pending district court review if the appeal authority finds it to be in
530 the best interest of the county.
531 (iii) After a petition is filed under this section or a request for arbitration of an issue is
532 filed, the petitioner may seek an injunction staying the appeal authority's decision.
533 (10) If the court determines that a party initiated or pursued a challenge to the decision
534 on a land use application in bad faith, the court may award attorney fees.
535 Section 16. Section **17-55-402** is enacted to read:
536 **17-55-402. Enforcement.**
537 (1) (a) A county or adversely affected party may, in addition to other remedies
538 provided by law, institute:
539 (i) injunctions, mandamus, abatement, or any other appropriate actions; or
540 (ii) proceedings to prevent, enjoin, abate, or remove the unlawful large concentrated
541 animal feeding operation.
542 (b) A county need only establish the violation to obtain the injunction.
543 (2) (a) A county may enforce the county's large concentrated animal feeding operation
544 ordinance by withholding a building permit.
545 (b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any
546 building or other structure if it results in the creation of a large concentrated animal feeding
547 operation within a county without approval of a building permit.
548 (c) The county may not issue a building permit for a large concentrated animal feeding
549 operation structure unless the plans of and for the proposed erection, construction,
550 reconstruction, alteration, or use fully conform to the ordinance and rules in effect when the
551 application is filed.
552 (d) A county may not deny an applicant a building permit because the applicant has not
553 completed an infrastructure improvement:
554 (i) that is not essential to meet the requirements for the issuance of a building permit or
555 under the building code and fire code; and
556 (ii) for which the county has accepted an improvement completion assurance for
557 landscaping or infrastructure improvements for the development.
558 Section 17. Section **17-55-403** is enacted to read:
559 **17-55-403. Penalties -- Notice.**

560 (1) In a county large concentrated animal operation ordinance, a county may establish
561 civil penalties for a violation of this chapter, rules made under this chapter, or an ordinance
562 adopted under this chapter.
563 (2) Violation of this chapter or any ordinance adopted under this chapter is punishable
564 as a class C misdemeanor upon conviction either:
565 (a) as a class C misdemeanor; or
566 (b) by imposing the appropriate civil penalty adopted under the authority of this
567 section.
568 (3) Before imposing upon an owner of record a civil penalty established by ordinance
569 under authority of this chapter, a county shall provide:
570 (a) written notice, by mail or hand delivery, of each ordinance violation to the address
571 of the:
572 (i) owner of record on file in the office of the county recorder; or
573 (ii) person designated, in writing, by the owner of record as the owner's agent for the
574 purpose of receiving notice of an ordinance violation;
575 (b) the owner of record a reasonable opportunity to cure a noticed violation; and
576 (c) a schedule of the civil penalties that may be imposed upon the expiration of a time
577 certain.
578 Section 18. Section **17-55-501** is enacted to read:
579 **Part 5. Mediation by the Department**
580 **17-55-501. Applicant request for mediation -- Procedure for mediation by the**
581 **department.**
582 (1) An applicant may, within 30 days after the county land use authority issues its
583 written decision on the applicant's application for a large concentrated animal feeding
584 operation, file a request with the department for mediation of any aspect of the county land use
585 authority written decision.
586 (2) The department shall conduct mediation proceedings under rules adopted by the
587 department, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
588 the department's agricultural mediation program. The department shall make rules related to
589 mediation under this chapter and may charge a fee for mediation set in accordance with Section
590 63J-1-504.

591 Section 19. Section **17-55-502** is enacted to read:

592 **17-55-502. Declining of request for mediation.**

593 In an action brought under Part 4, Judicial Appeal and Enforcement, if the applicant
594 requests mediation under the department agricultural mediation program and the county
595 declines to participate, the court may award costs and reasonable attorney fees to the applicant
596 to the extent the applicant prevails in the district court action.