

LEGISLATIVE BILL 803

Approved by the Governor August 06, 2020

Introduced by Hughes, 44; Blood, 3.

A BILL FOR AN ACT relating to agriculture; to amend sections 2-3740 and 49-1499.02, Reissue Revised Statutes of Nebraska, and sections 52-1308 and 60-6,298, Revised Statutes Cumulative Supplement, 2018; to adopt the Dry Pea and Lentil Resources Act; to create a commission and a fund; to redefine terms under the Dry Bean Resources Act and the Nebraska Political Accountability and Disclosure Act and for purposes of a filing system for farm product security interests; to change provisions relating to a distance limitation exception for certain vehicle weight and length permits; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 19 of this act shall be known and may be cited as the Dry Pea and Lentil Resources Act.

Sec. 2. For purposes of the Dry Pea and Lentil Resources Act, unless the context otherwise requires:

(1) Commercial channels means the sale of any dry peas and lentils for any use when sold to any commercial buyer, dealer, processor, or cooperative or any person, public or private, who resells any dry peas and lentils or product produced from dry peas and lentils;

(2) Commission means the Dry Pea and Lentil Commission;

(3) Dry peas and lentils means dry peas, lentils, chickpeas or garbanzo beans, faba beans, or lupins;

(4) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property rights in or to any dry peas and lentils from a grower and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower when the actual or constructive possession of such dry peas and lentils is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(5) Grower means any landowner personally engaged in growing any dry peas and lentils, a tenant of the landowner personally engaged in growing any dry peas and lentils, and both the owner and the tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business units, devices, and arrangements;

(6) Net market price means the sales price, or other value, per volumetric unit received by a grower for any dry peas and lentils after adjustment for any premium or discount;

(7) Net market value means the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a grower for any dry peas and lentils after adjustments for any premium or discount. For any dry peas and lentils pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, net market value means the principal amount of the loan; and

(8) Sale includes any pledge or mortgage of any dry peas and lentils after harvest to any person, public or private.

Sec. 3. The Dry Pea and Lentil Commission is created. Members shall be appointed to the commission by the Governor pursuant to section 4 of this act.

Sec. 4. (1) The commission shall be composed of five members who shall:

(a) Be citizens of Nebraska;

(b) Be at least twenty-one years of age;

(c) Have been actually engaged in growing dry peas and lentils in this state for a period of at least five years;

(d) Reside in the district they represent; and

(e) Derive a substantial portion of their income from growing dry peas and lentils.

(2) The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall serve as nonvoting members of the commission.

(3) With the exception of the nonvoting members, the Governor shall appoint the members to the commission. The Governor shall appoint the initial members no later than July 1, 2021. One member shall be appointed from each of the following five districts:

(a) District 1: The counties of Sioux, Scotts Bluff, Banner, Kimball, Dawes, Box Butte, Morrill, Cheyenne, Sheridan, Garden, and Deuel;

(b) District 2: The counties of Cherry, Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Chase, Hayes, Frontier, Dundy, Hitchcock, and Red Willow;

(c) District 3: All counties other than those listed in subdivision (a) or (b) of this subsection;

(d) District 4: The state at-large; and

(e) District 5: The state at-large.

Sec. 5. The term of the member first appointed to serve district 1 shall expire on June 30, 2022; the term of the members first appointed to serve district 2 and district 4 shall expire on June 30, 2023; and the term of the members first appointed to serve district 3 and district 5 shall expire on June 30, 2024. As the terms of office of the initial commission members expire as provided in this section, their successors shall be appointed to serve for terms of three years and until their successors are appointed and qualified. A member appointed to fill a vacancy, occurring before the expiration of the term of a member separated from the commission for any cause, shall be appointed for the remainder of the term of the member whose office has been so vacated in the same manner as his or her predecessor. Each commission member may serve a maximum of three consecutive terms.

Sec. 6. All voting members of the commission shall be entitled to expenses, as provided for in sections 81-1174 to 81-1177, while attending meetings of the commission or while engaged in the performance of official responsibilities as determined by the commission.

Sec. 7. A member of the commission may be removed by the Governor for cause. He or she shall first be given a written copy of the cause or causes for removal and an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he or she was appointed, or (3) be actually engaged in growing dry peas and lentils in the state shall be deemed a sufficient cause for removal from the commission.

Sec. 8. At the first meeting of the commission, it shall elect a chairperson from among its members. The commission shall meet at least once every year and at such other times as called by the chairperson or by any three voting members of the commission. The majority of the voting members of the commission shall constitute a quorum for transaction of business. The commission may hold meetings by teleconference or videoconference subject to the Open Meetings Act. No member shall vote by proxy, and the affirmative vote of the majority of all members of the commission shall be necessary for the adoption of rules and regulations.

Sec. 9. It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the dry pea and lentil industry and the economy of the areas producing dry peas and lentils. The commission shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, the commission shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of dry peas and lentils grown within the State of Nebraska;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Dry Pea and Lentil Resources Act and enter into such contracts as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the Dry Pea and Lentil Resources Act. The rules and regulations shall include provisions which prescribe the procedure for adjustment of the excise tax by the commission pursuant to section 11 of this act;

(5) Conduct, in addition to the things enumerated in this section, any other program for the development, utilization, and marketing of dry peas and lentils grown in the State of Nebraska. Such programs may include a program to make grants and enter into contracts for research and accumulation of data;

(6) Make refunds for overpayments of the excise tax according to rules and regulations adopted and promulgated by the commission; and

(7) Employ personnel and contract for services which are necessary for the proper operation of the Dry Pea and Lentil Resources Act.

Sec. 10. The commission may establish an administrative office in the State of Nebraska at such place as may be suitable for the furtherance of the Dry Pea and Lentil Resources Act. The commission shall not purchase, construct, or otherwise obtain title to its own administrative office, but shall be limited to leasing state or commercial office space.

Sec. 11. (1) Beginning on July 1, 2021, there is hereby levied an excise tax of one percent of the net market value of dry peas and lentils sold through commercial channels in the State of Nebraska. The tax shall be levied and imposed on the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Dry Pea and Lentil Resources Act, no dry peas and lentils shall be subject to the tax more than once.

(2) After July 1, 2023, the commission may, whenever it determines that the excise tax levied by this section is yielding more or less than is required to carry out the intent and purposes of the Dry Pea and Lentil Resources Act, reduce or increase such levy for such period as it deems justifiable, but not less than one year, and such levy shall not be less than one percent of net market value and not exceed two percent of the net market value. Any adjustment to the levy shall be by rule and regulation adopted and promulgated by the commission.

Sec. 12. In the case of a pledge or mortgage of dry peas and lentils as security for a loan under the federal price support program, the tax shall be deducted from the proceeds of such loan at the time the loan is made.

Sec. 13. The tax provided for by section 11 of this act shall be deducted as provided by the Dry Pea and Lentil Resources Act, whether such dry peas and lentils are stored in this or any other state.

Sec. 14. The tax levied and imposed by section 11 of this act shall not apply to the sale of dry peas and lentils to the federal government for ultimate use or consumption by the people of the United States, where the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Sec. 15. (1) The first purchaser, at the time of settlement, shall deduct the dry pea and lentil excise tax as provided for in section 11 of this act and shall maintain the necessary records of the excise tax for each purchase of dry peas and lentils on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the first purchaser shall provide the following information:

- (a) Name and address of the grower and seller;
- (b) Date of the purchase;
- (c) Number of pounds of dry peas and lentils sold;
- (d) Total value of the dry peas and lentils sold; and
- (e) Amount of the dry pea and lentil excise tax collected on each purchase.

(2) Such records shall be open for inspection and audit by authorized representatives of the commission during normal business hours observed by the first purchaser.

(3) The first purchaser shall render and have on file with the commission by the tenth day of each month on forms prescribed by the commission, a statement of the number of pounds of dry peas and lentils purchased in Nebraska during the prior month. At the time the statement is filed, the first purchaser shall pay and remit to the commission the tax as provided for in section 11 of this act.

Sec. 16. The Dry Pea and Lentil Fund is created. All taxes collected by the commission pursuant to the Dry Pea and Lentil Resources Act and any repayments relating to the fund, including license fees or royalties, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to carry out such act. The commission shall at each regular meeting review and approve all expenditures made since its last regular meeting. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 17. The commission shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the Department of Agriculture, University of Nebraska Institute of Agriculture and Natural Resources, or other proper local, state, or national organizations, public or private, in carrying out the Dry Pea and Lentil Resources Act.

Sec. 18. Any person violating the Dry Pea and Lentil Resources Act shall be guilty of a Class III misdemeanor.

Sec. 19. No funds collected by the commission shall be expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than twenty-five percent of its annual budget to influence federal legislation.

Sec. 20. Section 2-3740, Reissue Revised Statutes of Nebraska, is amended to read:

2-3740 Dry bean shall mean any dry edible bean. Dry bean does not include chickpeas or garbanzo beans.

Sec. 21. Section 49-1499.02, Reissue Revised Statutes of Nebraska, is amended to read:

49-1499.02 (1) An official or employee of the executive branch of state government who would be required to take any action or make any decision in the discharge of his or her official duties that may cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

(a) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and

(b) Deliver a copy of the statement to the commission and to his or her immediate superior, if any, who shall assign the matter to another. If the immediate superior does not assign the matter to another or if there is no immediate superior, the official or employee shall take such action as the commission shall advise or prescribe to remove himself or herself from influence over the action or decision on the matter.

(2) This section does not prevent such a person from (a) making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made or (b) making or participating in the making of a governmental decision if the potential conflict of interest is based upon a business association and the business association exists only as the result of his or her position on a commodity board. A person acting pursuant to subdivision (a) of this subsection shall report the occurrence to the commission.

(3) For purposes of this section, commodity board means only the following:

- (a) Corn Development, Utilization, and Marketing Board;
- (b) Nebraska Dairy Industry Development Board;
- (c) Grain Sorghum Development, Utilization, and Marketing Board;

- (d) Nebraska Wheat Development, Utilization, and Marketing Board;
- (e) Dry Bean Commission;
- (f) Nebraska Potato Development Committee; ~~and~~
- (g) Nebraska Poultry and Egg Development, Utilization, and Marketing Committee; ~~and~~ -
- (h) Dry Pea and Lentil Commission.

Sec. 22. Section 52-1308, Revised Statutes Cumulative Supplement, 2018, is amended to read:

52-1308 Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, dry peas and lentils, eggs, embryos or genetic products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew melon, horses, llamas, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

Sec. 23. Section 60-6,298, Revised Statutes Cumulative Supplement, 2018, is amended to read:

60-6,298 (1)(a) The Department of Transportation or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, except that any combination with two or more cargo-carrying units, not including the truck-tractor, also known as a longer combination vehicle, may only operate for a distance up to seventy miles loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans or dry peas and lentils from the field where harvested to storage or market when dry beans or dry peas and lentils are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288;

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle; or

(vi) To transport during daylight hours divisible loads of livestock forage in bale form which do not exceed twelve feet in width, except that the permit shall not allow transport on holidays.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public

construction or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation. The permit shall include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars. Permits issued pursuant to such subdivision shall be valid for thirty days and shall be renewable four times for a total number of days not to exceed one hundred fifty days per calendar year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

Sec. 24. Original sections 2-3740 and 49-1499.02, Reissue Revised Statutes of Nebraska, and sections 52-1308 and 60-6,298, Revised Statutes Cumulative Supplement, 2018, are repealed.