

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 746**

Introduced by Beutler, 28; Preister, 5; Schmitt, 41

Read first time January 20, 1999

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to livestock; to amend sections 54-725, 54-2401  
2 to 54-2404, 54-2406, 54-2408, 54-2411, and 54-2413,  
3 Reissue Revised Statutes of Nebraska; to change  
4 provisions relating to dead animals, livestock waste  
5 control facility permits and inspections, fees,  
6 department duties, and rules and regulations; to define  
7 terms; to create a fund; to harmonize provisions; and to  
8 repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1.   Section 54-725, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           54-725. The liquified remains of any dead animal ~~may~~  
4 shall not be injected below the surface of the ground ~~but may not~~  
5 ~~be or~~ spread above the surface of the ground in any manner. Any  
6 person violating ~~the provisions of~~ this section ~~shall be~~ is guilty  
7 of a Class II misdemeanor.

8           Sec. 2.   Section 54-2401, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           54-2401.   Sections 54-2401 to 54-2414 and section 7 of  
11 this act shall be known and may be cited as the Livestock Waste  
12 Management Act.

13           Sec. 3.   Section 54-2402, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           54-2402. For purposes of the Livestock Waste Management  
16 Act:

17           (1) Animal unit means a unit of measurement for any  
18 livestock operation calculated by adding the following numbers: The  
19 number of slaughter and feeder cattle multiplied by 1.0, plus the  
20 number of mature dairy cattle multiplied by 1.4, plus the number of  
21 swine weighing fifty-five pounds or more multiplied by 0.4, plus  
22 the number of weaned pigs weighing less than fifty-five pounds  
23 multiplied by 0.04, plus the number of sheep multiplied by 0.1,  
24 plus the number of horses multiplied by 2.0, plus the number of  
25 chickens multiplied by 0.01, plus the number of turkeys multiplied  
26 by 0.02, plus the number of ducks multiplied by 0.2. Such  
27 calculation may be modified for immature animals under section  
28 54-2413;

1           (2) Best management practices means schedules of  
2 activities, prohibitions, maintenance procedures, and other  
3 management practices found to be the most effective and practicable  
4 methods for specific sites to prevent or reduce the discharge of  
5 pollutants to waters of the state or control odor where  
6 appropriate. Best management practices also includes operating  
7 procedures and practices to control site runoff, spillage, leaks,  
8 sludge or waste disposal, or drainage from raw material storage;

9           (3) Council means the Environmental Quality Council;

10          (4) Corrective action means any action taken to minimize,  
11 contain, eliminate, remediate, mitigate, or clean up a discharge  
12 from a livestock waste control facility, including emergency  
13 remedial action;

14          (5) Department means the Department of Environmental  
15 Quality;

16          ~~(5)~~ (6) Discharge means the accidental or intentional  
17 spilling, leaking, pumping, pouring, emitting, emptying, or dumping  
18 of pollutants into any waters of the state or in a place which will  
19 likely reach waters of the state;

20          ~~(6)~~ (7) Existing livestock waste control facility means  
21 any livestock waste control facility that holds a permit issued by  
22 the department before April 15, 1998;

23          (8) Habitable structure means any of the following  
24 structures which is occupied or maintained in a condition which may  
25 be occupied: A dwelling, church, school, adult care facility,  
26 child care facility, medical care facility, library, community  
27 center, public building, or a licensed food service or lodging  
28 establishment;

1            (9) Liquification means the physical breakdown of animal  
2 carcasses by placement in a vaulted pit until the remains are in  
3 liquid or semi-liquid form;

4            ~~(7)~~ (10) Livestock operation means the feeding or holding  
5 of beef cattle, dairy cattle, horses, swine, sheep, poultry, and  
6 other livestock in buildings, lots, or pens which normally are not  
7 used for the growing of crops or vegetation but does not include  
8 the holding of cattle in calving operations for less than ninety  
9 days per year. Two or more livestock operations under common  
10 ownership are deemed to be a single livestock operation if they are  
11 adjacent to each other or if they utilize a common area or system  
12 for the disposal of livestock wastes;

13            ~~(8)~~ (11) Livestock waste control facility means any  
14 structure or combination of structures utilized to control  
15 livestock waste until it can be used, recycled, or disposed of in  
16 an environmentally acceptable manner. Such structures include, but  
17 are not limited to, diversion terraces, holding ponds, debris  
18 basins, liquid manure storage pits, lagoons, and other such devices  
19 utilized to control livestock waste;

20            ~~(9)~~ (12) New livestock waste control facility means any  
21 livestock waste control facility that applies for a permit from the  
22 department on or after April 15, 1998;

23            ~~(10)~~ (13) Person has the same meaning as in section  
24 81-1502;

25            ~~(11)~~ (14) Prior pending application means an application  
26 for a livestock waste control facility received by the department  
27 prior to April 15, 1998; and

28            ~~(12)~~ (15) Waters of the state has the same meaning as in

1 section 81-1502.

2 Sec. 4. Section 54-2403, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 54-2403. In order to better implement the Livestock  
5 Waste Management Act, the Governor shall appoint a livestock waste  
6 management ~~task force to work with the department~~ advisory board to  
7 ~~conduct the study as required by subsection (2) of section 54-2408~~  
8 provide information and advice to the department on the management  
9 of livestock waste and odor. ~~Task force~~ Board members shall  
10 include:

11 (1) Three representatives of the livestock industry, one  
12 representing a class I livestock waste control facility, one  
13 representing a class II livestock waste control facility, and one  
14 representing either a class III or class IV livestock waste control  
15 facility;

16 (2) A biological systems engineer from the University of  
17 Nebraska;

18 (3) One elected representative from the natural resources  
19 districts who is not involved in the livestock industry;

20 (4) An agronomist from the University of Nebraska;

21 (5) A representative from the natural resource  
22 conservation service;

23 (6) A member of the general public representing  
24 environmental interests; ~~and~~

25 (7) A representative of municipalities; and

26 (8) A representative of counties.

27 The ~~task force~~ board shall cease to exist on December 1,  
28 ~~1998~~ 2001.

1           Sec. 5.   Section 54-2404, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           54-2404.   (1) When there is a potential for discharge  
4 into waters of the state, as determined by the department:

5           (a) No person shall construct a livestock waste control  
6 facility without first obtaining a construction permit from the  
7 department; and

8           (b) No person shall operate a livestock waste control  
9 facility without an operating permit or interim use authorization  
10 from the department.

11           (2)(a) In counties having no zoning regulations, new  
12 construction permits shall not be approved for livestock waste  
13 control facilities and operating permits shall not be approved  
14 which provide for livestock waste control facilities for a class II  
15 livestock waste control facility within fifteen hundred feet of, or  
16 a class III or IV livestock waste control facility within one mile  
17 of, a habitable structure unless the owner of such habitable  
18 structure waives the application of this section in writing to the  
19 department.

20           (b) In counties having no zoning regulations, new  
21 construction permits shall not be approved for livestock waste  
22 control facilities and operating permits shall not be approved  
23 which provide for livestock waste control facilities for a class II  
24 facility within twenty-five hundred feet of, or a class III or IV  
25 livestock waste control facility within one and one-half miles of,  
26 the following: Major tourist sites as identified by the Department  
27 of Economic Development; federal or state parks or recreation  
28 areas; state historic sites; or designated federal wild, scenic, or

1 recreational rivers.

2           (3) Livestock waste control facilities shall be  
3 classified according to the maximum number of animal units for  
4 which the livestock waste control facility is designed. The  
5 council, in adopting rules and regulations under section 54-2413,  
6 shall set out the requirements for any livestock waste control  
7 facility which is reclassified after permit issuance.  
8 Classifications shall be as follows:

9           (a) A class I livestock waste control facility is  
10 designed for one thousand or less animal units;

11           (b) A class II livestock waste control facility is  
12 designed for more than one thousand and five thousand or less  
13 animal units;

14           (c) A class III livestock waste control facility is  
15 designed for more than five thousand animal units and twenty  
16 thousand or less animal units; and

17           (d) A class IV livestock waste control facility is  
18 designed for more than twenty thousand animal units.

19           Sec. 6. Section 54-2406, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           54-2406. (1) Any person owning or operating a livestock  
22 operation that does not hold a permit or has not been notified by  
23 the department that no permit was required shall, on forms  
24 prescribed by the department, request the department to inspect  
25 such person's livestock operation to determine if a livestock waste  
26 control facility is required. If an inspection is requested prior  
27 to January 1, 1999, an inspection fee for such inspection shall not  
28 be assessed. For inspections requested on or after January 1,

1 1999, there shall be an inspection fee of fifty dollars for a class  
2 I or class II livestock waste control facility and an inspection  
3 fee of five hundred dollars for a class III or class IV livestock  
4 waste control facility. A person who requests an inspection prior  
5 to January 1, 2000, shall not be determined by the department to be  
6 in violation of the permitting provisions of the Livestock Waste  
7 Management Act prior to issuance or denial of a permit for such  
8 livestock waste control facility. However, the person shall not  
9 violate any provisions of the Environmental Protection Act.

10 (2) The department shall, in conjunction with natural  
11 resources districts and the Cooperative Extension Service of the  
12 University of Nebraska, publicize information to make owners and  
13 operators of affected livestock operations aware of the need to  
14 request an inspection.

15 (3) The department shall inspect class III and class IV  
16 livestock waste control facilities a minimum of twice annually,  
17 unless the department determines that for a given facility, and  
18 based on the facility's inspection record, only one annual  
19 inspection is needed.

20 Sec. 7. (1) The Livestock Waste Control Facility  
21 Clean-up Fund is created. The fund shall be administered by the  
22 department and used to properly close abandoned livestock waste  
23 control facilities or to conduct investigative studies and  
24 corrective actions of livestock waste control facilities when the  
25 responsible parties have not been identified or have not initiated  
26 such actions within a reasonable time. Any money in the fund  
27 available for investment shall be invested by the state investment  
28 officer pursuant to the Nebraska Capital Expansion Act and the

1 Nebraska State Funds Investment Act.

2           (2) Each class III livestock waste control facility shall  
3 pay an annual fee of three hundred dollars, and each class IV  
4 livestock waste control facility shall pay an annual fee of two  
5 thousand dollars. The department shall remit such fees to the  
6 Livestock Waste Control Facility Clean-up Fund until such time as  
7 the fund reaches a balance of two hundred fifty thousand dollars.  
8 If subsequently the balance of the fund falls below one hundred  
9 fifty thousand dollars each class III and class IV facility shall  
10 pay the annual fee until a two hundred fifty thousand dollar  
11 balance is reached. Any fees paid by a class III or class IV  
12 livestock waste control facility shall be refundable to the  
13 facility upon its ceasing operations if no part of the fund has  
14 been used to close or to conduct investigative studies and  
15 corrective actions of the facility.

16           (3) The department may recover from responsible parties  
17 the cost of any corrective action, closure, or related  
18 investigative studies funded under this section.

19           Sec. 8. Section 54-2408, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           54-2408. (1) On or after June 1, 1998, any person  
22 required to obtain a permit for a livestock waste control facility  
23 under section 54-2404 shall file an application with the department  
24 in the manner established by the department. The application fees  
25 shall be three hundred dollars for a class I livestock waste  
26 control facility, eight hundred dollars for a class II livestock  
27 waste control facility, one thousand five hundred dollars for a  
28 class III livestock waste control facility, and five thousand

1 dollars for a class IV livestock waste control facility. For  
2 permit modifications the fee shall equal the amount of the  
3 application fee for the class of the proposed modification minus  
4 the application fee paid for the original application. If the  
5 permit modification will result in a lower class designation, there  
6 shall be no fee.

7           (2) The department shall conduct a study to determine the  
8 possible environmental impacts of class III and class IV livestock  
9 waste control facilities on ground and surface water quality in  
10 environmentally sensitive areas of the state including watersheds  
11 with sandy soils or shallow water tables or to which waster rights  
12 granted for the purpose of protecting fish or wildlife pertain.  
13 The study shall determine if class III and class IV livestock waste  
14 control facilities or the land application of waste from such  
15 facilities should be prohibited in environmentally sensitive areas  
16 in order to protect water quality or if additional design or  
17 operational requirements of such facilities are needed in such  
18 areas. A report of such study shall be submitted to the Natural  
19 Resources Committee of the Legislature no later than September 1,  
20 2000. The department, in conjunction with the livestock waste  
21 management task force, shall conduct a study to recommend  
22 appropriate inspection or operation fees which may be charged to  
23 livestock waste control facilities under the Livestock Waste  
24 Management Act. Such fees shall, if implemented, in conjunction  
25 with other recommended revenue sources, be sufficient to pay the  
26 costs of administering and enforcing the act. Such study shall  
27 also include best management practices for odor control, the  
28 feasibility of requiring financial assurance requirements for class

1 ~~III and class IV livestock waste control facilities and the~~  
2 ~~creation of an indemnification fund, and an analysis of the new~~  
3 ~~technologies available relating to the disposal of dead animals. A~~  
4 ~~report of such study shall be submitted to the Natural Resources~~  
5 ~~Committee of the Legislature no later than December 17, 1998.~~

6 (3) All fees collected under this section and section  
7 54-2406 shall be remitted to the State Treasurer for credit to the  
8 Livestock Waste Management Cash Fund which is created for the  
9 purposes described in the act. Any money in the fund available for  
10 investment shall be invested by the state investment officer  
11 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
12 State Funds Investment Act.

13 (4) On or before January 1 of each year, the department  
14 shall submit a report to the Legislature in sufficient detail to  
15 document all direct and indirect costs incurred in the previous  
16 fiscal year in carrying out the Livestock Waste Management Act  
17 including the number of inspections conducted for each class of  
18 livestock waste control facility, the number of permitted livestock  
19 waste control facilities, the number of livestock operations  
20 inspected, the size of the livestock waste control facilities, and  
21 other elements relating to carrying out the act. The  
22 Appropriations Committee of the Legislature shall review the report  
23 in its analysis of executive programs in order to verify that the  
24 revenue generated from fees was used solely to offset appropriate  
25 and reasonable costs associated with carrying out the act.

26 Sec. 9. Section 54-2411, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

28 54-2411. (1) In carrying out its responsibilities under

1 the Livestock Waste Management Act, the department may contract  
2 with the various natural resources districts as appropriate. The  
3 contract may include all tasks or duties necessary to carry out the  
4 act but shall not enable the natural resources districts to issue  
5 permits or initiate enforcement proceedings. The contract may  
6 provide for payment of natural resources districts' costs by the  
7 department.

8 (2) Upon receipt of a livestock waste control facility  
9 permit application, the department shall notify the natural  
10 resources district or districts in which the livestock waste  
11 control facility is to be located of the permit application. The  
12 natural resources district or districts shall have twenty days to  
13 comment to the department regarding any conditions that may exist  
14 at the proposed site which the department should know when  
15 determining the appropriateness of issuing such permit. Such  
16 natural resources district or districts may request the department  
17 for a twenty-day extension of the comment period.

18 (3) The department shall notify the county board or  
19 boards when an application for a livestock waste control facility  
20 has been submitted to the department.

21 (4) Upon initial receipt of the permit application, the  
22 department has thirty days to conduct a preliminary review of the  
23 application and to formally request in writing additional  
24 information or to acknowledge that the application is complete.  
25 Within sixty days after receipt of a completed permit application,  
26 unless a hearing is required under subsection (6) of this section,  
27 the department shall transmit its written findings, conclusions,  
28 and reasons for approval or disapproval to the applicant. This

1 subsection applies to permit applications received by the  
 2 department on or after September 1, 1998, for any pending  
 3 application or any new permit application.

4 (5) The department shall provide for public notice of  
 5 such permit application for all class III and class IV livestock  
 6 waste control facilities in the county or counties where the  
 7 livestock waste control facility is to be located.

8 (6) The department shall hold a public hearing prior to  
 9 final approval of an application for a class III or class IV  
 10 livestock waste control facility in the county or counties where  
 11 the facility is proposed to be located. Such a hearing process  
 12 shall not add more than forty-five days to the total time required  
 13 for a final permit decision by the department.

14 Sec. 10. Section 54-2413, Reissue Revised Statutes of  
 15 Nebraska, is amended to read:

16 54-2413. (1) The council shall adopt and promulgate  
 17 rules and regulations to carry out the Livestock Waste Management  
 18 Act within twelve months after April 15, 1998. The rules and  
 19 regulations shall include a permit program for livestock waste  
 20 control facilities which provides for:

21 (a) A permitting process which includes:

22 (i) A construction permit which prohibits construction of  
 23 a livestock waste control facility prior to its issuance;

24 (ii) An operating permit for new and existing livestock  
 25 waste control facilities to be issued after terms of the  
 26 construction permit have been fulfilled and which may be  
 27 terminated, modified, or revoked by the department for cause;

28 (iii) An application process which requires a permitting

1 determination by the department within sixty days after receipt of  
2 a complete application, an acknowledgment by the applicant that a  
3 construction permit may not be approved, and an operating plan to  
4 be incorporated into the permit;

5 (iv) Monitoring of surface or ground water by the  
6 permittee which may be necessary as determined by the department  
7 where a significant risk to waters of the state exists;

8 (v) Modification of operating permits in accordance with  
9 section 54-2407; and

10 (vi) Notification of the applicant by the department  
11 within thirty days if the application is complete or, if the  
12 application is not complete, notification as to what information or  
13 requirements are needed;

14 (b) Requirements for existing livestock waste control  
15 facilities whose permits are being modified under section 54-2407  
16 including best management practices as provided in subdivision (c)  
17 of this subsection;

18 (c) Best management practices where appropriate to  
19 specific sites to control runoff of waste, including adequate area  
20 for land application and proper methods and rates of disposal of  
21 waste and nutrients such as nitrogen and phosphorus, and best  
22 management practices for control of odor; ~~which terminate July 1,~~  
23 ~~1999;~~

24 (d) Location requirements for such facilities to be on  
25 soils or constructed with materials and methods which will ensure  
26 that percolation does not exceed: Twenty-five hundredths of an  
27 inch per day for a class I livestock waste control facility and  
28 thirteen hundredths of an inch per day for a class II, class III,

1 or class IV livestock waste control facility;

2 (e) Disposal of dead animals in a manner other than  
3 liquification of carcasses. Composting as a means for the disposal  
4 of dead animals may be used if done according to department rules  
5 and regulations. The department shall have authority to enforce  
6 the provisions of this subdivision in consultation with the  
7 Department of Health and Human Services;

8 (f) Modifications to the calculation of animal units for  
9 immature animals; and

10 ~~(e)~~ (g) A training program for land application of waste  
11 which may include contracting with the Cooperative Extension  
12 Service of the University of Nebraska for curriculum development  
13 and instruction.

14 (2) Rules and regulations adopted and promulgated under  
15 this section may be based upon size classification of livestock  
16 waste control facilities and the form of waste management and may  
17 include more stringent requirements for facilities of larger size  
18 classes and waste control technologies that are more likely to  
19 cause adverse impacts.

20 (3) The council may adopt and promulgate any other rules  
21 and regulations necessary to carry out the purposes of the  
22 Livestock Waste Management Act.

23 Sec. 11. Original sections 54-725, 54-2401 to 54-2404,  
24 54-2406, 54-2408, 54-2411, and 54-2413, Reissue Revised Statutes of  
25 Nebraska, are repealed.