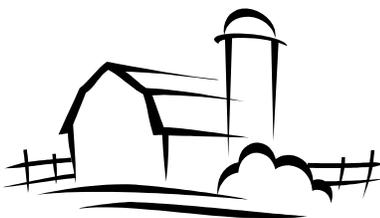

COMMITTEE ON AGRICULTURE

ONE HUNDRETH LEGISLATURE
FIRST SESSION - 2007



SUMMARY AND DISPOSITION OF LEGISLATION REFERRED TO THE COMMITTEE

Agriculture Committee Members

Senator Philip Erdman, Chair
Senator Annette Dubas, Vice-Chair
Senator Ernie Chambers
Senator "Cap" Dierks
Senator Russ Karpisek
Senator Vickie McDonald
Senator Don Preister
Senator Norm Wallman

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STATUS REPORT BY BILL NUMBER

LB #	Primary Introducer	One-Line Description	Hearing Date	Disposition	Amends Adopted	Amends Pending	Comment
LB 12	Mines	Change the Commercial Dog and Cat Operator Inspection Act	01/16/07	Enacted	AM161 AM317 AM637 AM948 ER8029		
LB 25	Langemeier	Change rabies control provisions to include hybrid animals	01/16/07	Enacted	AM23 AM29 AM231 FA07 ER8000		
LB 46	Hudkins	Require payments by grape producers	02/27/07	General File		AM607	Purposes/provision of LB 46 and pending AM607 incorporated into LB 441 by AM691
LB 74	Erdman	Change the Nebraska Pure Food Act	01/23/07	Enacted	ER8008		
LB 108	Ag Committee	Change provisions relating to fence disputes	01/30/07	Enacted	AM172 ER8022		
LB 110	Erdman	Adopt the Bovine Tuberculosis Act	01/23/07	Enacted	AM78 ER8005		
LB 111	Erdman	Change provisions relating to milk	01/23/07	Enacted	AM186 ER8011		
LB 131	Raikes	Provide for a University Research and Development Corridor Master Plan	02/13/07	Held			
LB 200	Burling	Change the definition of tractors subject to a permit requirement	01/30/07	Held			

STATUS REPORT BY BILL NUMBER (continued)

LB #	Primary Introducer	One-Line Description	Hearing Date	Disposition	Amends Adopted	Amends Pending	Comment
LB 273	Kopplin	Change the definition of tractors subject to a permit requirement	01/30/07	Held			
LB 422	Erdman	Change membership of the Nebraska Brand Committee	01/30/07	Enacted	AM154 ER8018		
LB 435	Raikes	Provide for a Nebraska State Fairgrounds Master Plan	02/13/07	Enacted	AM854 ER8095		Ag Committee 2 nd Priority Bill
LB 515	Stuthman	Change county conditional use permit provisions relating to livestock operations	02/20/07	IPP			
LB 516	Agriculture Committee	Adopt the Corporate Farming Policy Advisory Act	02/06/07	Enacted	AM1132		Ag Committee 1 st Priority Bill
LB 626	Dierks	Create a production incentive for biodiesel	02/27/07	Held			
LB 632	Dierks	Change provisions pertaining to the National Animal Identification System	02/20/07	General File		AM527	
LB 633	Dierks	Change provisions of the Competitive Livestock Markets Act	02/20/07	Held			
LB 634	Dierks	Adopt the Feedlot Statutory Trust Act	02/20/07	Held			

BILLS ENACTED AND SIGNED BY THE GOVERNOR

LB 12 (Mines) Change the Commercial Dog and Cat Operator Inspection Act

Date of Public Hearing: 1/16/07

Date Reported from Committee: 2/05/07

Committee Amendment: AM161

Other Adopted Amendments: AM317, AM637, AM948, ER8029

Effective Date: September 1, 2007

LB 12 effects various changes to the Commercial Dog & Cat Operator Inspection Act, most notably to increase the Department's inspection activity. The bill also clarifies disciplinary procedures, adds administrative fine as a disciplinary option, clarifies fee provisions and specifies appropriations. The substantive changes to current law are found in sections 3, 5 and 8 of the bill. The primary substantive elements of the bill include:

- Section 3 of the bill amends §54-628 to replace existing direction to establish an inspection program with prescribed annual inspection of all existing licensed facilities. Section 5 similarly amends §54-630 to change from permissive to mandatory the inspection of an applicant's facilities prior to issuance of an initial license. A harmonizing deletion to existing text that currently authorizes, but does not require, the Department to perform inspection as an application procedure is made to §54-627 by section 2 of the bill.
- A clarification to the licensure fee provisions contained in §54-627 are made under section 2 of the bill to specify that the determination of the fee under a sliding scale is based upon the number of dogs and cats rather than all animals, and provides for a flat fee if the licensee does not harbor dogs and cats.
- A new subsection 3 of §54-633 is added by section 8 of the bill to authorize administrative fine not exceeding \$5000 as an enforcement action that may be imposed for violation of the Act or regulations. Corresponding harmonizing or implementing changes are made elsewhere in the Act as follows:
 - Administrative fine as set forth in §54-633, and administrative order to cease and desist, are added under section 6 of the bill as a disciplinary response that may be imposed for non-compliance with the Act.
 - Rule and regulatory authority under §54-629 is revised by section 4 of the bill to include authority to identify factors considered when imposing administrative fine.
 - Harmonizing changes to the disciplinary process, including changes in internal reference to sanctions that may be imposed under §54-631 and to the elements of notice to licensees of administrative hearing prescribed by §54-632, are made under sections 6 & 7 of the bill.
 - A new section is added to the Commercial Dog and Cat Operator Inspection Act by Section 9 of the bill to specify disposition of any administrative fine collected to conform to cited constitutional provisions and to declare unpaid administrative fines as a debt to the state and to prescribe a collection mechanism of lien foreclosure.

As introduced, section 10 of the bill stated legislative intent to appropriate \$411,559 general funds and \$127,000 cash funds for FY2007-08 to carry out the Commercial Dog and Cat Operator Inspection Act.

The adopted committee amendment (AM16) as modified by AM317 made the following revisions:

- Eliminated original section 10 stating legislative intent to appropriate specific funds. Appropriations necessary to carry out the purposes of LB 12 are specified in LB12A.
- Reduced the frequency of regulator inspection of licensees specified in changes made to §54-628 to specify inspection of licensees only every other year rather than annually. A requirement for precensure inspection under §54-630 as a prerequisite for initial licensure under the act contained in the original bill was not affected. Parallel language in §54-627 struck as obsolete under section 2 of the introduced bill was restored as modified to conform to changes elsewhere in the act.
- Adds instruction in amendments to §54-628 under section 3 of the bill that additional field personnel employed for this purpose that are funded through general fund appropriation shall be available for temporary reassignment to other Bureau of Animal Industry activities in the event of the livestock health emergency or other threat to public or livestock health.

The enacted version of LB 12 included additional clarification to the schedule of initial and annual license fees provided under §54-627. Current law directs the Department to implement a graduated fee schedule based on volume with a statutory cap of \$250 for the highest fee category and with a discount fee for an initial license. As revised by adoption of AM948, §54-627 would statutorily prescribe a graduated fee schedule based on volume with a \$250 initial maximum fee, and also clarifies that the fee scale graduation is based on average daily number of animals housed by the licensee. The enacted bill also specifically sets an initial license fee of \$125 for all new licensees and a flat fee of \$150 if the licensee does not harbor dogs or cats. The revisions authorize the schedule of fees to be adjusted periodically following public hearing provided the maximum fee does not exceed \$350.

LB 25 (Langemeir) Change rabies control provisions to include hybrid animals

Date of Public Hearing: 1/16/07

Date Reported from Committee: 1/18/07

Committee Amendment: AM23

Other Adopted Amendments: AM29, AM231, FA7, ER8000,

Effective Date: September 1, 2007

The substantive provision of LB 25 is found in section 3 which inserts a new section into a series of rabies control provisions with the public health statutes setting forth requirements for vaccination for rabies of hybrid animals. Specifically, section 3 provides as follows:

- Requires hybrid animals to be vaccinated with a “licensed vaccine determined scientifically to be reliable in preventing rabies in hybrid animals,” and initially vaccinated and revaccinated as specified in rule and regulation. Requires vaccination of previously unvaccinated hybrid animals within 30 days of arrival in the state.
- Restricts sale of rabies vaccine to licensed veterinarians.
- Prohibits ownership of a hybrid animal if a vaccine determined scientifically reliable is not available. Possession of a hybrid animal owned prior to the effective date of the bill that would be in noncompliance may continue for the lesser of a period of one year or until transferred out-of-state, provided the animal is kept in adequate enclosure.

“Hybrid animal” is added as a defined term to §71-4401 by section 1 of the bill. Hybrid animal is defined to mean the product of the mating of a domestic animal with a nondomestic animal or the mating of a nondomestic animal with other species of animal.

Existing rule and regulation authorization currently contained as subsection (3) of §71-4402 is set out as a separate statute by Section 4 to avoid confinement of this authority only to domestic animals by its current placement. The remainder of the bill makes conforming changes throughout other rabies control provisions by incorporating new sections 3 & 4 into internal references and extending application to hybrid animals.

The adopted committee amendment (AM23) strikes a portion of the definition of “hybrid animal” to confine the definition only to animals that are a cross between domestic animals and non-domestic animals. The definition of hybrid animal was further confined by adoption of FA07 to apply only to canine hybrid crosses (feline species excluded). In enacted form, LB 25 would further subject compliance with rabies control requirements as defined by the bill to hybrid animals obtained after the effective date of the bill. Owners would be subject to compliance for animals owned prior to the effective date of the bill only within 1 year of the development of an acceptable rabies vaccine for such animal.

LB 69 (Hudkins) Change the Agricultural Opportunities and Value-Added Partnerships Act

Date of Public Hearing: 2/27/07

Date Reported from Committee: 3/07/07

Committee Amendment: AM562

Other Adopted Amendments: ER8087

Effective Date: September 1, 2007

LB 69 as introduced provided for an earmark of 25% of the grant funds awarded through Agricultural Opportunities and Value-Added Partnerships Act for qualifying specialty crop development purposes. “Specialty crop” is added as a defined term within §2-5415 under section 1. Section 2 amends §2-5416 to add encouragement of enterprises in the production and marketing of specialty crops as an additional enumerated purpose of the Agricultural Opportunities and Value-Added Partnerships Act. Entities eligible for grant awards in §2-5418 is revised under section 4 of the bill by eliminating an eligibility requirement for farming or ranching operations to be part of a collaborative arrangement with other operations or entities. The adopted committee amendment (AM562) struck section 3 thereby omitting the earmark of 25% of grant funds for specialty crop projects from the enacted version of the bill.

LB 74 (Erdman) Change the Nebraska Pure Food Act

Date of Public Hearing: 1/23/07

Date Reported from Committee: 1/24/07

Committee Amendment: none

Other Adopted Amendments: ER8008

Effective Date: February 15, 2007

LB 74 is brought at the request of the Department of Agriculture to update provisions of the Nebraska Pure Food Act to incorporate provisions and concepts contained in the 2005 Food Code.

The Nebraska Pure Food Act currently incorporates the provisions of the 2001 Food Code (LB 250, 2003).

The Nebraska Pure Food Act (§§81-2,239 to 81-2,292) is the primary body of state law regulating food establishments (groceries, restaurants, institutional food providers, etc.) where food is prepared for and/or delivered to a final consumer. The Pure Food Act establishes standards for sanitation, preparation, storage and accurate presentation of food items. It is updated every 4 years to incorporate regulatory experience and advancements in understanding means of mitigating risk factors for food borne illness. Nebraska is among the majority of states that incorporate the model provisions of the Food Code, a publication of the U.S. Public Health Service, Food & Drug Administration. While most provisions of the Food Code are incorporated by reference directly, some provisions are adopted in modified form as set forth in sections of the Nebraska Pure Food Act, and some provisions may be omitted. Incorporation of the Food Code and related documents is accomplished under §81-2,239. Those provisions omitted are listed in §81-2,244.

Sec. 1: Amends citation section to incorporate section 3 of the bill within the Nebraska Pure Food Act.

Sec. 2: Defines the Food Code incorporated within the Nebraska Pure Food Act under §81-2,239 as the 2005 Recommendations of the United States Public Health Service, Food and Drug Administration (2005 Food Code) except as excluding the definitions of “adulterated food” and “food establishment” (these terms are defined by state statutory provision within the Nebraska Pure Food Act) and excluding listed sections of the 2005 Food Code.

Sec. 3: Adds a definition for “itinerant food vendor.” Itinerant food vendor is defined to mean persons selling prepackaged, potentially hazardous foods from approved sources as non-permanent locations. Food establishments that fall within the definition of an itinerant food vendor are currently defined as convenience stores.

Sec. 4: Amends §81-2,257 by correcting citation to critical violations due to changes elsewhere in the act.

Sec. 5: Amends §81-2,270 to revise permit and inspection fees imposed under the Nebraska Pure Food Act. All existing permit and inspection fee categories are retained except that a new fee category for “itinerant food vendor” as defined by section 3 of the bill is added. Itinerant food vendors are currently included within food establishments defined as convenience stores for purposes of fees established under current law. The revisions to fee amounts shown are revisions to the statutory maximum fee. Current provisions governing annual fee setting parameters are not affected by the bill and therefore actual fees are set annually by the Director to achieve fee revenues no greater than 108% of the annual cash fund appropriation and to end with a cash fund carry over balance of no greater than 17% (2 month reserve) of the cash fund appropriation.

Charges for late payment of fees imposed under Subsection (6) of §81-2,270 are clarified to be for charges for purposes of recovering additional administrative expense incurred to collect fees not timely paid and to specify that late fees are to be deposited in the Pure Food Cash Fund. Current law does not expressly distinguish late fees under this section from administrative fine or penalty which disposition is directed to the support of the common schools in conformity with Article VII, Section 5 of the state constitution.

Sec. 6: Amends §81-2,270.10 to modify provisions relating to hand washing and bare hand contact with foods in food preparation and serving. Current law allows only minimal hand contact only after hand washing. The revision to this section more specifically reference hand washing standards specified elsewhere in the Nebraska Pure Food Act and limits hand contact to ready-to-eat foods excluding serving highly susceptible populations. Note-this section substitutes for excluded provisions of the 2005 Food Code which are more restrictive of bare hand contact.

Sec. 7: Amends §81-2,272.17 by removing an internal citation to a statutory section of the Nebraska Pure Food Act outright repealed under Section 12 of the bill. The stricken text references a provision that currently allows exception to a notification to consumers required under this section pertaining to raw and undercooked foods of animal origin. The section currently referenced exempts steak cuts specifically ordered by a customer in an undercooked state provided the item has at minimum been surface seared. The repealed statutory section substitutes for an excluded provision of the 2001 Food Code. LB74 would incorporate the corresponding 2005 Food Code recommendation which is now identical to existing state law.

Secs. 8-9: Amends §81-2,274.24 and §81-2,274.24 to modify provisions relating to how long food may be kept in a food establishment before consumption or discarding and how the food must be dated after opening or preparation. As modified, these sections would continue existing modification of excluded provisions of the 2001 Food Code that are carried forth into to the 2005 Food Code. Existing Nebraska law and as provided under LB 74 differs from both 2001 and 2005 Food Code recommendations that required food establishments to have capability to hold foods at 41° within 5 years. Existing Nebraska Pure Food Act provisions do allow longer holding times provided under the Food Code holding standards when establishments are equipped with suitable equipment, but adopt shorter holding times before foods must be discarded when cooling equipment is not capable of meeting the 41° cold holding temperature.

LB74 revisions utilize terminology consistent with the 2005 Food code for referring to potentially hazardous foods requiring time and temperature controls for safety, and by incorporating exceptions for specific types of foods as specified in the 2005 Food Code. That foods must be consumed or sold before exceeding the time and temperature controls or discarded is made an express requirement.

Sec. 10: Provides for an operative date of July 1, 2007 to apply the new fee schedule imposed pursuant to section 5 of the bill beginning in FY 07-08.

Sec. 11: Repealer section.

Sec. 12: Sections outright repealed.

Sec. 13: Emergency Clause.

LB 108 (Agriculture Committee) Change provisions relating to fence disputes

Date of Public Hearing: 1/30/07

Date Reported from Committee: 1/31/07

Committee Amendment: AM172

Other Adopted Amendments: ER8022

Effective Date: March 9, 2007

LB 108 is a substantial modernization of the law of division fences (§34-101 to §34-117). The bill redefines the responsibility of adjacent landowners for division fences, eliminates provisions for fenceviewers and duties of counties with respect to fence disputes, and provides for a direct cause of action under prescribed procedures for pursuing contribution for fences. The primary changes are found in sections 3 and 6, and in the sections outright repealed under section 10 of the bill. The elements of the bill include the following:

- §34-102 is amended by section 3 to redefine circumstances when adjoining landowners are assigned shared responsibility for fence construction and maintenance and the proportional contribution each is liable for. Current section §34-102 assigns a duty to each landowner to make and maintain a “just proportion” of the fence between them unless neither landowner desires a fence. LB 108 would make the following changes:
 - Clarifies that within areas zoned primarily for agricultural or horticultural use, the duties assigned adjoining landowners under the section applies when either or both properties are used for agricultural use. An area zoned primarily for agricultural or horticultural use is defined by reference to similar terminology under greenbelt statutes (§77-1343). In all other areas of the state, the law would apply only when both adjoining properties are utilized for agricultural use
 - Retains provision of existing law that adjoining landowners have responsibility to contribute a “just proportion” but specifies an equal share allocation only when both landowners utilize the fence for livestock enclosure. Retains current law specification that this section does not compel construction of a division fence neither landowner desires.
 - Section §34-112 pertaining to liability for repair of a damaged fence is amended by section 4 to conform with the proportional allocation of liability and locational specifications of §34-102 as amended by Section 3 of the bill. A duty to respond to a request for performance of such duty with this section is made obsolete by section 6 of the bill and eliminated.
 - A conforming citation to the law of division fences contained in §37-1012 is made by Section 8 of the bill.
- Existing causes of action to allow landowners to recover one-half of the construction cost of a new fence and to recover costs of repair of a damaged fence that are the responsibility of an adjacent landowner contained in outright repealed sections §34-103 and §34-113 are consolidated and replaced in a new section 6. Section 6 provides as follows:
 - Provides that a landowner gives rise to a cause of action to compel an adjacent landowner to fulfill his or her statutory duties for contribution by first serving upon the adjacent landowner written notice of intent to construct, maintain or repair a division fence. The notice is to contain a request that the adjoining landowner fulfill statutory fencing duties through actual physical construction or financial contribution. Clarifies that after giving notice, a landowner may initiate or complete construction or repairs, in which case the cause of action would be for contribution only.

- If the adjacent landowner is unresponsive to the written notice, the landowner may commence an action within one year of giving written notice in the county court of the county where the fence is located. The action may be commenced by filing a form for such purpose prescribed by the state court administrator. Notice and summons of such action are to be given according to procedures modeled upon those specified for actions initiated in small claims court.
 - Directs that parties are to receive information regarding mediation services available as alternative dispute resolution, and with consent of both parties, a court may refer to mediation. Harmonizing changes to the Farm Mediation Act are made by sections 1 and 2 of the bill to accommodate acceptance of referred fence disputes.
 - If mediation succeeds in mutually signed agreement, the court enters the agreement as the judgment. Parties pay mediation costs directly to the mediation service.
 - If mediation fails, or the parties do not request mediation, then the case proceeds according to normal civil procedure.
- A limited right of entry upon adjacent land necessary for fulfilling fencing responsibilities is defined in new Section 5 of the bill. Section 5 defines access as confined to that reasonably necessary to carry out activities contemplated under the law. The section further specifically excludes authorization for tree removal or other alteration upon other property, or removal of personal property, without consent of the landowner or court order.
 - Specifies that existing law and procedure continues to apply only to division fence disputes arising before the effective date of the bill.
 - Outright repeals sections §34-104 through §34-111 which currently provide for the appointment of fenceviewer panels to hear and determine fence disputes. Current law assigns duties to county clerks to maintain and appoint fenceviewers and to collect costs of construction or repair of division fences ordered by fenceviewers through special assessment.
 - Outright repeals §34-101 which authorizes placing a protection fence to assist the growth of live fences adjacent to a public road or highway for a period of seven years.

The adopted committee amendment (AM172) changes the term “petition” to “complaint” to designate the document initiating the civil process contained in section 6.

LB 110 (Erdman) Adopt the Bovine Tuberculosis Act

Date of Public Hearing: 1/23/03

Date Reported from Committee: 1/24/07

Committee Amendment: AM78

Other Adopted Amendments: ER8005

Effective Date: February 15, 2007

LB 110 is a comprehensive update to provisions providing duties and authorities of the Department of Agriculture pertaining to bovine tuberculosis to provide appropriate statutory authorities to the Department of Agriculture to carry out TB prevention and eradication activities consistent with the most recent Uniform Methods and Rules for Bovine Tuberculosis Eradication (January 1, 2005).

Requirements for states and zones to advance to and retain TB accreditation stages are set forth in 9 CFR 77 and in the most recent publication of the Animal and Plant Health Inspection Service publication of Uniform Methods and Rules: Bovine Tuberculosis Eradication effective January 1, 2005. These include sufficient authorities for state animal health authorities to carry out surveillance, quarantine, depopulation and herd and premise cleanup procedures.

The section-by-section summary of LB 110 as introduced:

Sec. 1: Names the act the Bovine Tuberculosis Act.

Sec. 2: States the purpose of the act is to maintain Nebraska's status as a tuberculosis accredited free state.

Sec. 3: Establishes definitions for use in the act, which include definitions in the federal regulations and Uniform Methods and Rules adopted by reference in Section 4.

Sec. 4: Adopts by reference into the Bovine Tuberculosis Act Part 77 of Title 9 in the Code of Federal Regulations and the Bovine Tuberculosis Eradication Uniform Methods and Rules, in effect on the effective date of the bill. This section also establishes a hierarchy of authority if any inconsistency between the act, the regulations, and the Uniform Methods and Rules exists.

Sec. 5: Provides authority to the Department of Agriculture in regard to cooperating and contracting with public and private entities, access to records of dealers and livestock markets, and access to premises where animals are for inspections and tests. It requires dealers and markets to maintain those records for five years.

Sec. 6: Imposes a duty on all persons to immediately report animals exhibiting signs of bovine tuberculosis. Also imposes a duty on owners or custodians of animals exhibiting such signs to submit such animals to be tested when ordered by the State Veterinarian.

Sec. 7: Grants authority to adopt regulations concerning manner, method, and system of testing and any other regulations necessary to carry out the act. Also establishes who may conduct the tests and imposes a requirement of reporting the tests to the State Veterinarian.

Sec. 8: Grants authority to quarantine animals and premises and sets the quarantine restrictions.

Sec. 9: Establishes responsibility for cleaning and disinfecting premises due to a health hazard to animals because of bovine tuberculosis.

Sec. 10: Owner and custodian of an affected herd is required to assist in bovine tuberculosis examination and testing.

Sec. 11: Grants authority to the Department of Agriculture to assess and collect payment for services provided and expenses incurred in performing duties under the act.

Sec. 12: Creates the Bovine Tuberculosis Cash Fund and provides that the fund shall be used to carry out the act.

Sec. 13: Permissive authority for the Department of Agriculture to utilize state funds appropriated for the benefit of herd owners. Such funds may be used to pay a portion of the costs of testing, but shall not be used to pay for:

1. Testing for change of ownership at private treaty or at concentration points;
2. Costs of gathering animals to test;
3. Herd accreditation testing to qualify for or maintain accreditation; or
4. Indemnity for destroyed bovine tuberculosis affected animals.

The department is not liable for costs incurred by a person due to departmental actions in enforcing the act.

Sec. 14: Prohibits any person other than an accredited veterinarian from injecting or applying tuberculin into an animal. Also prohibits any person, including a veterinarian, from injecting or applying tuberculin into an animal for the purpose of plugging, fraudulently concealing the presence of bovine tuberculosis, or preventing future reactions to tuberculin.

Sec. 15: Establishes authority for the department to obtain a restraining order or injunction for enforcement. The Attorney General or a county attorney is to institute appropriate proceedings when notified of the violation or threatened violation.

Sec. 16: Provides authority for administrative cease and desist order to obtain compliance with the act. The department may pursue remedies other than the cease and desist order when there is a violation of the act or regulations.

Sec. 17: Violations of the act or regulations constitute a Class II misdemeanor.

Sec. 18: An amendment to conform the Nebraska Manufacturing Milk Act with the changes in this bill. This change is consistent with the current Nebraska Pasteurized Milk Law and another proposed legislative bill on milk law changes.

Sec. 19: Repeal the amended section in the Nebraska Manufacturing Milk Act.

Sec. 20: The outright repeal of sections which are no longer necessary because of the Bovine Tuberculosis Act.

The adopted committee amendment (AM78) changed from mandatory to permissive the authority of the Department found in subsection (2) of section 5 of the bill to cooperate and contract with appropriate local, state or national organizations for the performance of activities related to the bovine TB eradication authorities provided by the bill. AM78 also added the emergency clause.

LB 111 (Erdman) Change provisions relating to milk

Date of Public Hearing: 1/23/07

Date Reported from Committee: 1/24/07

Committee Amendment: none

Other Adopted Amendments: AM186, ER8011

Effective Date: September 1, 2007

LB 111 is brought at the request of the Department of Agriculture to update provisions of the Nebraska Pure Food Act to incorporate most recent federal model provisions pertaining to the regulation of milk and to consolidate the Grade A and manufacturing grade milk laws. The bill also revises associated permit and inspection fees. The primary purposes of LB 111 are as follows:

- Consolidates two separate laws, the Nebraska Pasteurized Milk Law (§2-3901 to §2-3912) and the Nebraska Manufacturing Milk Act (§2-3913 to §2-3945) into one Act to be known as the Nebraska Milk Act. The bill would utilize selected existing sections of these acts as recodified and as modified to retain distinctions between utilization of milk for either Grade A or manufacturing grade purposes where appropriate. Existing sections of §2-3901 to §2-3945 that become obsolete or duplicative because of the consolidation are outright repealed under Section 31 of the bill.
- Incorporates the most recent publication of the United States Department of Health and Human Services, Public Health Service and the Conference on Interstate Milk Shipments titled the Grade A Pasteurized Milk Ordinance, 2005 Revision (2005 PMO), as the basic body of regulation governing sanitary practices for Grade A milk. Nebraska law currently incorporates the 1999 PMO Revisions.
- Adapts new permit and inspection categories and fees to reflect evolution of the milk industry since the fees were last changed in 1980, the elimination of duplicative and conflicting fee categories within the Manufacturing Milk Act, and to address stagnating fee revenues in order to maintain current allocation of milk inspection program costs between cash and general funds.
- Incorporate certain fee setting and cash fund management principles to annually set fees within a statutory cap to achieve fee revenues only as needed to meeting current year resource needs and to avoid excessive cash fund buildup that occurs with statutorily-prescribed fees.
- Technical cleanup and statute updating to reflect current practice.

Sec. 1: Amends §2-3901 to reflect citation of §§1 – 28 of the bill and the 2005 Grade A Pasteurized Milk Ordinance (PMO) as the Nebraska Milk Law. The provisions of the PMO are incorporated except as modified or excluded within the definition of this document. Corrected internal reference and citation within this section to statutory replacement of excluded PMO provisions due to consolidation and reorganization of the milk laws are made.

Sec. 2: Recodifies §2-3914 which currently defines terms utilized within the Manufacturing Milk Act and adapts this section to define terms utilized in the Nebraska Milk Act which are not defined under incorporated Section 1 of the 2005 PMO.

Sec. 3: Recodifies §2-3902 as revised with conforming internal citation and deletion of obsolete internal citation.

Sec. 4: Inserts a new section making necessary distinction of permit classifications due to combining of Grade A and manufacturing grade statutes that were previously permitted under separate laws.

Sec. 5: Recodifies §2-3903. A conforming clarification is made in this section due to its applicability to both Grade A and manufacturing grade milk and milk products. The existing exemption of direct sales of raw milk and milk products from pasteurization and other requirements that normally apply to milk sold to a final consumer is clarified to apply only to raw milk and cream. Conforms internal citations.

Sec. 6: Recodifies §2-3904 as revised to conform an internal citation.

Sec. 7: Recodifies and revises the schedule of permit and inspection fees in §2-3906. Retains existing Pasteurized Milk Law permit fees until July 31, 2008 and inspection fees until

September 30, 2007. New inspection fee categories are established and assigned for payment to either milk plants or first purchasers of milk as appropriate. Current statutorily-prescribed fees are replaced with statutory maximum within which the Department may annually set the actual fee. The actual fee set annually by the director is limited by fee-setting parameters prescribed by this section such that the fee cannot be set at a level to receive more than 107% of the cash fund appropriation or result in an anticipated year-end cash fund carryover balance exceeding 17% (two-month reserve) of the cash fund appropriation.

Sec. 8: Recodifies §2-3907 as revised to conform internal citations.

Sec. 9: Recodifies §2-3908 as revised to allow rule and regulatory authority currently confined by this Sec. to implementation of the Pasteurized Milk Law to apply to the entire act.

Sec. 10: Recodifies §2-3910 as revised to conform internal citations. New text is inserted that creates a criminal violation of impeding or obstructing the director in performance of enforcement of the Act or regulations.

Sec. 11: Recodifies §2-3911 as revised to conform internal citations.

Sec. 12: Recodifies §2-3913 as revised to conform internal citations. Revisions to this section also provide for transfer of the balance of terminated Manufacturing Milk Cash Fund established under outright repealed section §2-3930 to the Pure Milk Cash Fund on the effective date of the bill.

Sec. 13: Inserts a new section defining the position of field representatives of milk plants and other first purchasers of raw milk from producers. Duties to be performed by field representatives are enumerated and qualification by training and examination are prescribed. This section is a modification of existing provisions of the Manufacturing Milk Act found in outright repealed §2-3941.

Sec. 14: Recodifies §2-3913 as revised to eliminate obsolete text confining applicability of this section to milk for manufacturing use.

Sec. 15: Recodifies §2-3915.

Sec. 16: Recodifies §2-3916 containing odor standards for raw milk for manufacturing purposes with a necessary clarification to continue to confine this section to manufacturing grade milk.

Sec. 17: Recodifies §2-3917 containing various standards of raw milk for manufacturing purposes with necessary clarification to continue to confine application of this section to manufacturing grade milk. This section is further amended to replace somatic cell standards and procedures and drug residue testing for manufacturing grade milk with those standards under the 2005 PMO.

Sec. 18: Recodifies §2-3917.01 containing existing Manufacturing Milk Law standards for sediment with clarification to continue to confine applicability of this Sec. to manufacturing grade milk. Corrects a reference to the Code of Federal Regulations for methods of determining sediment levels.

Secs. 19 – 25: Recodifies consecutive sections of Manufacturing Milk Law (§2-3919 through §2-2925) as each section is revised to continue to confine applicability of these sections to manufacturing grade milk.

Sec. 26: Recodifies §2-3935 as revised to delete current provisions relating to the pasteurization of milk and milk products to avoid duplication of, and conflict with, most up-to-date requirements in the 2005 PMO. Existing pasteurizing instructions for cream used in butter making is retained except as modified to remove a requirement related to vat method of pasteurization.

Sec. 27: Recodifies §2-3937.

Sec. 28: Amends §2-3942 of Manufacturing Milk Law regarding access to facilities to remove obsolete text confining applicability of this section to facilities associated with manufacturing milk only.

Sec. 29: Amends §81-2,270 of the Nebraska Pure Food Act to harmonize a reference to milk laws due to changes elsewhere in Act.

Sec. 30: Repealers of section amended by the bill.

Sec. 31: Outright repealed sections

LB 422 (Erdman) Change Membership of the Nebraska Brand Committee

Date of Public Hearing: 1/30/07

Date Reported from Committee: 1/31/07

Committee Amendment: AM154

Other Adopted Amendments: ER8018

Effective Date: March 8, 2007

LB 422 revises the membership of the Nebraska Brand Committee under §54-191 to remove the Secretary of State as a permanent member and chairperson. Membership and governance of the Committee is then revised as follows:

- Adds an additional cattle producer member appointed by the Governor retaining qualifications for membership as currently prescribed.
- Reflects existing allocation of representation on the Committee of cattlemen and feeders by specifying that at least three members continue to be cattlemen and at least one member is a feeder.
- Adds the Secretary of State and the Director of Agriculture or their designees as non-voting, ex-officio members of the Committee.
- Provides for annual election of a chair and vice-chair of the Committee from among its appointed producer members.

Sections 2 & 3 reassign two duties currently vested in the Secretary of State by virtue of the Secretary of State's designation as Chair of the Brand Committee.

- Amends §54-192 to provide for meetings of the Brand Committee at the call of the chair or vice-chair.
- Amends §54-194 to vest the Director of the Brand Committee or the chair of the Brand Committee with authority to authenticate brand recording documents by signature.

The committee amendment (AM154) adopted during general file made certain changes to address transitional issues but do not alter the substantive purposes of the bill as introduced. The adopted committee amendment added the emergency clause to allow an operative date for changes to the Brand Committee membership brought about by the bill to coincide with the terms of Brand Committee members which commence on August 28 of the year. The amendment further clarifies that the Secretary of State continues as chair of the Brand Committee until a new chair is selected according to the mechanisms of the bill.

LB 435 (Raikes) Provide for a State Fair Master Plan

Date of Public Hearing: 2/13/07

Date Reported from Committee: 4/02/07

Committee Amendment: AM854

Other Adopted Amendments: ER8095

Effective Date: May 17, 2007

As introduced, LB 435 would have amended §2-111 by inserting a new subsection (2) assigning a duty to the State Fair Board to provide to the Governor and the Legislature a Nebraska State Fairgrounds Master Plan. The master plan was to be submitted no later than November 1, 2007 and developed in consultation with the city of Lincoln, Lancaster County, and the State Building Division of the Department of Administrative Services. Elements of the master plan were prescribed as follows:

- a) current and updated plan for use of the Nebraska State Fair Park over a 15-year planning period
- b) 15-year cash flow analysis of costs associated with the plan
- c) projected status of deferred maintenance at the end of the planning period
- d) economic cost-benefit analysis accruing from the plan
- e) analysis of cost savings from co-location of the state fair at the site of another agricultural exposition site

As introduced, LB 435 would also amend §2-106 to limit the “disbursement” of funds for improvements to State Fair Park beyond general maintenance and repairs or as necessary to correct fire or safety deficiencies.

The adopted committee amendment (AM854) struck the original sections to become the bill. The amendment substitutes a study by the Agriculture Committee of programming needs to conduct a state fair and enhance other utilization of a state fair campus and the costs to achieve such programming needs at State Fair Park or at a new site. Sections 1 & 2 amend §2-108 and §2-111 to direct the Fair Board to cooperate with the Ag Committee study and authorizes the State Fair Board to commit funding to underwrite such study project.

A new section 3 is added directing the Agriculture Committee, with the assistance of DAS, to perform a study with the following elements:

- Identification of capital facilities and infrastructure required at present state fair site to meet 15-year program needs to serve as state fair and to maximize off-season utilization and 15-year cash flow projection incorporating capital improvements to meet such program need.
- Identification of capital facilities and infrastructure required at alternative location to meet comparable 15-year program need and 15-year cash flow projection.

This section further directs that the Ag Committee study would be assisted by analysis and recommendations relevant to the purposes of the study by an independent consultant commissioned with the assistance of the DAS. Costs of the study are to be underwritten by contributions received by DAS for that purpose (i.e. funds contributed by State Fair Board as authorized elsewhere in the amendment). Such independent consultant report is to be submitted on or before November 15, 2007. The Ag Committee is directed to provide a report of its findings and recommendation by December 15, 2007 with an intervening public hearing of the committee held after receipt of the consultant report.

Section three and revisions to §2-111 in section 2 terminate on January 1, 2008. The Committee amendment added the emergency clause.

LB 516 (Agriculture Committee) Adopt the Corporate Farming Policy Advisory Act

Date of Public Hearing: 2/06/07

Date Reported from Committee: 4/26/07

Committee Amendment: AM1132

Other Adopted Amendments: ER8106

Effective Date: March 25, 2007

LB 516 as introduced creates the Corporate Farming Policy Advisory Council charged with the tasks of developing policy recommendations vis-à-vis corporate farming activity. The bill provides for the Council to complete its task in two phases culminating in submission of a corporate farm policy plan prior to the 2009 legislative session. The bill contains the emergency clause. The elements of LB 516 as introduced include the following:

- Formation of Council: (Section 2, subsections 1 & 2)
 - Provide for appointment of Council consisting of up to 18 person's representative of a listing of seven categories of persons. The bill further specifies that membership be chosen to be representative of the state both geographically and philosophically.
 - Provides for an initial appointment of seven Council members each by the Governor and Chairperson of the Agriculture Committee and an additional round of appointments of up to 4 additional members to achieve the diversity of representation contemplated. Appointments are to be completed within 30 days of the effective date of the bill.
 - Provides for the ex-officio, non-voting appointment of designated state agency heads or their designees.

- Operations of the Council: (Section 2, subsections 3 – 6)
 - Directs the council to select a chair and vice chair. Specifies 11 members to constitute a quorum and 3/5 majority vote of the voting membership to adopt recommendations. The council is directed to meet at least six times through December 1, 2008.
 - Council members are not compensated but reimbursed for actual or necessary expenses.
 - Places the council within the Department of Agriculture for purposes of providing administrative and operational services to the Council. Authorizes the Department of Agriculture to contract for the services of a meeting facilitator and other assistance of legal and economic experts to assist the task force in its work, within funds available.

- Duties of the Council and schedule of completion:

The Council is charged with two duties completed in two phases. The initial phase of the Council process is contained in Sections 3 and 4 of the bill:

- Section 3 directs the Council to submit a report of findings and recommendations to the Legislature and the Governor by December 1, 2007. The report is to identify available “policy instruments” for asserting public policy regarding corporate farming activity and that such recommendations may include, although not limited to nor necessarily requiring, proposed constitutional revisions in consideration of the cited ruling of the Federal District Court and subsequent rulings finding Article XII, Section 8 of the state constitution to be invalid, enjoined or restricted in application
- Section 4 provides for the Agriculture Committee to receive the initial report of the Council in a public hearing on or before December 15, 2007, and further provides for preparation of legislation to implement recommendations of the Council.

The second phase of the Council process is defined by sections 5 & 6 of the bill:

- Section 5, subsections 1 & 2 direct the Council to develop a Corporate Farming Policy Plan presented to the Legislature and the electorate for advancing identified public policy objectives of preserving farm ownership and farming and ranching in dispersed family farm operations and in forms consistent with responsible stewardship of natural resources. In making such recommendations, the Council shall also consider and address the business management tools that should be made available to agricultural producers to remain competitive in the evolving farm economy, to facilitate intergenerational transfers of agricultural assets, to access capitol and manage risks, and to produce within cooperative arrangements. The Council plan shall also address issues associated with the Americans with Disabilities Act.
- Subsection (3) of subsection 5 directs the council to meet at least 4 times prior to August 1, 2008 for purposes of receiving and evaluating data and input of expertise with the objective of developing a draft corporate farming policy advisory plan. This subsection provides for the minutes and copies of materials received to be available to the public. Provides that the Council shall present the draft plan and receive public input at least one public hearing in each of the congressional districts. The Council is directed to meet one time at the conclusion of public hearing to finalize the plan. The plan shall be submitted to the Legislature and the Governor on or before December 1, 2008.
- Section 6 provides for the Agriculture Committee to receive the initial report of the Council in a public hearing on or before December 15, 2007, and further provides for preparation of legislation to implement recommendations of the Council.

- Cash Fund: Section 7 creates the Corporate Farm Policy Cash Fund to receive any appropriations or other contribution received for carrying out the purposes of the Act.

The adopted committee amendment (AM1132) struck the original provisions and become the bill. The committee amendment eliminates formation of a separate task force to provide recommendations to Legislature and merely stated legislative findings and intent to assist the Agriculture Committee in a study to understand the implications of the I-300 litigation and to develop appropriate policy options in response. Simultaneous with advancement LB 516 in amended form, interim study resolution LR 93 assigning such research task to the Agriculture Committee was introduced. As amended, the enacted version of the bill contained the following sections:

Sec. 1: States legislative findings that federal district court ruling holding Article XII, Section 8 (i.e. I-300) of the Nebraska Constitution of Nebraska has implications for the future structure and development of agricultural production.

Sec. 2. States legislative intent to facilitate study by the Agriculture Committee to determine appropriate policy responses, including but not limited to, potential for revision of Article XII, Section 8, to advance state interests that exist in the structure, development and progress of agricultural production. The section provides that the Executive Board of the Legislature may, in consultation with the Agriculture Committee of the Legislature, commission expertise in appropriate fields of study and practice for research and assistance of such study by the Agriculture Committee. The accompanying A-bill (LB516A) provides for a \$50,000 general fund appropriation to the Legislative Council for this purpose.

Sec. 3: States legislative intent that the Attorney General perform or acquire such research as may be appropriate to assist the Agriculture Committee in determining appropriate policy response, including but not limited to potential for revision of Article XII, Section 8 of the Nebraska Constitution, to advance state interests that exist in the structure, development and progress of agricultural production. The section sets forth specific authority for the Attorney General to contract with expertise in appropriate fields of study to carry out the intent stated in this section.

Sec. 4: Emergency clause.

BILLS ENACTED BY INCORPORATION INTO OTHER ENACTED BILLS

LB 46 (Hudkins) Require payments by grape producers

Date of Public Hearing: 2/27/07

Date Reported from Committee: 3/07/07

Committee Amendment: AM607

Other Pending Amendments:

Provisions/purposes of LB46 enacted as sections 2-7 of LB441

LB 46 as introduced amends §54-304 to provide for a \$20 / ton assessment on grapes collected from grape producers paid to the Department of Revenue. Revenues from this assessment are directed to the Winery and Grape Producers Promotional Fund.

The pending Agriculture Committee amendment (AM607) strikes the original provisions and becomes the bill. The amendment essentially substitutes a grape assessment collection mechanism implemented by the Department of Agriculture similar to mechanisms utilized in other commodity assessment programs. The amendment contains the following elements:

- Imposes an excise tax of 1 cent / lb upon grapes purchased from growers through commercial channels or delivered in Nebraska. Defined terms for “commercial channels”, “Delivered or delivery”, “first purchaser”, and “grower” are provided by section 1. The imposition of the assessment is qualified by applicable definition or direct exclusion as follows:
 - Does not apply to grapes purchased or received for ultimate consumption as table grapes.
 - Does not apply to grapes received for storage only (will not be utilized for processing by the receiver).
 - Excludes any sales of grapes to the federal government for food purchase programs where imposition of the excise tax would be prohibited by federal law.
- Provides for a first purchaser mechanism of collection:
 - Assigns a duty for first purchasers to deduct the amount of the assessment from the payment made to growers at the time of settlement.
 - Provides that twice annually, first purchaser to file on forms prescribed a report of grape purchases and to remit the amount of assessment.
 - Prescribes recordkeeping to be maintained by first purchasers for auditing and compliance purposes.
- Authorizes the Department of Agriculture to be reimbursed for costs associated with collection of the assessment. Section 4 provides for quarterly transfer of funds from the Winery & Grape Producers Promotional Fund to the Management Expense Revolving Fund in amount of costs documented quarterly by the Department. The revolving fund is utilized by the Department of Agriculture to receive and account for collection costs recovered for similar collection service provided to other agencies.

- Provides for Class III misdemeanor penalty for violations of the Act.
- Amends §54-304 to conform the list of revenue streams placed in the Winery and Grape Producers Promotional Fund and authorized uses of the fund to changes elsewhere in the amendment.

The provisions of LB46 as would be revised by the pending committee amendment were incorporated into LB 441 by AM691 adopted during select file debate on that bill. LB 441 as enacted redirects certain license fees collected from shippers of wine directly to final consumers to the Winery and Grape Producers Promotional Fund.

BILLS ADVANCED BUT NOT ENACTED

LB 632 (Dierks) Change provisions relating to the National Animal Identification System

Date of Public Hearing: 2/20/07

Date Reported from Committee: 2/28/07

Committee Amendment: AM527

Other Pending Amendments:

Pending Amendments: none

LB 632 amends §54-702 to add clarification that participation by premise owners in the premise registration system that is expressly authorized under this section is a voluntary participation system and to direct the Department of Agriculture to provide a means of removing registrations upon request. The Department would be further directed to confirm by affidavit that the removal from all participating agencies' databases has occurred.

The introduced bill also amended §54-702.01 to clarify that any disclosure of producer provided information as may be allowed under subsection 1 of this section is subject to state and federal privacy and confidentiality law.

The pending committee amendment (AM527) would strike the original sections and become the bill. However, the committee amendment retains the substantive intent of the bill as introduced by inserting direction within §54-702 that the Department accommodate requests to remove a premise registration. The Department is to provide written confirmation that it has purged premise ID info from its own data base and further instructing the Department to cooperate with USDA in removing premise registrations.

The committee amendment would omit section 2 of the bill as introduced.

BILLS HELD BY THE COMMITTEE

LB 131 (Raikes) Provide for a University of Nebraska research corridor master plan

Date of Public Hearing: 2/13/07

LB131 would authorize completion of a master plan for development of land adjacent to the University of Nebraska-Lincoln including potential reuse of State Fair Park. The elements of the bill include the following:

Sec. 1: States legislative findings that the state has a fiscal responsibility for land use planning for land surrounding the University. States findings that a corridor of land adjacent to the University has potential for utilization to enhance the University's research and economic development mission, and potential for other public and private development.

Sec. 2: Assigns a duty to the University of Nebraska to complete a University Research and Development Corridor Master Plan in cooperation with the city of Lincoln and the state building division, and with all interested parties.

Sec. 3: Specifies elements of the master plan for areas identified as lands east and north and adjacent to the University of Nebraska-Lincoln, to include:

- A master plan of identified areas and including potential use and reuse of all or portion of State Fair Park.
- A fifteen-year cash flow analysis of costs associated with the plan.
- An economic cost-benefit analysis of state and local benefits.
- Any other analysis beneficial to determining economic and research opportunities.

Sec. 4: Establishes a deadline of November 1, 2007 for the University to provide the master plan to the Legislature and the Governor.

LB 200 (Burling) Change the definition of "tractor" subject to a permit requirement

Date of Public Hearing: 1/30/07

Under Nebraska law (Neb. Rev. Statutes §2-2701 et seq.) first enacted in 1919, only permitted tractor models may be sold in Nebraska. The law essentially requires the endorsement of the Nebraska Board of Tractor Test Engineers before a permanent permit is issued by the Nebraska Department of Agriculture. This endorsement is contingent upon independent testing of the model to measure performance characteristics (such as engine horsepower, drawbar and PTO horsepower, hydraulic lift capacity, fuel efficiency, noise suppression, etc.) important to tractor consumers. Manufacturers who fail to submit a current tractor model for testing, or whose tested model fails to match manufacturer performance claims, are required to inform purchasers, may be enjoined from selling untested or underperforming models, and are required to offer to repurchase the machines.

LB 200 would exempt current agricultural tractor models of under 100 horsepower from the requirement to obtain a permit to be sold in Nebraska. Only tractor models of less than 40 horsepower are currently exempt.

LB 273 (Kopplin) Change the definition of “tractor” subject to a permit requirement

Date of Public Hearing: 1/30/07

LB 273 would exempt current agricultural tractor models of under 60 horsepower from the requirement to obtain a permit to be sold in Nebraska. (see description of permit requirement under LB200 summary) Only tractor models of less than 40 horsepower are currently exempt.

LB 626 (Dierks) Create a production incentive for biodiesel fuel

Date of Public Hearing: 2/27/07

LB 626 creates the Biodiesel Fuel Producer Incentive Fund from which a production incentive of 30 cents per gallon would be paid for each gallon of biodiesel sold by qualifying producers of biodiesel. The bill contains the following clarifying elements:

- Biodiesel fuel is defined by incorporation and reference to the American Society for Testing and Materials specification D6751-02 for biodiesel fuel derived from vegetable oils or animal fats.
- A qualified producer is defined as a producer entity having both principle place of business and production facility located in Nebraska.
- Claims against the fund are allowed beginning January 1, 2008 and claims are to be filed quarterly thereafter with certain documentation to verify the production prescribed and as may be specified by rule and regulation of the Department of Revenue.
- The bill grants rule and regulation authority to the Department to carry out the purposes of the bill, including to define the procedure for payment.
- Authorizes the Department to develop a process for making payments on a pro-rata basis

LB 633 (Dierks) Change provisions of the Competitive Livestock Markets Act

Date of Public Hearing: 2/20/07

LB 633 is a substantive rewrite of the Competitive Livestock Markets Act that would address certain issues beyond clarifying implementation issues in the event federal price reporting is not renewed that were enacted in LB 856 last session. Most notably, the bill draft eliminates the existing swine price

discrimination and cattle contracting provisions to avoid likely Commerce Clause litigation and questions of market disruption that have accompanied implementation of similar provisions in other states. These are replaced with new prohibitions that create state causes of action and prosecution for violations of certain Packers & Stockyards Act provisions. Specifically, the bill:

- Outright repeals existing sections that pertain to swine price discrimination and cattle contract procurement restrictions.
- The existing price discrepancy prohibitions for swine procurement in §54-2607 is replaced with language prohibiting certain unfair procurement prohibitions listed under section 202 (7 U.S.C. 192) of the federal Packers & Stockyards Act and applies to procurement of either swine or cattle. Specifically, the draft incorporates prohibitions against any unfair or unjustly discriminatory practice or giving or subjecting any person or locality to unreasonable preference and advantage. Unreasonable preference or advantage is further defined. The prohibition is extended to govern procurement practices of swine contractors. Swine contractor is added as a defined term under the Act by section 2 of the bill.
- Existing causes of action and contract remedies, and criminal penalties, that currently pertain to the swine price discrimination provisions are made to apply to the prohibitions under §54-2607 as amended. The prohibitions against discriminatory procurement practices are decoupled from state price reporting and are therefore not indirectly preempted if state price reporting is preempted by Federal law. A conforming amendment is made to §54-2607.01 by section 11 to acknowledge that only §54-2613 is preempted by the federal Livestock Mandatory Reporting Act of 1999.
- Price reporting provisions for cattle procurement currently in §54-2623 are consolidated with price reporting provisions for swine in §54-2613 and harmonizing internal citations in other sections are made where appropriate. There is no change to the information required to be reported under the existing price reporting sections.

LB 634 (Dierks) Adopt the Feedlot Statutory Trust Act

Date of Public Hearing: 2/20/07

LB 634 creates a statutory trust for the benefit of unpaid sellers of livestock purchased by feedlots.

The primary substantive provision of LB 634 is found in Section 4 which declares that a statutory trust exists for the benefit of unpaid cash sellers of livestock to a feedlot operator. The trust is modeled after the “packer trust” provisions of the federal Packers & Stockyards Act (P&SA). Specifically, section 4 provides that livestock purchased by a feedlot from a cash seller, and all proceeds and receivables from any subsequent sale of the livestock, are held in trust by the feedlot operator for the benefit of unpaid cash seller until the seller has been paid in full. The remainder of the bill primarily adds clarification, definition and interpretation of the trust created by the bill:

- Section 1 names the sections of the bill the Feedlot Statutory Trust Act.
- Section 2 declares legislative intent that the Act is intended to remedy a burden on commerce caused by security agreements entered into between feedlot operators and their lenders granting security interests in livestock obtained from unpaid cash sellers.

- Cash seller is defined in section 3 as a livestock seller who has not entered into a written credit agreement with a feedlot purchaser, demands payment within 7 days after transfer of possession, and is not paid.
- Payment is deemed not to have been made if a check or other instrument in payment is dishonored.
- The trust interest of unpaid cash sellers is lost if a seller fails to give timely notice of nonreceipt of payment to the purchaser and the Director of Agriculture within 30 days of the transfer of possession or within 15 days after the seller receives notice that a payment instrument is dishonored.
- Trust assets exclude livestock that are collateral for a perfected purchase money security interest (in such case the cash seller has obtained a superior lien to the feedlot creditor and would be entitled to the livestock or proceeds without the necessity of claiming against the trust).
- The trust interest may not be waived by the seller prior to purchase.
- Livestock and proceeds remain assets of the trust even if commingled with other livestock or funds of the purchaser and courts are instructed that trust beneficiaries are not required to identify specific funds or assets of the purchaser's estate that are trust assets.
- The trust interest of cash sellers does not conflict with provisions of the UCC that specifically allow title to pass to subsequent purchasers but the trust is preserved irrespective of title to livestock.

Cash sellers are authorized to initiate legal proceedings to enforce their trust interest. Additionally, the Director of Agriculture is authorized by the bill to institute legal action, or to intervene in any legal proceeding, to assert the trust interests of cash sellers created by the bill.

BILLS INDEFINITELY POSTPONED BY THE COMMITTEE

LB 515 (Stuthman) Change county planning commission provisions relating to livestock operations

Date of Public Hearing: 2/20/07

LB 515 would have amended provisions first inserted into §23-114.01(4) by LB 754 in 2003 for a procedural option available to applicants in the county conditional use permitting process when livestock operations are involved. LB 754 provided that an applicant for a special use permit for a livestock operation may request that the applicable zoning authority provide in a timely manner a “final determination” of the special conditions or requirements deemed necessary to conform the operation to applicable zoning standards and regulations.

LB 515 divides §23-114.01(4) into two subdivisions, setting out a procedure specific to conditional use applications for livestock operations as a separate subdivision (4)(b). The revisions to subdivision (4)(b) made by LB 515 essentially vest in the county board exclusively the duty to provide a timely determination of approval or denial of the permit, or of the conditions to be imposed to conform the use to zoning standards. The bill strikes existing text making a request for final determination optional for the applicant and which currently assigns the duty to respond to such request to either the planning commission or county board. LB 515 assigns only a duty of the planning commission to provide recommendations to the county board. Conforming revisions were proposed elsewhere within §23-114.01(4).

REPORT ON THE PRIORTIZING OF INTERIM STUDY RESOLUTIONS

Pursuant to Rule 4, Section 3(c)

The following resolutions were referred to the Committee on Agriculture. The Committee has prioritized the resolutions in the following manner:

<u>Study Category</u>	<u>Resolution No.</u>	<u>Subject</u>
1	LR 76	Examine rural economic development potential of wind energy
1	LR 93	Examine implications of I-300 litigation and potential policy options
1	LR 106*	Examine effects of invasive vegetation on streamflow
1	LR 133	Examine issue within jurisdiction of Agriculture Committee
1	LR 136	Examine means to stimulate biodiesel production
2	LR 134	Examine means of enhancing agricultural development as a component of economic development
2	LR 135	Study to catalogue programs and public funding sources of agricultural research and examine systems for determining ag research needs and priorities
2	LR 137	Examine redesign of the Livestock Friendly County program
2	LR 138	Examine means of cash funding the Department of Agriculture's duties under the noxious weed program
2	LR 140	Examine necessity and means of continuing Department of Agriculture positions and activities funded through federal initiatives
2	LR 187	Examine means of maximizing local economic benefits of ethanol production
3	LR 139	Identify constraints to expanded deployment of energy recovery from livestock wastes
3	LR 141	Examine mitigation of commercial issues relating to the Nebraska tractor permit law
3	LR 188	Review duties of the Carbon Sequestration Advisory Committee

- 1 – Committee Priority – Staff to prepare research report, interim hearings, task force or combination of committee activities
- 2 – Chairman Priority – Staff to carry out work on behalf of the committee under Chairman's direction and brief members
- 3 – Senator Priority – Individual senator's office to lead research with assistance of committee staff

Legislative Resolution 76 introduced by Preister, 5

PURPOSE: The purpose of this study is to examine the rural economic development potential of wind energy development in Nebraska and legislation which may advance this goal.

Legislative Resolution 93 introduced by Erdman, 47

PURPOSE: To examine implications for the future structure, development, and progress of agricultural production in Nebraska arising from the ruling of the United States Court of Appeals for the Eighth Circuit in *Jones v. Gale*, No. 06-1308, holding Article XII, section 8, of the Constitution of Nebraska, to be invalid and enjoined. The study shall seek to identify policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily limited to or requiring, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance state interests and policy objectives relevant to the structure, development, and progress of agricultural production in Nebraska.

Legislative Resolution 106 introduced by the Natural Resources Committee

PURPOSE: The purpose of this study is to examine the effects of vegetation on river-flow in river basins in Nebraska, including, but not limited to, the Republican River Basin, the Platte River Basin, and the Niobrara River Basin.

*Note—Joint Agricultural/Natural Resources Committee referral

Legislative Resolution 133 introduced by the Agriculture Committee

PURPOSE: The purpose of this resolution is to provide an opportunity for the Agriculture Committee of the Legislature to investigate and review matters arising during the interim that relate to issues within the jurisdiction of the committee and which may be the subject of legislation prepared for introduction in the 2008 legislative session. This interim study is intended to provide a forum to facilitate the committee's review and consideration as may be appropriate of potential policy response to changes in federal law, judicial decisions, and other developments that may occur during the interim.

Legislative Resolution 134 introduced by Erdman, 47

PURPOSE: The purpose of this study is to examine agricultural development as an element of economic development. The study shall specifically review means of enhancing the agricultural development functions of the Department of Agriculture, including, but not limited to, enhancing coordination with rural development programs administered by the United States Department of Agriculture.

Legislative Resolution 135 introduced by Erdman, 47

PURPOSE: The purpose of this resolution is to catalog programs of agricultural research and public sources of funding for agricultural research and to examine critical research priorities in order to resolve societal, resource, and other constraints to the optimization of economic opportunities for production agriculture in this state. The study shall further examine existing means of identifying prioritization of public agricultural research investment in this state and to identify potential funding sources to match unmet agricultural research needs.

Legislative Resolution 136 introduced by Erdman, 47

PURPOSE: The purpose of this study is to examine means of stimulating expansion of the biodiesel fuel industry in Nebraska. The study shall specifically examine the potential for utilization of production incentives for that purpose as proposed in LB 626, One Hundredth Legislature, First Session. The study shall also examine means by which the State of Nebraska may encourage and facilitate technology transfer and commercialization of innovative biodiesel conversion technologies and systems that increase the conversion efficiency and net energy balance of biodiesel production and enable the utilization of feedstocks that offer renewable energy solutions with minimal impact to food security.

Legislative Resolution 137 introduced by Erdman, 47

PURPOSE: The purpose of this study is to examine the feasibility and desirability of redesigning the livestock friendly county program to serve as a delivery vehicle for providing assistance for county identified livestock development goals and to implement other recommendations contained within the LR 320 staff report to the Agriculture Committee of the Legislature.

Legislative Resolution 138 introduced by Erdman, 47

PURPOSE: The purpose of this study is to examine means of fully cash funding the duties of the Department of Agriculture under the Noxious Weed Control Act. It shall also be a purpose of this study to examine the utilization and accomplishments of the Noxious Weed and Invasive Plant Species Assistance Fund, to examine the need for continuation of the grant program under the act, and to identify sources of funding to carry out the purposes of the program. This study shall not include an examination of the purposes and the utilizations of such fund authorized and funded through Laws 2007, LB 701.

Legislative Resolution 139 introduced by Erdman, 47

PURPOSE: The purpose of this study is to examine and identify constraints to expanded deployment of systems for the recovery of energy and other useful byproducts from animal wastes associated with confined livestock operations. The study shall seek to identify means by which the State of Nebraska may encourage and enable greater utilization of such systems by Nebraska livestock producers, including, but not limited to, enhancing coordination of state programs with and enhancing Nebraska producers' competitiveness in accessing United States Department of Agriculture programs and other available federal assistance programs for such purpose.

Legislative Resolution 140 introduced by Erdman, 47

PURPOSE: The purpose of this study is to examine activities and staffing of the Department of Agriculture and the Bureau of Animal Industry funded wholly or in part through federal grant funds under homeland security, livestock disease emergency response, animal identification, or other initiatives of the federal government. It is a goal of this study to identify the need for and feasibility of continuing such activities and staffing if federal funding sources are not continued.

Legislative Resolution 141 introduced by Erdman, 47

PURPOSE: The purpose of this study is to examine means of minimizing interstate commercial distortions and burdens to Nebraska agricultural equipment dealers from the inability to serve consumer demand for certain tractor models not permitted for sale in Nebraska. The study shall specifically seek to:

- (1) Quantify and qualify the number and value of current tractor models not permitted for sale in Nebraska purchased by Nebraska tractor consumers from out-of-state equipment dealerships;
- (2) Quantify and qualify the Nebraska tractor market in terms of agricultural and nonagricultural applications, power ranges, and trends in tractor sales;
- (3) Identify any disincentives to tractor manufacturers meeting the Nebraska tractor permit requirements and identify means by which such barriers may be reduced or incentives enhanced to encourage manufacturers to submit to the Nebraska permitting requirements; and
- (4) Monitor and report on the progress of any efforts to apply a system of third-party performance verification testing identical to or substantially similar to Nebraska's tractor permitting requirements as a condition to marketing tractor models in the United States.

Legislative Resolution 187 introduced by Dierks, 40

PURPOSE: To examine ways to maximize rural economic development benefits of agricultural land and commodities. In particular, the study shall examine ways to keep markets accessible to local farmers and business persons and keep the benefits of ownership with local residents and communities.

Legislative Resolution 188 introduced by Dierks, 40

PURPOSE: To study the duties of Nebraska's Carbon Sequestration Advisory Committee. This committee was established in 2000 with the passage of LB 957. The study would reexamine the mission of the Carbon Sequestration Advisory Committee due to the completion of its initial responsibilities. A future role for this committee must be considered in light of a viable national carbon market.