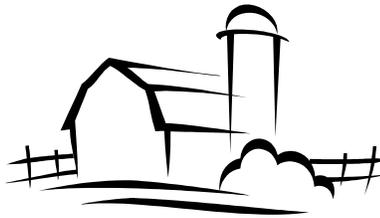


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# COMMITTEE ON AGRICULTURE

ONE HUNDRETH LEGISLATURE  
SECOND SESSION - 2008



## SUMMARY AND REPORT OF 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**  
**(Carryover bills introduced in 2007)**

<b>LB #</b>	<b>Primary Introducer</b>	<b>One-Line Description</b>	<b>Hearing Date</b>	<b>Disposition</b>	<b>Amends Adopted</b>	<b>Amends Pending</b>	<b>Comment</b>
LB 131	Raikes	Provide for a University Research and Development Corridor Master Plan	02/13/07	IPP'd			
LB 200	Burling	Change the definition of tractors subject to a permit requirement	01/30/07	IPP'd			
LB 273	Kopplin	Designate entire state as a brand inspection area	01/30/07	IPP'd			
LB 626	Dierks	Create a production incentive for biodiesel fuel	02/27/07	Held			
LB 632	Dierks	Change provisions pertaining to the National Animal Identification System	02/20/07	Enacted	AM527		
LB 633	Dierks	Change provisions of the Competitive Livestock Markets Act	02/20/07	IPP'd			
LB 634	Dierks	Adopt the Feedlot Statutory Trust Act	02/20/07	Held			



**STATUS REPORT BY BILL NUMBER**  
**(Bills read first time in 2008 session)**

LB #	Primary Introducer	One-Line Description	Hearing Date	Disposition	Amends Adopted	Amends Pending	Comment
LB 729	Flood	Redefine exotic animals for auctions and swap meets	1/22/08	Held			
LB 751	Christensen	Change noxious weed funding provisions relating to stream vegetation removal	2/05/08	Held			
LB 788	Erdman	Adopt the Anthrax Control Act	1/22/06	General File		AM1689	
LB 789	Erdman	Change grant requirements under the Agricultural Opportunities and Value Added Partnerships Act	1/29/08	Enacted		AM1928	
LB 790	Erdman	Change buffer strip program provisions	1/22/08	Enacted			
LB 791	Erdman	Provide for rules for certified seed potatoes	1/22/08	Enacted			
LB 860	Burling	Remove a fingerprinting requirement for licensure as a grain dealer or grain warehouse	2/05/08	IPP'd			
LB 861	Agriculture Committee	Remove statutory specification for the location of the state fair	2/26/08	IPP'd			Purposes of LB 861 addressed in LB 1116
LB 862	Agriculture Committee	Change noxious weed funding provisions	2/05/08	General File			Purposes/provisions of LB 862 incorporated into LB 961 by AM2448
LB 875	Fulton	Change eligibility requirements under the Beginning Farmer Tax Credit Act	1/29/08	Held			Purposes/provisions of LB 875 incorporated into LB 1027 by AM2295 & AM2761
LB 925	Fischer	Change applicability of provisions pertaining to trespassing animals to include goats	1/22/08	Enacted	AM1607		

LB #	Primary Introducer	One-Line Description	Hearing Date	Disposition	Amends Adopted	Amends Pending	Comment
LB 999	Hansen	Change Livestock Brand Act provisions governing brand recording	1/19/08	Held			
LB 1027	Erdman	Provide a personal property tax exemption under the Beginning Farmer Tax Credit Act	1/29/08	Enacted	AM2295 AM2761		Ag Committee 2 <sup>nd</sup> priority bill; Enacted bill incorporates purposes/provisions of LB 875
LB 1044	Raikes	Create and provide duties for the State Fair Futures Commission	2/26/09	IPP'd			Purposes of LB 1044 made obsolete by enactment of LB 1116
LB 1053	Erdman	Create a biodiesel production incentive	1/29/08	Held			
LB 1113	Erdman	Create the Family Farm Policy Advisory Council	2/12/08	Held			
LB 1114	Erdman	Require a vote of the people to approve county fairground bonds	2/29/08	Held			
LB 1115	Erdman	Change Nebraska State Fair Board membership	2/29/08	General File	AM2045		Provisions/purposes of LB 1115 incorporated into LB 1116 by AM2629
LB 1116	Erdman	Remove statutory specification for location of the state fair and provide for disposition of fairground property	2/29/08	Enacted	AM2629 AM2747		Ag Committee 1 <sup>st</sup> priority bill. Enacted bill incorporates purposes/provisions of LB 1115
LB 1171	Dierks	Adopt the Agricultural Commodities Protection Act	2/19/08	Held			
LB 1172	Dierks	Adopt the Food Supply Animal Veterinary Incentive Program Act	2/19/08	Enacted	AM2305		
LB 1174	Dierks	Restrict entity ownership of agricultural land and farming and ranching activities	2/12/08	General File			

# BILLS ENACTED AND SIGNED BY THE GOVERNOR

## **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 Adopted Amendments: ER8147

Effective Date: July 18, 2008

LB 632 amends §54-702 which currently grants express authority to the Department of Agriculture to develop a livestock premise registration system and to participate in a national uniform system of animal identification. LB 632 limits this authority to development of a voluntary premise registration system and implementation of a voluntary a national ID system. The bill further directs the Department to provide a means of removing registrations upon request and to confirm by affidavit that the removal from all participating agencies' databases has occurred.

The introduced bill also amended §54-702.01. This section expressly exempts information maintained for purposes of an animal ID system from public records disclosure statutes and strictly limits release of information to purposes of epidemiological investigation and as authorized by the supplier of the information. This section further authorizes the Department to impose appropriate confidentiality restrictions upon recipients of information when released under the limited circumstances allowed by this section. LB 632 as introduced inserted clarification that disclosure of animal ID information is subject to state and federal privacy and confidentiality law.

The enacted version of the bill as revised by the adopted committee amendment (AM527) retains the substantive intent of the bill as introduced but substitutes direction within §54-702 that the Department accommodate requests to remove a premise registration. As enacted, LB 632 directs the Department is to provide written confirmation that it has purged premise ID info from its records and further instructing the Department to cooperate with USDA in removing premise registrations. The adopted committee amendment also omitted section 2 of the introduced bill from the enacted version.

## **LB 789** (Erdman) Change grant requirements under the Agricultural Opportunities and Value Added Partnerships Act

Date of Public Hearing: 1/29/08

Date Reported from Committee: 2/21/08

Committee Amendment: AM1928

Other Adopted Amendments: ER8197

Effective Date: April 17, 2008

LB 789 revises matching requirements for eligibility for grants awarded under the Agricultural Opportunities & Value-Added Partnerships Act. Specifically, LB 789 as introduced proposed revisions to §2-5420 as follows:

- Strike text authorizing the acceptance of in-kind contribution in lieu of, or in combination with, cash to meet the existing 25% matching requirement for eligibility for grant awards.
- Insert new text increasing the match amount to 50% cash match when the grant is used to acquire buildings or equipment used in a farming or livestock operation or private enterprise.

The adopted committee amendment (AM1928) struck the original provisions and became the bill. As revised by the committee amendment, LB 789 revises §2-5420 by rearranging what are currently subsections (1) through (3) to become subdivisions (a) through (c) of subsection 1 and inserting two new subsections that address the purposes of the bill in a different manner. Specifically, as enacted, LB 789 effects the following changes:

- Retains existing authority to accept in-kind contributions but inserts express authority in new subsection (2) of §2-5420 to authorize preference given to applications with cash matches.
- Retains the introduced bill's requirement for 50% match of amount of grant funds requested when the grant funds are utilized to acquire buildings or equipment but requires only 25% of amount requested must be cash match.
- Adds a new subsection (3) to §2-5420 to clarify that any removal from the state or resale of building or equipment within a three-year period of award without prior approval is a diversion of grant funds subject to recapture provisions of §2-5421.
- Adds the emergency clause to enable the statutory changes to be effective prior to the beginning of the next grant cycle.

#### **LB 790 (Erdman) Change buffer strip program provisions**

Date of Public Hearing: 1/22/08

Date Reported from Committee: 1/24/08

Committee Amendment:

Other Adopted Amendments:

Effective Date: July 14, 2006

LB 790 amends §2-5109 of the Nebraska Buffer Strip Act to increase the statutory maximum annual compensation that may be made available to landowners contracting to manage eligible lands as buffer strips. Currently, the statutory cap is set at \$150 / acre. The bill increases this maximum to \$250 / acre.

#### **LB 791 (Erdman) Provide for rules for certified seed potatoes**

Date of Public Hearing: 1/22/08

Date Reported from Committee: 1/24/08

Committee Amendment:

Other Adopted Amendments:

Effective Date: July 14, 2006

LB 791 amends the Nebraska Plant Protection and Plant Pest Act to provide express authority for the Department of Agriculture to promulgate rules governing the planting of certified seed potatoes in the state. Specifically, LB 791:

- Inserts a new defined term, "certified seed potatoes," in section 3 of the bill which is incorporated into the Plant Protection and Plant Pest Act by sections 1 and 2 of the bill.
- Amends §2-10,116 to add rules pertaining to the planting of certified seed potatoes to the list of items relevant to the regulation of plant pests for which the Department is expressly authorized by this section to promulgate rules and regulations.

**LB 925 (Fischer) Change applicability of provisions pertaining to trespassing animals to include goats**

Date of Public Hearing: 1/22/08

Date Reported from Committee: 1/24/08

Committee Amendment: AM1607

Other Adopted Amendments:

Effective Date: July 14, 2006

LB 925 as introduced essentially amends the law of estrays and trespassing animals to apply its provisions to goats. Specifically, the bill:

- Amends §54-401 to add goats to the list of stock whose owners are subject to liability for damages caused by the stock trespassing on the property of another. The inclusion of goats in this section extends applicability of provisions of §54-401 through §54-407 pertaining to the right of landowners to impound trespassing animals, to have a lien on such animals and procedures for resolving and recovering damages and costs of care.
- Amends §54-415 assigning duties to the Brand Committee or county sheriffs for the disposition of stray animals when the owner is unknown and resolution of landowner claims for damages or costs of care for stray animals incurred by a distrainer. The provisions of this section are revised to allow sale by any expedient means for stray goats rather than the current general rule of sale of estrays through an auction market to reflect that few auction markets handle sales of goats. Section §54-415 by internal reference applies to estrays as defined by the Nebraska Brand Law. Estrays as defined under §54-180 do not include goats. LB 925 amends §54-415 to clarify that it applies to goats.

The enacted version of the bill, as revised by the adopted committee amendment (AM1607), omits section 2 of the introduced bill containing revisions to §54-415 and therefore limits applicability only to those sections pertaining to trespassing animals.

**LB 1027 (Erdman) Provide a personal property tax exemption under the Beginning Farmer Tax Credit Act**

Date of Public Hearing: 1/29/08

Date Reported from Committee: 3/13/08

Committee Amendment: AM2295

Other Adopted Amendments: AM2761, ER8238

Effective Date: July 14, 2006

**Ag Committee 2<sup>nd</sup> priority bill**

**Enacted version contains provisions/purposes of LB 875 (sections 3, 7 --8)**

The primary substantive purpose of LB 1027 as introduced is accomplished in original section 3. This section provides for the exemption of personal property of a qualified beginning farmer or livestock producer utilized in production of agricultural products or livestock. The exemption is for a period of three years beginning with the first year for which the exemption is claimed. This exemption is incorporated into the Beginning Farmer Tax Credit Act by Section 2 of the bill. A harmonizing internal reference is inserted within §77-202 to the new exemption in section 3.

The enacted version of the bill contained the revisions made by the committee amendment (AM2295) which struck the original sections and became the bill. In addition to technical revisions to the substantive purposes of the bill as introduced, the Committee amendment also incorporated portions of LB 875. Specifically, the following changes were brought about by adoption of AM2295.

- The purposes of section 3 of the introduced bill are accomplished in modified form in what becomes section 4 of the bill as enacted. The enacted bill continues to define a personal property tax exemption available to qualified beginning farmers but with the following substantive and procedural clarifications:
  - The exemption applies to agricultural and horticultural machinery and equipment. The definition of exempted items corresponds to those items allowed the sales tax exemption that are valued at depreciated value for property tax purposes.
  - The value that may be exempted is capped at \$100,000.
  - Provides procedural clarification for claiming the credit modeled upon processes similar to existing exemptions that may be claimed, including:
    - Applicant makes initial application to county assessor by Dec. 31 of the year preceding the year for which exemption is sought;
    - Applicant provides documentation verifying certification of qualification to claim the exemption provided by Beginning Farmer Board;
    - County assessor approves or denies with appeal to Bd. of Equalization in event of denial. Protest procedures as set forth in §77-1502, and appeal of adverse decision of County Bd. of Equalization to the Tax Equalization and Review Commission pursuant to §77-5013 are incorporated by reference;
    - Requires annual filing of reaffirmation documentation to claim the exemption each subsequent year of the 3-year exemption period, and;
    - Clarifies that the exemption continues irrespective of whether beginning farmer continues to meet beginning farmer qualifications during the exemption period unless the claimant quits farming or livestock operations.
  - Further harmonizing changes elsewhere in the Beginning Farmer Tax Credit Act were added to the enacted version by adoption of the committee amendments. New sections inserted by what becomes sections 5 and 6 of the enacted bill make harmonizing revisions to §77-5204 and §77-5208 to assign authority and duties to the Beginning Farmer Board in certifying Beginning Farmers for the Tax Credit.
- The purposes of LB 875 were partially incorporated in modified form by adoption of the committee amendment in what become sections 3, 7 & 8 of the enacted bill. Specifically, AM 2295 incorporated the following substantive elements:
  - Redefines “owner of agricultural assets” under §77-5203 (7) as follows:
    - Eliminates occupational and physical labor and management, and residency tests of eligibility for individuals or trustees under subdivision (7) (a). Clarification is added that such individuals or trustees have an ownership interest in agricultural assets within Nebraska and meet any additional qualifications determined by the Beginning Farmer Board
    - Expands non-individual entities under subdivision (7) (c) eligible to qualify as asset owners to include corporations, limited liability companies or other business entity in addition to partnerships. Occupational and physical labor and management contribution, and residency tests that currently apply to determine partnership eligibility are eliminated.

- Subdivision (7) (d) of §77-5203 is stricken. This subdivision becomes obsolete as the revisions elsewhere in this section no longer require separate provisions for eligibility of qualifying family farm corporations.
- Sections 7 & 8 of the bill added by the committee amendment make non-substantive changes to the enumeration of beginning farmer qualifications currently in §77-5209. The requirement that the day-to-day management and labor qualification is clarified to apply to the beginning farmer's farming and livestock production operations. The amendment also relocates the substantive purpose of existing subsection (8) of §77-5209 that a beginning farmer not be related to the asset owner to a new subsection (5) inserted into §77-5211. The current location disqualifying a rental agreement when the parties to the agreement are related is awkwardly placed in the enumeration of qualifications as a beginning farmer in §77-5209 and is better placed as a disqualification of a rental agreement in §77-5211. This provision was further amended by AM2761 adopted on select file to add an additional purpose of LB 875 to allow related asset owners to qualify for the beginning farmer tax credit if the rental agreement is part of a qualifying farm succession plan as defined.

**LB 1116 (Erdman) Remove statutory specification for location of the state fair and provide for the disposition of the state fairgrounds**

Date of Public Hearing: 2/26/08

Date Reported from Committee: 3/31/08

Committee Amendment: AM2629

Other Adopted Amendments: AM2747, ER8236

Effective Date: July 18, 2008

**Ag Committee 1<sup>st</sup> priority bill**

**Enacted version contains provisions/purposes of LB 1115 (Section 3)**

LB 1116 as introduced removed a statutory specification for the location of the State Fair and provided for the disposition of the State Fairgrounds in the event the property is vacated by the State Fair Board. Specifically, LB 1116 as introduced would have revised §2-101 as follows:

- Remove existing text in subsection (3) that directs the State Fair to be held at its present location as identified.
- Insert new subsection (4) directing the Department of Administrative Services to cause an appraisal of the state fairgrounds to be made upon notification of the State Fair Board of its intention to vacate the property, upon which the following would occur:
  - Any order of disposition by the Vacant Building and Excess Land Committee for reutilization of the property for state purposes shall require the acquiring agency to deposit the greater of the appraised value or \$30 million to the Nebraska State Fair Support and Improvement Cash Fund.
  - If there is no offer of reutilization by a state agency or the University, the property is to be sold and the proceeds deposited to the Nebraska State Fair Support and Improvement Cash Fund.

The committee amendment (AM2629) adopted on general file struck the original provisions to become the bill. As amended, LB 1116 states legislative intent and makes various revisions to existing statutes, including insertion of new statutory sections, to facilitate the state fair relocating to

Fonner Park in Grand Island beginning with the 2010 State Fair. The amendment also inserts the purposes of LB 1115 regarding membership on the State Fair Board.

As modified by the adoption of the committee amendment and additional revisions made by AM2747 adopted on select file, the enacted version of LB 1116 makes the following specific revisions:

- Continues the revisions to §2-101 made by the introduced bill to remove specification in statute that the state fair be held at its existing described location, the Nebraska State Fairgrounds, but omits the provisions for disposition of the fairgrounds contained in the original bill. Instead, the enacted version of LB 1116 inserts legislative intent as new subsection (4) of §2-101 that the State Fair be held at Fonner Park within the city of Grand Island beginning with the 2010 State Fair. The insertion restates legislative understandings of the State Fair Board's cooperation and coordination with the Hall County Livestock Improvement Association, the city of Grand Island and others to effect capitol improvements to the site as well as governance & utilization agreements necessary for conducting a state fair. Adoption of select file amendment AM2747 inserted additional text stating legislative intent of cooperation between and among pertinent entities to carry out the intent to relocate the fair and to transition title to the University.
- Amends §2-103 to incorporate revisions to the makeup of the State Fair Board made by LB1115 as advanced separately by the Committee, including:
  - Redefines the qualification of the four appointed members representing the business community of the state to provide that three of them shall be selected from congressional districts, and one member shall be selected from among the business community of the host community (most populous municipality of the county the fair is located within).
    - Existing appointed members who continue to be qualified to serve under the redefinition of qualification continue to serve out the terms for which they are currently appointed and are eligible for reappointment subject to the limitation on terms.
    - In the event the fair is to be relocated to a new host community, the term of the member designated to represent the previous host community is vacated and the Governor is to appoint a representative of the host community to fulfill the remainder of the vacated term.
    - Deletes obsolete transitional language that provided for the staggering of terms of members originally selected to the Board.
  - Replaces the Chairperson of the Nebraska Arts Council and the Chancellor of the University of Nebraska-Lincoln as ex-officio, voting members of the Board, with the State 4-H Program Administrator and the Executive Director of Nebraska FFA as ex-officio, non voting members.
- Revises §2-108 to conform expenditures that may be made from the Nebraska State Fair Support and Improvement Cash Fund to the purposes of the bill.
- Amends §84-612 to authorize the transfer of \$5 million from the Cash Reserve Fund to the newly created Nebraska State Fair Relocation Cash Fund. The cash fund is created in what becomes section 5 of the bill for the receipt of transferred funds or other funds that may be

received as contribution toward capital facility improvements at an exhibition facility to enable the site to serve as the location of the state fair.

- Inserts a new section of statute directing the transfer of the State Fairgrounds to the Board of Regents of the University of Nebraska on December 31, 2009 for utilization as a research campus. As enacted, this transfer is made contingent upon the certification of contributions of specified amounts having been made by or on behalf of the University of Nebraska and the city of Grand Island and the State Fair Board toward the costs of capital improvements at Fonner Park to accommodate the State Fair, and further provides that the contributions are achieved in intermediate cumulative increments of approximately one-third by specified dates. The transfer is also made contingent upon the University providing a site plan and business plan for development of the innovation campus on or before December 1, 2009.

## **LB 1172 (Dierks) Adopt the Food Supply Animal Veterinary Incentive Program Act**

Date of Public Hearing: 2/19/08

Date Reported from Committee: 3/12/08

Committee Amendment: AM2305

Other Adopted Amendments: ER8240

Effective Date: July 18, 2008

### **2008 session speaker priority bill**

The primary substantive purposes of LB 1172 are found in sections 3 – 5 of the bill. Section 3 assigns a duty to the Department of Agriculture to annually select 4 veterinarians from among applicants eligible for up to 4 years of direct stipend payments. The terms of eligibility are set forth in section 4 of the bill to require that eligible individuals:

- are graduates of an approved veterinary program;
- are licensed to practice in Nebraska;
- contract to provide veterinary services in a rural mixed animal practice in approved rural communities. “Rural Mixed animal practice” is a defined term in section 2 of the bill meaning one where a substantial portion of the practice is in provision of food supply animal veterinary service. The Department is instructed to give preference in approving communities served by participants to communities located in shortage areas as designated by the American Veterinary Medical Association; and
- attain federal food animal veterinary accreditation.

Section 5 of the bill prescribes the maximum amount of annual stipends that may be paid to participating veterinarians of \$15,000 in each of the first two years of eligible practice, and \$25,000 in each of the 3<sup>rd</sup> and 4<sup>th</sup> years of practice. The amount of stipend is prorated in the event of partial year of practice. Conditions allowing participating veterinarians to be released from contract obligations to serve in an eligible practice are set forth in section 6. These conditions include completion of performance of the contract, physical disability, extreme hardship, death, or if subject to a licensure discipline or loss of federal accreditation. The bill creates the Food Supply Animal Veterinary Incentive Fund for receipt and expenditure of funds and grants rule and regulation authority to carry out the act. As introduced, the bill stated legislative intent that the stipend program be funded by general funds.

The adopted committee amendment (AM2269) largely inserted clarifying and technical revisions to the bill and implementing details. The enacted version of the bill contained the following revisions to the introduced version:

- Various revisions are made throughout the bill to allow the state's obligation to provide stipend incentives for eligible veterinary services to be commensurate with resources actually made available to the program. As enacted, section 3 directs the Department to select "up to" 4 individuals to participate and further adds funding availability as an event triggering proration of annual stipend payments made to participants.
- The duty of determining food animal veterinary shortage areas is assigned to the Department but the Department is allowed to initially utilize the American Veterinary Medical Association's designation. As enacted, the bill also allows flexibility not provided in the introduced bill for the Department to update designations as circumstances warrant.
- The introduced bill infers that contracts to provide veterinary practice eligible for the stipend incentive are to be entered into with the Department. This is made an express condition of the enacted bill.
- A clarifying revision is made to provide that eligible practice may be through a dedicated food supply animal practice in addition to a rural mixed animal veterinary practice.
- A recapture provision is added as new subsection 6(2)(b) in the event a veterinarian is unable to perform further veterinary service due to a license discipline for cause as defined in referenced sections of the Veterinary Practice Act. Existing provision of subsection 6(2) releasing a veterinarian from contract obligations upon loss of licensure or federal accreditation are clarified to release the veterinarian from further provision of veterinary services but not necessarily releasing from contract terms that may facilitate recapture.
- Provisions of section 7 creating the cash fund are revised by inserting additional clarifying text as to the receipt and expenditure of funds to and from the cash fund. A companion revision is made in the new recapture provisions to provide that any recaptured funds are returned to the Food Supply Animal Veterinary Incentive Fund.
- Original section 9 stating legislative intent pertaining to funding is omitted. The omission avoids confining funding for the program to general fund appropriations, although the Legislature is free to provide general fund support. The accompanying appropriations bill (LB1172A) appropriates \$60,000 of general funds to the purposes of the beginning in FY2009-10.

# BILLS WITH PROVISIONS/PURPOSES INCORPORATED INTO OTHER ENACTED BILLS

**LB 862** (Agriculture Committee) Change noxious weed funding provisions

Date of Public Hearing: 2/05/08

Date Reported from Committee: 3/05/08

Committee Amendment: AM1859

Other Pending Amendments:

## **Provisions/purposes of LB 862 incorporated as section 3 of LB 961**

LB 862 as introduced would have enacted a series of reallocations of fee and other cash revenues with the goal of fully cash funding the state noxious weed program and replenishing funds available for a grant program within that program. Specifically, LB 862 contained the following provisions:

- Amends §54-857 of the Commercial Feed Act under introduced section 3 of the bill to provide that the revenue from 2 cents of the current 10 cents / ton inspection fee imposed by §54-856 be remitted to the Noxious Weed Cash Fund. A harmonizing amendment to §2-958 enumerating revenues received by the Noxious Weed Cash Fund is made by section 1 of the bill.
- Text directing a one-time transfer of \$200,000 from the Commercial Feed Act Administrative Fund to the Noxious Weed and Invasive Plant Species Assistance Fund on or before Oct. 1, 2008 is inserted into §54-857 of the Commercial Feed Act by section 3 of the bill. Harmonizing revision to §9-958.01 is made under section 2 of the bill.
- §81-201.05 is amended by section 4 of the bill to provide that scheduled annual transfers of \$25,000 from the Weed Book Cash Fund be extended 2 additional years provided sufficient funds are available, and that these transfers and 25% of the sales price of a weed publication which are currently deposited in the Noxious Weed Cash Fund be deposited instead into the Noxious Weed and Invasive Plant Species Assistance Fund. Harmonizing revisions to §2-958.01 corresponding to the revisions to this section are made under section 2 of the bill

The pending committee amendment (AM1859) would strike the original provisions and become the bill. As amended, LB 862 would make the following changes.

- Amends §54-857 to provide for a one-time transfer of \$250,000 from the Commercial Feed Act Administrative Cash Fund to the Noxious Weed and Invasive Plant Species Assistance Fund. This transfer is made in section 3 of the amendment. A harmonizing revision to §2-958.01 is made in section 1.
- Inserts new section 2 amending §54-856 to reduce the commercial feed inspection fee to 9¢ / ton beginning with fees paid after July 1, 2008. The Committee amendment adds the emergency clause to allow the new rate to be effective before fees scheduled for collection in July of this year.
- Carries over provisions of the introduced bill extending for 2 years the annual transfers from the Weed Book Cash Fund but retains current law that these funds and 25% of weed book sales price are deposited in the Noxious Weed Cash Fund.

The one-time \$250,000 transfer from the Commercial Feed Act Administrative Cash Fund as directed by the pending committee amendment to LB 862 was incorporated into LB 961 by adoption of AM2448 during select file debate on that bill.

## **LB 875 (Fulton) Change eligibility requirements under the Beginning Farmer Tax Credit Act**

Date of Public Hearing: 1/29/08

Date Reported from Committee:

Committee Amendment:

Other Pending Amendments:

### **Provisions/ purposes of LB 875 incorporated as sections 3 & 7-8 of LB 1027**

LB 875 expands the definition of owners of agricultural assets under the Beginning Farmer Tax Credit Act that are eligible for the tax incentive offered by this program when renting assets to qualified beginning farmers. Specifically, LB 875 contains the following substantive elements:

- Redefines “owner of agricultural assets” under §77-5203 (7) as follows:
  - Eliminates occupational and physical labor and management contribution tests of eligibility for individuals or trustees under subdivision (7) (a). Clarification is added that such individuals or trustees have an ownership interest in agricultural assets within Nebraska and meet any additional qualifications determined by the Beginning Farmer Board.
  - Expands non-individual entities under subdivision (7) (c) eligible to qualify as asset owners to include corporations, limited liability companies or other business entity in addition to partnerships. Occupational and physical labor and management contributions tests met by one or more partners that currently apply to determine partnership eligibility are eliminated. LB 875 adds clarification that at least one partner, shareholder or member of such entity be a resident individual and that the entity meets other qualifications as determined by the Beginning Farmer Board.
  - Subsection (7) (d) is stricken. This section become obsolete as the revisions elsewhere in this section longer require separate provisions for eligibility of qualifying family farm corporations.
- Amends statutory criteria for qualifying as a beginning farmer currently found in §77-5209 of the Act by striking a qualification that the beginning farmer is not related to the owner of assets involved in a rental agreement. The bill allows qualification for renting of agricultural assets by a related beginning farmer provided the rental agreement is part of a succession plan approved by the Beginning Farmer Board. A new subsection 2 is added setting forth minimal standards, including that it be a written, legally binding document specifying process and timetable for transfer of assets.
- Amends §77-5215 to clarify that the changes made by the bill shall become operative for credits earned in tax years beginning January 1, 2008.

The purposes of LB 875 as introduced were partially incorporated into LB 1027 in modified form by the committee amendment (AM2295) to that bill, and additional purposes of LB 875 were incorporated into LB 1027 by AM2761. The reader is referred to discussion of LB 1027 for summary of the enacted provisions of LB 875.

## **LB 1115 (Erdman) Change Nebraska State Fair Board membership**

Date of Public Hearing: 2/26/08

Date Reported from Committee: 3/06/08

Committee Amendment: AM2045

Other Pending Amendments:

### **Provisions/purposes of LB 1115 enacted as section 3 of LB 1116**

As introduced, LB 1115 revises §2-103 make the following revisions to the makeup of the State Fair Board:

- Redefines the qualification of the four appointed members representing the business community of the state in subdivision (1) (b) to provide that three of them shall be selected from congressional districts, and one member shall be selected to represent the business community of the host community.
  - Existing appointed members who continue to be qualified to serve under the redefinition of qualification continue to serve out the terms for which they are currently appointed and are eligible for reappointment subject to the limitation on terms.
  - In the event the fair is relocated to a new host community, the term of the member designated to represent the previous host community is vacated and the Governor is to appoint a representative of the host community to fulfill the remainder of the vacated term.
  - Deletes obsolete transitional language that provided for the staggering of terms of members originally selected to the Board.
  
- Amends subsection (5) by replacing the Chairperson of the Nebraska Arts Council and the Chancellor of the University of Nebraska-Lincoln as ex-officio, voting members of the Board with the State 4-H Program Administrator as an ex-officio non voting member.

The pending committee amendment (AM2045) adds the Executive Director of the Nebraska FFA as an ex-officio, non-voting member. The purposes of LB 1115 as revised by the pending committee amendment were incorporated into LB 1116 by the adoption of the committee amendments (AM2629) to that bill. The reader is referred to discussion of LB 1116 for summary of the enacted provisions of LB 1115.

# BILLS ADVANCED BUT NOT ENACTED

## LB 788 (Erdman) Adopt the Anthrax Control Act

Date of Public Hearing: 1/22/08

Date Reported from Committee: 1/31/08

Committee Amendment: AM1689

Other Adopted Amendments:

Pending Amendments:

LB 788 updates authorities of the Department of Agriculture relating to anthrax to incorporate current veterinary and epidemiological practices common to other livestock disease eradication programs. The bill adopts wholly new provisions as the Anthrax Control Act and repeals existing anthrax provisions in §54-754 through §54-763 although elements of existing law are carried over into section 1 – 18 as modified. The most significant differences between current law and LB 788 include the following:

- LB 788 does not carry over the concept of eradication as the ability to eradicate anthrax is limited due to the long-term viability of anthrax spores.
- The current statute does not give the Department express authority to cooperate with other entities, such as USDA or other appropriate entities, to accomplish anthrax response objectives. LB 788 inserts express authorization.
- Current law prescribes burial depth of diseased carcasses at no less than four feet. This is increased to six feet for anthrax affected animals. The bill also inserts express authority for the Department to prescribe other disposal methods.
- Removes express or implied liability of the state of Nebraska for costs incurred by owners of affected animals for cost associated with treatment, quarantine, disposal, etc of animals affected by anthrax.
- Current law does not expressly describe the length for a quarantine of premises. As anthrax spores can remain in the soil for lengthy periods of time, it might be necessary for the Department to quarantine just a premise once livestock on the premises have been vaccinated.
- Requires development of a herd plan that is not required under current law. This is an essential element of modern eradication programs that allows for flexibility in carrying out activities associated with vaccinating, testing, cleaning and disinfection, and disposal of carcasses.
- The current statute requires disinfection of the property where the animals were kept. However, disinfection, cleaning, or both, are not always possible or reasonable due to the type or size of the premises involved. LB 788 allows greater flexibility than under current law to deal with each case as is epidemiologically feasible.
- Adds specification regarding requirements associated with vaccination, such as sale of vaccine, recordkeeping for sale of vaccine and type of vaccine.
- Current anthrax authorities do not clearly delineate liabilities and responsibilities of livestock owners that are common in other eradication authorities. Owner responsibilities common to other programs are inserted as sections 9, 11, 14, 16, and 17 of the introduced bill.

Section-by-section summary:

Section 1 Names the act the Anthrax Control Act.

Section 2 States the purpose of the act is to prevent, suppress, and control anthrax to protect the health of Nebraska's livestock.

Section 3 Establishes definitions for use in the act.

Section 4 Provides authority to the Department of Agriculture to: 1) cooperate and contract with any person, including local, state, or national entities for the performance of activities required pursuant to the act; 2) employ all general powers and duties to administer and enforce the act; 3) require the herd owner or custodian of an affected herd to pay for costs related to the quarantine, testing, or vaccination of an affected herd; the disinfection or cleaning of affected premises; and any other costs associated with the control of anthrax in such herd; 4) have access to any premises where livestock are suspected to be infected with anthrax for the purpose of inspections, tests, or treating or enforce quarantines, 5) delegate to appropriate personnel any responsibilities for the proper administration of the act, 6) adopt regulations concerning the establishment of procedures for the testing, vaccination, quarantine, cleaning and disinfection of premises, and any other regulations necessary to carry out the act and 7) designate approved laboratories for the diagnosis and confirmation of anthrax.

Section 5 Imposes a duty to immediately report animals exhibiting signs consistent with anthrax.

Section 6 Prohibits any person from knowingly harboring, selling, or disposing of any animal or part of any animal exposed to or infected with anthrax except as provided in the Act or regulations.

Section 7 Grants authority to immediately quarantine animals and premises affected by anthrax, and prohibits any person from removing an animal under quarantine until directed to do so by the State Veterinarian.

Section 8 Requires the herd owner or custodian to develop a herd plan in cooperation with the department. Sets the parameters for development of a herd plan.

Section 9 Prohibits any person from preventing the testing, vaccination, and treatment of any affected herd. Owner of an affected herd is required to assist in anthrax examination and testing.

Section 10 Establishes the parameters for the sale and use of anthrax vaccine as follows:

- An exposed herd may be vaccinated as deemed appropriate by the State Veterinarian.
- Requires infected herds to be vaccinated by accredited veterinarians licensed to practice in Nebraska or by a designee of the department.
- Allows a herd owner or custodian of an affected herd to purchase anthrax vaccine from an accredited veterinarian.
- Only licensed and approved anthrax vaccines shall be used for the vaccination of livestock and such vaccine shall be distributed by an accredited veterinarian licensed to practice in the state.
- Requires the prescribing or administering veterinarian to maintain records of all sales and purchases of anthrax vaccine for a period of five years, and shall make such records available for departmental review during normal business hours.

Section 11 Imposes a duty on the owner or custodians of affected herds which have experienced any death loss to have samples submitted to an approved laboratory for confirmation purposes.

Section 12 Prohibits 1) the transport of any animal or animal carcass suspected to or which have died of anthrax except under department direction and approval; 2) the use of the flesh or organs of

such animal or animal carcass for food for livestock; and 3) the removal of the skin or hide of any animal or animal carcass suspected to or which have died of anthrax.

Section 13 Imposes a duty on the owner or custodian of an animal which has died of anthrax to bury or burn the carcass as directed by the Department. Buried carcasses shall be buried not less than six feet from the surface of the ground. Establishes responsibility for the herd owner or custodian to clean, disinfect the premises and treat an infected herd and premises if the Department so directs.

Section 14 Confirmation of anthrax shall be made by approved laboratories.

Section 15 (1) Grants authority to the Department of Agriculture to assess and collect payment for services provided and expenses incurred in performing duties under the act.

(2) Violations of the act or regulations constitute a Class I misdemeanor.

(3) Grants authority to the Department of Agriculture to perform the owner or custodian functions under the act, should the owner or custodian fail to carry out such functions.

(4) Imposes a duty on the owner or custodian of affected animals to reimburse the department its actual costs within fifteen days following notice, and the owner or custodian shall be assessed a late fee of up to twenty-five percent of the amount due for each thirty days of nonpayment.

(5) Creates the Anthrax Control Act Cash Fund and provides that the fund shall be used to carry out the provisions of the act.

Section 16 Provides authority for the department to obtain a temporary restraining order; a temporary or permanent injunction, or mandatory injunction for enforcement of the act. The Attorney General or a county attorney is to institute appropriate proceedings when notified of the violation or threatened violation.

Section 17 The department is not liable for actual or incidental costs incurred due to departmental actions in enforcing the act.

Section 18 Violations of the act or regulations constitute a Class I misdemeanor where no penalty is otherwise provided.

Section 19 Outright repeals of existing sections of statute replaced by the Anthrax Control Act.

LB 788 advanced from committee with the committee amendment (AM1689) pending on general file consideration. The pending committee amendment would make the following revisions:

- Moves existing subsection 3 of section 4 of the bill as introduced to new subsection (1) of section 15. This section is current written in form of a duty of livestock owners rather than authority of the Department as enumerated in section 4. The subsection fits better with the enumeration of duties and costs that may be assigned to livestock owners under section 15.
- Inserts a new subsection (3) into section 4 authorizing the Department to expend appropriated or available state funds to carry out duties under the act on behalf of affected herd owners. This language is present in other eradication programs.
- Adds the emergency clause.

## **LB 1174 (Dierks) Restrict entity ownership of agricultural land and farming and ranching activities conducted by entities**

Date of Public Hearing: 2/12/08

Date Reported from Committee: 3/13/08

Committee Amendment: AM2319 (not adopted)

Other Adopted Amendments:

Pending Amendments:

LB 1174 would install as statutory law many of the familiar qualifications on the use of limited liability business entities to own agricultural land or to engage in farming and ranching found at Article XII, Section 8 of the constitution (I-300) in combination with other provisions of statute. The restrictions contained in LB 1174 incorporate certain modifications to respond to dormant commerce clause defect and violation of the Americans with Disabilities Act found by federal courts with the constitutional provisions. As introduced, LB 1174 contained the following substantive elements:

### Statement of intent and findings

- Section 1 of the bill contains an extensive statement of Legislative findings and intent, including the following:
  - Declares a public interest in encouraging ownership and control of agricultural production and assets by owner-operators and finds social and economic benefits accruing from such pattern of ownership of agricultural enterprise
  - Declares a public interest and duty in ensuring that the benefits of limited liability business entities are utilized in the public interest
  - Declares a public interest in safeguarding natural resources and finds a preference for owner-operator stewardship of productive natural resources in safeguarding this interest, further finding contradiction to that end in stewardship by entities that shield passive investors from environmental liability
  - Finds that an array of federal farm policies encourage and preserve benefits to individuals and entities who are owner-operators of family farms.

### Definitions

- Section 2 of the bill defines key terms utilized throughout the bill. The following terms are defined:
  - Entity – Defined to mean corporations and other limited liability business forms or any partnership of which an entity is a partner
  - Farming and ranching – defined to mean the cultivation of crops and the ownership, keeping or feeding of animals for the production of livestock or livestock products
  - Farm or ranch – defined to mean all agricultural activities and agricultural real estate without geographical restriction to Nebraska
  - Family farm or ranch entity – defined to mean an entity meeting requirements of majority ownership or membership in related individuals and provision of labor and management thresholds provided on the farm or ranch by at least one representative of the ownership majority

- Actively engaged in day-to-day labor & management – defined to include accommodation for individuals prevented from meeting the requirements for qualification as a family farm or ranch entity due to mental or physical impairment

#### Agricultural ownership and operation restrictions

- Section 3(1) states a general prohibition against entities from acquiring or obtaining interest in title to real estate utilized for farming or ranching or engaging in farming or ranching.
- Subsection (2) of Section 3 enumerates exceptions to the prohibition in subsection (1) for certain entities, ownership interests, circumstances of ownership, activity or manner of utilization as follows:
  - Family farm or ranch entities
  - Entities that are non-profit corporations
  - A farm or ranch located within reservation boundaries owned by an entity that is a tribal corporation
  - Lands and interests in lands held by a farming entity on the effective date of the bill (grandfathering provision) while the grandfathered interest is continuous. Expansion of ownership in lands is limited to reasonably necessary acquisitions to comply with pollution control regulations. Grandfathered interests are clarified to include land being purchased on contract upon the effective date of the bill.
  - Research or experimental farming operations where commercial sales of agricultural commodities are merely incidental
  - Farms or ranches operated for raising poultry
  - Land leased by alfalfa processors for producing alfalfa
  - Farms and ranches operated for seed, nursery stock or sod
  - Mineral rights
  - Agricultural land acquired for non-farming purpose provided ownership does not exceed five years and provided farming operations pending development are leased to a farm operator not prohibited from engaging in farming and ranching
  - Land and livestock acquired in the collection of debts, provided acquiring entity divests of property within five years and pending disposition, the land is leased to a farm operator not prohibited from engaging in farming and ranching
  - Encumbrances taken for security
  - Custom spraying, fertilizing or harvesting activities
  - Livestock futures contracts, ownership of livestock incidental to acquisition for slaughter, and temporary ownership of livestock incidental to intent to resale
  - Production contracts entered into within one year prior to the effective date of the act but the exemption extends only to one year after the effective date of the act
  - Trustee interests in agricultural land held for benefit of a natural person or entity not disqualified from owning land under this section.

#### Ownership succession

Section 3, subsection (3) provides for a period of transition of ownership of a family farm entity to minority shareholders where the majority shareholders no longer provide threshold measures of personal engagement in the operation of the farm or ranch. Provided that majority ownership remains vested in qualifying family majority ownership, and the entity's landholdings are not increased, this section provides that an entity shall have fifty years to requalify as a family farm

entity (i.e. unrelated minority shareholder providing day-to-day labor and management given 50 years to acquire majority ownership).

Enforcement:

Enforcement provisions are set forth in Section 4 of the bill as follows:

- Assigns a duty to the Secretary of State to monitor entity agricultural land acquisitions and farming activities and to notify the Attorney General of potential violations
- Authorizes the Attorney General to commence actions to enjoin noncompliant land acquisitions or production activity. Prescribes divestiture as a remedy and declares land not divested in compliance with court order escheats to the state
- Grants standing to Nebraska citizens and entities to seek enforcement in the absence of enforcement by state officials

Americans with Disabilities Act:

Subsection (3) of section 4 directs the Secretary of State to promulgate rules for providing accommodation of individuals prevented from meeting threshold management and labor contributions to qualify as a family farm entity due to physical or mental impairment. The Secretary of State is directed to maintain a registry of entities qualified as a family farm or ranch entity by virtue of reasonable accommodation.

Harmonizing provisions:

A series of harmonizing revisions to related sections of statute are made in section 5 - 11 of the bill, primarily to remove internal reference and coordination of such provisions to Article XII, Section 8 of the constitution. Specifically, the following revisions are made:

- Section §21-2602 and §67-409 are amended by Sections 5 & 6 of the bill respectively to strike existing provisions declaring LLCs and limited liability partnerships to be syndicates for purposes of Article XII, Section 8 unless meeting certain ownership and threshold requirements for day-to-day labor and management. The stricken provisions are redundant and unnecessary since LLC's' and limited are included in the definition of entity restricted by Section 3 of the bill and provisions for qualifying an LLC or a limited partnership as a family farm entity are contained in section 2.
- Sections 7 – 10 of the bill amend provisions of reporting requirements of certain entities relating to compliance with Article XII, Section 8 (found at §§76-1520 et seq.). LB 1174 conforms internal references in these sections to apply reporting requirements as relating to Section 3 of the bill and utilizes terminology for identifying entities subject to reporting provisions to be consistent with those utilized by the bill
- §77-5203 of the Beginning Farmer Tax Credit Act is amended by section 11 of the bill to conform internal references within the definition of qualified owners of agricultural assets to the bill.

Miscellaneous:

- A revisor's amendment is made to §76-1523(3) to clarify disposition of fines received under this section to conform with constitutional Article VII, Section 5. Current law directs the specific disposition of deposit in the Temporary School Fund.

- Legislative intent of severability is declared by section 12.

LB 1174 was bracketed and did not reemerge for floor debate upon the failure of the committee amendment (AM2319) to be adopted during general file discussion of the bill. LB 1174 thus technically remained pending on general file. The rejected committee amendments would have stricken the original provisions to become the bill. The committee amendment would have made largely clarifying and technical changes but inserted a significant provision not contained in the introduced bill to exempt certain entities formed by unrelated agricultural producers from the bills general restrictions. The bill as modified by the committee amendment would have differed from the introduced version in the following ways:

- Consolidates legislative findings and intent currently in subsections (1) & (2) of section 1 into new subsection (1). The revisions are for style, logical progression, and avoidance of redundancy of concepts embedded in the original subsections (1) & (2). The revisions further reinforce the reservation of the use of limited liability business entities in agricultural production to owner-operators as evidenced by provision of day-to-day management and labor. The amendment also replaces the term “farm & ranch” with the operational term “farming & ranching operation” consistent with similar changes throughout the bill contained in the amendment.
- Inserts a new findings subsection stating legislative findings of public interest in allowing limited use entities formed by owner-operated farm and ranch operators to pool resources and achieve economies of scale. The additional statement of legislative findings parallels an additional exception for “qualified owner-operator controlled farm or ranch entity” to the general prohibition in section 4 of the bill as amended.
- Modifies the definition of “entity,” the substantive effect of which is to clarify that cooperative associations included in the term encompasses both stock and nonstock cooperatives. The amendment also rearranges sentence order for style & clarity.
- Replaces the defined term “farm or ranch” with a new defined term “farming and ranching operation.” The new defined term, substituted throughout the bill as revised by the amendment, reinforces the concept of farming and ranching as an enterprise utilizing agricultural resources wherever located as opposed to a geographically defined entity.
- Modifies the defined term “family farming or ranching entity” by substituting the term “farming & ranching operation” for the term “farm or ranch” to reinforce that qualifying contribution of management and labor is to the entity’s farming and ranching enterprise as opposed to being provided upon geographically-defined assets. Additionally, the amendment specifies that trusts that are permitted as a part of a qualifying majority ownership are trusts or family trusts as defined in §76-1511 or §76-1512.
- A new defined term “qualified owner-operator controlled farm or ranch entity” is inserted. The term is defined as an entity in which ownership is exclusively held by farmers or ranchers meeting thresholds of personal engagement in farming or ranching operations and where a member of the ownership group provides day-to-day management and labor to the entity’s farming or ranching operation.
- The amendment omits “actively engaged in day-to-day labor and management” as a defined term. The substantive purpose of this term in the in the bill as introduced is effected in a new section 3 of the bill as amended. Section 3 of the bill as amended instructs that interpretation and application of the bill’s restrictions on use of a business entity to conduct farming and ranching shall include reasonable accommodation for qualified individuals with a disability to comply with the Americans with Disabilities Act (ADA). “Qualified individual with a disability” is substituted for the bill’s original designation of disabled individuals as those “having physical or mental impairment that substantially limits major

life activities.” The substituted term utilizes more accurate ADA terminology to designate individuals for whom reasonable accommodation is to be provided.

- The general prohibition to entity ownership of agricultural land and engaging in farming and ranching, and enumerated exceptions to this prohibition contained in Section 3 of the bill as introduced becomes section 4 of LB 1174 as amended. The Committee amendment makes the following revisions to this section:
  - Inserts “qualified owner-operator controlled farm or ranch entity” as an enumerated exception to the prohibition stated in subsection (1) of this section.
  - Clarifies that the exception for operations raising poultry includes operations raising poultry for poultry products, eggs, or as a poultry hatchery.
  - Omits the exemption for production contracts included as subdivision 2(o) of section 3 of the bill as introduced. The purpose of the exception in LB 1174 as introduced was to grandfather production contracts that may have been entered into with an entity that would be prohibited by LB 1174 from engaging in farming and ranching (a defined term that includes the owning, feeding or keeping livestock) to avoid potential impairment of contract. Omission of the exception removes the express grandfathering of production contracts in existence on the effective date of the bill and defers to prosecutorial discretion in enforcing the bill’s prohibitions where an impairment of existing contracts may occur. Omission of this subdivision also avoids a potential unintended conflict with other enumerated exceptions.
  - Substitutes the term “farming and ranching operation” for the term “farm or ranch” as appropriate throughout the enumerated exceptions to the general prohibition of farming activities owned or conducted by entities.
- Modifies provisions contained in Subsection 3(3) of the introduced bill providing for a 50-year period for entities to requalify as a family farm or ranch entity. The requalification period is contained in what becomes subsection 3 of Section 4 of the bill as amended. The committee amendment rearranges sentence order for clarity. The amendment further clarifies that renewal of an entity’s lease of agricultural land, or the entity’s purchase of land leased at the time it falls out of qualification as a family farm entity, do not constitute an increase in landholdings.
- Omits the provisions of subsection 3 of section 4 of the bill as introduced. Coupled with changes elsewhere in the amendment, the allowance of reasonable accommodation for qualified persons with disability is deferred to as an element of enforcement rather than assigned as a duty of the Secretary of State.
- Adds a new reporting element to information currently required to be reported by entities pursuant to §76-1520 that the reporting entity report names and addresses of shareholders and members. The harmonizing revisions to this section contained in section 7 of the bill as introduced are carried over in the amendment.
- An additional harmonizing revision to changes elsewhere in the amendment is made within §77-5203 of the Beginning Farmer Tax Credit Act to include owner-operator controlled farm or ranch entities as qualified owners of agricultural assets

## **BILLS HELD BY THE COMMITTEE**

### **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 defining the procedure for payment.
- Authorizes the Department to develop a process for making payments on a pro-rata basis

### **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.

**LB 729 (Flood) Redefine exotic animals for auctions and swap meets**

Date of Public Hearing: 1/22/08

LB 792 clarifies the definition of "exotic animals" for purposes of determining circumstances under which goats are prohibited to be sold or exchanged in exotic animal actions and swap meets. Specifically, LB 729 proposed the following changes to current law:

- Amends the definition of "exotic animal" in §54-701.03 to exclude breeds of goats utilized for dairy, food or fiber only if the Department determines there is not readily available venues of trade through licensed livestock markets. Such designation is to be made within 90 days of the effective date of the bill.
- Amends §54-7,108 to provide that only exotic animals may be exchanged through an exotic animal auction or swap meet. Currently, the prohibition in this section states which animals may not be sold through an exotic venue.

**LB 751 (Christensen) Change noxious weed funding provisions relating to stream vegetation removal**

Date of Public Hearing: 3/05/08

LB 751 revises a geographical restriction on the use of a grant funds for vegetation management to enhance stream flow. Specifically, LB 851 amends §2-958.02, subsection (4) to increase the distance from the banks of a channel for which grant funds may be utilized from 100 ft. to 1,320 ft. (1/4 mile).

**LB 999 (Hansen) Change Livestock Brand Act provisions governing brand recording**

Date of Public Hearing: 3/19/08

LB 999 would add a requirement of consent of lien holders of livestock for recording the assignment of a recorded brand. Specifically, the bill amends §54-1,100 of the Nebraska Brand Law pertaining to recording of such transfers. Current law authorizes, but does not require, instruments of writing

that evidence the assignment to be recorded with the Nebraska Brand Committee. The following requirements would be inserted by LB 999 for assignment of brand ownership:

- Require application for recording of transfer to be accompanied by either a) written consent to the transfer by holders of lien or security interests in livestock owned by the transfer applicant or b) a written statement of oath by requester that livestock are free of lien or security encumbrance.
- Provide that transfer of ownership of a brand is not effective unless recorded. The bill implies that a prescribed uniform instrument of writing evidencing transfer is to be utilized

### **LB 1053 (Erdman) Create a biodiesel production incentive**

Date of Public Hearing: 1/29/08

LB 1053 provides a targeted production incentive for qualifying biodiesel production resulting from early commercialization of innovative advancements in biodiesel production. The bill assigns a duty to the Director of Agriculture to provide a direct production incentive that may be claimed by producers of biodiesel. This incentive is limited to production utilizing advances in conversion technologies and systems that meet criteria as defined, and within limitations as prescribed in section 3 of the bill. The substantive elements of the bill include the following:

- States a legislative finding of public interest in encouraging research and demonstration, technology transfer and commercialization of innovative means of biodiesel production and states legislative intent to provide incentives to the biodiesel industry that advance this public interest.
- Section 3 of the bill provides for a “biodiesel technology transfer and commercialization” production incentive of 30 cents / gallon within the limitations set forth in this section and elsewhere in the bill. Eligible production is specifically limited as follows:
  - The incentive is made available by Subsection (1) of section 3 for biodiesel produced utilizing innovative technologies and systems “not commonly utilized commercially” which satisfy one or more performance or feedstock criteria enumerated. These criteria essentially describe eligibility criteria as biodiesel production resulting from technologies and systems that achieves greater efficiency and net energy balance in conversion of conventional feedstocks or that enables conversion of feedstocks that avoids or mitigates biofuel competition for utilization of agricultural land
  - The amount of incentives that may be claimed by individual claimants is limited by subsection 2 as follows:
    - Caps annual (calendar year) eligible production occurring at a single plant at 1 million gallons and limits eligibility to production occurring during a 24 consecutive month period commencing with the month an initial claim is submitted. In effect, eligible production of a single plant is limited to a cumulative cap of 2 million gallons
    - Caps annual cumulative production for which the incentive may be claimed by all plants claiming the credit at 2 million gallons and prorates payments in the event that annual claims exceed the 2 million gallon cumulative cap
    - Payment of claims is limited under subsection 1 to availability of funds
    - Eligibility to claim the production incentive is subject to prequalification
    - Eligible biodiesel production is further limited by definitions in Section 2 of the bill to production occurring in Nebraska and which meets identified industry fuel standards for biodiesel.

- Subsection 3 sets forth a prequalification procedure for claiming the incentive and assigns a duty to the Director to determine eligibility in conformity with the purposes for which the incentive is provided. Specifically, subsection 3 provides as follows:
    - Producer submits application to the Director of Agriculture with materials sufficient to enable evaluation of production method with purposes of production incentive and an evaluation fee not to exceed \$1000. Information submitted by an application for purpose of evaluation that are trade secrets and proprietary information are expressly protected from Public Records Act disclosure
    - The Directors assessment is assisted by evaluation performed by the Industrial Ag Products Center at UNL
    - Upon completion of evaluation, the Director makes determination of eligibility. If determined eligible, the producer may submit claims quarterly on forms provided by the Director. The producer shall submit an initial claim within 1 year of the determination.
    - provides for appeal of adverse determination according to the Administrative Procedures Act.
- Creates the Advanced Biodiesel Technology Transfer and Commercialization Cash Fund to receive and expend appropriations, fees and other revenues

**LB 1113 (Erdman) Create the Family Farm Policy Advisory Council**

Date of Public Hearing: 2/12/08

LB 1174 provides for the appointment of a task force identified as the Family Farm Policy Council to investigate and recommend policy and program interventions to advance family farm models of agricultural production. The bill contained the following substantive elements:

- Membership on the council is prescribed under section 1(1) to include representation of agricultural producers and additional membership to provide expertise relevant to the tasks assigned to the council under the bill. Subsection (2) of section 1 prescribes appointments to be made by the following procedure:
  - 7 members appointed by the Governor
  - 7 members appointed by the chair of the Agriculture committee in consultation with the committee
  - up to 2 additional members appointed by each the Chair of the Agriculture Committee and the Governor as necessary to achieve the specified representation
  - Appointments are to achieve geographical representation and to provide representation that is knowledgeable in relevant matters
  - Appointments are to be completed within 30 days of the effective date of the bill
  - The Vice Chancellor of IANR, the directors of Agriculture, Environmental Quality, Economic Development and the Executive Director of NIFA are named ex-officio, non-voting members
- Subsections 3 & 4 of Section 1 prescribe details in the organization and administration of the council. The Council is assigned administratively to the Department of Agriculture which is vested with authority to contract for services and the provision of expertise to assist the council in its investigation. The Council is to select a chair from among its membership and a majority vote of its members is required for its recommendations to be official. Members of the task force are allowed compensation of actual and necessary expenses.

- Section 2 assigns to the Council the task of identifying and recommending policies, programs, services, and strategies to encourage family farm proprietorship and models of agricultural production conducive to family farm. Such recommendations shall seek to coordinate with USDA and other federal rural development initiatives. Eleven specific areas of investigation are enumerated. The council is directed to provide a report to the Legislature and Governor on or before December 15, 2008.
- Section 4 creates the Family Farm Policy Advisory Council Cash Fund for the receipt and expenditure of funds utilized for the purposes of the bill.
- Sections 1 -3 providing for the appointment and duties of the Council are terminated by section 3 of the bill on January 1, 2009.

**LB 1114 (Erdman) Require a vote of the people to approve county fairground bonds**

Date of Public Hearing: 2/26/08

LB 1114 inserts a new section of statute to prohibit the issuance of bonds paid or secured by the levy authority of a county fair board, county agricultural society or joint public agency unless first approved by voters of the affected county at a general or special election. Sections 2 - 5 of the bill insert harmonizing internal reference to this prohibition within pertinent sections of the Interlocal Cooperation Act and the Joint Public Agency Act.

**LB 1171 (Dierks) Adopt the Agricultural Commodities Protection Act**

Date of Public Hearing: 2/19/08

LB 1171 creates a private cause of action for damages and equitable relief, including injunction, for certain persons injured by a refusal of ethanol plants to sell product. Specifically, LB 1171 prohibits the following specific acts:

- Refusing to sell ethanol to any manufacturer, distributor, marketer or retailer of motor fuels
- Imposing charges or price differential based on purchase quantity or utilization not applicable to all purchasers
- Requiring purchase of unreasonable quantities as a term of sale

The bill allows an affirmative defense if the refusal to sell is due to certain listed events that disrupt production or shipment that are beyond the producer's control and to avoid impairment of performance of contracts entered into prior to the effective date of the bill. LB 1171 further declares total production contracts whereby a plant's entire production is committed to one market to be contrary to public policy. The bill further declares that remedies available under the bill are not exclusive and do not bar pursuit of remedies that may be available in other areas of law.

## **BILLS INDEFINITELY POSTPONED BY THE COMMITTEE**

### **LB 131 (Raikes) Provide for a University Research and Development Corridor Master Plan**

Date of Public Hearing: 2/13/07

LB 131, first introduced in the 2007 legislative session, would have assigned 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 other interested parties, for areas adjacent to the University of Nebraska-Lincoln. The bill specified elements of the master plan 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

The bill established a deadline of November 1, 2007 for the University to provide the master plan to the Legislature and the Governor. LB 131 was a companion measure to LB 435 enacted during the 2008 legislative session. Its essential purposes were largely carried out through planning activities conducted by the University outside of the authority and funding provided by the bill. The bill is further made obsolete by the advancement and enactment of LB 1116.

### **LB 200 (Burling) Change the definition of tractors subject to a permit requirement**

Date of Public Hearing: 1/30/07

LB 200, first introduced in the 2007 legislative session, would have exempted 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 tractors subject to a permit requirement**

Date of Public Hearing: 1/30/07

LB 273, first introduced in the 2007 legislative session, would have exempted current agricultural tractor models of under 60 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 633 (Dierks) Change provisions of the Competitive Livestock Markets Act**

Date of Public Hearing: 2/20/07

LB 633, first introduced during the 2007 legislative session, proposed a substantive rewrite of the Competitive Livestock Markets Act that would address certain issues that have arisen as an indirect result of federal preemption of the Act's price reporting provisions and as a result of litigation in federal courts on similar laws in other states. 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 similar to Packers & Stockyards Act provisions. Specifically, the bill:

- Outright repeals existing sections that pertain to swine price discrimination and cattle contract procurement restrictions.
- Replaces existing price discrepancy prohibitions for swine procurement in §54-2607 is replaced with language prohibiting certain unfair procurement prohibitions modeled after section 202 (7 U.S.C. 192) of the federal Packers & Stockyards Act and applied 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 or 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.
- 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 that would be required to be reported under the existing price reporting sections in the event federal preemption is lifted.

**LB 860 (Burling)** Remove a fingerprinting requirement for licensure as a grain dealer or grain warehouseman

Date of Public Hearing: 2/05/08

LB 860 would have revised requirements for meeting criminal background checks as a license requirement under the Nebraska Grain Dealers Act and the Nebraska Warehouse Act. Specifically, LB 860 amends relevant sections to no longer specify that the criminal history check provided for purpose of licensure be one obtained by submitting a set of fingerprints to the State Patrol.

**LB 861 (Ag Committee)** Remove a statutory specification for the location of the state fair

Date of Public Hearing: 2/26/08

LB 861 would have removed statutory specification within §2-101 that the state fair be held at its present location. LB 861 was a competing measure to LB 1044 and LB 1116 and is made obsolete by the advancement and enactment of LB 1116.

**LB 1044 (Raikes) Create and provide duties for the State Fair Futures Commission**

Date of Public Hearing: 2/26/08

LB 1044 would have provided for the creation of a commission and process for relocating the State Fair and directs that the relocation of the fair be completed by August 1, 2012. Section 1 stated legislative findings that the current location is inadequate for purposes of the state fair and further states legislative intent to relocate the fair. The bill states further findings that the land be transferred to the University of Nebraska.

Sections 2 – 6 provided for establishment of a State Fair Future Commission prescribing membership by appointment and assigning the duty, in consultation with the State Fair Board and other stakeholder interests, to recommend a new location for the state fair and to complete a report of its findings and recommendations on or before December 31, 2008. The bill would also have amended §2-101 to remove text specifying that the State Fair be held at its current location and directing that the State Fair relocation be completed by August 1, 2012.

LB 1044 is a competing measure to LB 1116 and is made obsolete by the advancement and enactment of LB 1116.

# REPORT ON THE PRIORTIZING OF INTERIM STUDY RESOLUTIONS

Pursuant to Rule 4, Section 3(c)

COMMITTEE: Agriculture

DATE: April 17, 2008

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

<b><u>Study Category</u></b>	<b><u>Resolution No.</u></b>	<b><u>Subject</u></b>
1	LR 314	Examine means to fully cash fund the noxious weed program
1	LR 335	Examine policies, programs, etc. to support family farms
1	LR 400	Examine issues involved with relocation of the State Fair
2	LR 315	Examine disease eradication statutes
2	LR 316	Examine fed funded staffing positions and program in Bureau of Animal Industry
2	LR 350	Examine opportunities in renewable energy systems from ag products and waste streams
3	LR 353	Examine rural economic development potential of wind energy
3	LR 357	Examine the Livestock Friendly County program
3	LR 361	Examine impact of federal ban on horse slaughter

- 1 – Committee Priority – Staff prepare research report, interim hearings, task force or combination of committee activities
- 2 – Chairman Priority – Staff to compile information and prepare memoranda
- 3 – Senator Priority – Staff to assist individual senator’s research of issue

**Legislative Resolution 314** introduced by Erdman

PURPOSE: The purpose of this study is to examine means to fully cash fund the duties carried out by the Department of Agriculture under the Noxious Weed Control Act. The study shall seek to identify significant emerging and recurring invasive and noxious vegetation management issues, identify beneficiaries of weed control programs, and identify sources of dissemination of invasive and noxious vegetation. The study shall also seek to identify possible efficiencies in the delivery and funding of weed control programs and services.

**Legislative Resolution 315** introduced by Erdman

PURPOSE: The purpose of this study is to review the statutory provisions for disease eradication programs authorized in Chapter 54, article 7, and administered by the Bureau of Animal Industry of the Department of Agriculture. It is a goal of this study to examine such statutes and the activities carried out to provide for consistency in statutory form, in the elements of eradication programs authorized, consistency and uniformity in defining duties and violations, and consistency and uniformity of penalties across eradication programs.

**Legislative Resolution 316** introduced by Erdman

PURPOSE: The purpose of this study is to continue the examination initiated by Legislative Resolution 140 (2007) and 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 335** introduced by Erdman

PURPOSE: It is the purpose of this resolution to examine and identify policies, programs, services, and strategies to encourage and support family farm proprietorship and models of agricultural production and marketing conducive to family farm scale of agricultural production in this state. Such policies, programs, services, and strategies may address, but are not necessarily limited to, the following areas:

- (a) Tax incentives and policy;
- (b) Programs of extension, research, and technical and financial assistance;
- (c) Cooperative formation;
- (d) Government and institutional procurement practices;
- (e) Agricultural products standards, inspection, and certification;
- (f) Direct and local food marketing and development of specialty crops;
- (g) Credit and lending programs;
- (h) Farm succession and beginning farmer programs;
- (i) Conservation programs, open space preservation, and environmental services; and
- (j) Value-added processing, agro-tourism, and other on-farm entrepreneurial activities.

The study shall seek to involve Nebraska farm and commodity organizations, the Department of Agriculture, the University of Nebraska, the Institute of Agriculture and Natural Resources, the United States Department of Agriculture Rural Development Service Center Agency, and other entities and individuals with interest and expertise in purposes of this study.

**Legislative Resolution 350** introduced by Dubas

PURPOSE: The purpose of this resolution is to examine opportunities in the growth and development of renewable energy, including cellulose ethanol, biodiesel, and other systems for capturing energy values from agricultural products and waste streams. This study should identify policies, programs, and strategies to optimize economic value realized by production agriculture and related economic sectors in renewable energy development.

**Legislative Resolution 353** introduced by Preister

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 357** introduced by Preister

PURPOSE: To examine policies relating to livestock friendly county programs in the state.

**Legislative Resolution 361** introduced by Dierks

PURPOSE: The purpose of this resolution is to examine the impact of federal and state bans on the slaughter of horses, the transport of horses for slaughter, and the options available for the disposal of horses. The study shall seek to determine the availability of rendering and the utilization of land burial as a means of disposal and examine whether states that allow humane slaughter of horses are in conflict with applicable federal law.

**Legislative Resolution 400** introduced by the Agriculture Committee

PURPOSE: It is the purpose of this study to monitor activity, and to examine issues, relating to the implementation of Legislative intent stated in subsection (4) of §2-101 as amended by LB 1116 enacted during the 100<sup>th</sup> Legislature, second session. LB 1116 as enacted states legislative intent that the Nebraska State Fair relocate to Fonner Park in Grand Island by the 2010 state fair and that the State Fairgrounds be transferred to the University of Nebraska for development as a research and innovation campus. LB 1116 reflects and acknowledges the agreement of pertinent parties for the Fair Board's use of Fonner Park, a plan of capitol improvements to upgrade the Fonner Park facility to serve as a state fair exhibition facility, and funding contributions by the University of Nebraska, the city of Grand Island, the State Fair Board and the State of Nebraska. It is a goal of this study to monitor, report on, or make recommendations relating to, but not necessarily limited to:

- a) the performance of financial commitments of the University of Nebraska, the City of Grand Island, and the Nebraska State Fair Board, including incremental benchmarks of funding contributions;
- b) the resolution of any property issues pertaining to interests of third parties held through long-term leasing arrangements and capital improvements made by such entities upon the state fairgrounds;
- c) the future of live and simulcast racing currently conducted at state fair park and the potential for live racing to be relocated to another site;
- d) the cooperation and coordination between the University of Nebraska, the State Fair Board and other appropriate entities to perform activities of due diligence associated with the property transfer contemplated by LB 1116;
- e) the completion and execution of those agreements between and among the State Fair Board, the Hall County Livestock Improvement Association and any other appropriate entities regarding site governance, revenue sharing, and facility utilization;
- f) the completion and execution of a site plan for capitol improvements and activities for carrying out such plan of improvements, including the utilization of funds available in the State Fair Relocation Cash Fund and the State Fair Support and Improvement Cash Fund;
- g) Additional statutory revisions necessitated by, or to accommodate, the relocation of the Nebraska State Fair, and
- h) Planning and vision for the state fair.

The Chair of the Agriculture Committee, in consultation with the members of the committee and other members of the Legislature, shall conduct the study contemplated by this resolution in consultation with the State Fair Board, the Hall County Livestock Improvement Association, the City of Grand Island, the City of Lincoln, the Department of Administrative Services, the State Racing Commission, and other appropriate public and private organizations in carrying out the purposes of the study.