

AMENDMENTS TO LB 803

1 1. Strike the original sections and insert the following
2 new sections:

3 "Section 1. Sections 1 to 17 of this act shall be known
4 and may be cited as the Nebraska Pork Industry Development Act.

5 Sec. 2. The Legislature declares it to be in the public
6 interest that pork producers in Nebraska be permitted and
7 encouraged to maintain and expand domestic sales of pork and pork
8 products, develop new products and new markets, improve methods and
9 practices relating to marketing or processing of pork and pork
10 products, and inform and educate consumers of sound nutritional
11 principles including the role of pork in a balanced diet. It is
12 the purpose of the Nebraska Pork Industry Development Act to
13 designate a recognized state association of pork producers to
14 administer funds remitted to the state under the federal Pork
15 Promotion, Research, and Consumer Information Act of 1985, 7 U.S.C.
16 4801 et seq., and to authorize and prescribe the necessary
17 procedures by which the pork industry in Nebraska may finance
18 programs to achieve the purposes expressed in this section in the
19 event the federal pork promotion program is terminated.

20 Sec. 3. The Legislature finds that:

21 (1) The federal government has enacted the Pork
22 Promotion, Research, and Consumer Education Act of 1985, 7 U.S.C.
23 4801 et seq., which provides for the establishment of a national
24 program of promotion, research, consumer information, and industry

1 information designed to strengthen the pork industry's position in
2 the marketplace, to improve pork production methods, and to
3 maintain and expand existing domestic and foreign markets and uses
4 for pork and pork products;

5 (2) To carry out the federal pork promotion program,
6 assessments are made on the sale of domestic swine and on swine
7 that are imported. The federal act provides that a proportion of
8 net assessments collected in each state shall be remitted to a
9 recognized state association defined as the single organization of
10 producers in a state that is organized under the laws of the state
11 and recognized by the Governor of the state as representing that
12 state's pork producers;

13 (3) The federal Secretary of Agriculture will, in
14 accordance with the settlement agreement reached in the case of
15 Michigan Pork Producers Association, et al. v. Ann Veneman,
16 Secretary of Agriculture, restructure the federal pork promotion
17 program to separate the functions of the National Pork Board with
18 respect to administration of assessments for purposes of the
19 federal act from the administration and activities conducted by the
20 National Pork Producers Council;

21 (4) It is desirable to clearly distinguish and delineate
22 pork promotion, research, and consumer education activities funded
23 by assessments collected under the federal act or pursuant to the
24 state act that are expended by the recognized state association
25 from lobbying, candidate endorsement, member services, and other
26 functions that may be carried out by associations of pork
27 producers. To accomplish this objective, it is necessary to

1 establish a separate board to administer assessment funds
2 consistent with the purposes of the federal act or with the
3 purposes of the state act if assessments are collected as provided
4 under the state act; and

5 (5) It is desirable to encourage the formation of a
6 nonprofit corporation that adheres to principles of organization,
7 pork producer representation, and administration of assessment
8 funds consistent with the purposes set out in the federal act and
9 the state act and that an association meeting such criteria be
10 designated by the Governor as the recognized state association for
11 purposes of receiving and expending assessments collected under the
12 federal act or the state act, as the case may be.

13 Sec. 4. For purposes of the Nebraska Pork Industry
14 Development Act:

15 (1) Board means the Nebraska Pork Industry Development
16 Board, which is the nonprofit corporation designated as the
17 recognized state association of pork producers pursuant to section
18 5 of this act;

19 (2) Director means the Director of Agriculture;

20 (3) Federal act means the Pork Promotion, Research, and
21 Consumer Information Act of 1985, 7 U.S.C. 4801 et seq., as the act
22 existed on the effective date of this act, or any substantially
23 similar successor federal act which provides for an assessment on
24 the marketing of swine for purposes similar to the act;

25 (4) Purchaser means any person, public or private
26 corporation, association, partnership, or limited liability company
27 accepting for shipment, or otherwise acquiring the property right

1 in or to swine, and shall include a mortgagee, pledgee, lienor, or
2 other person, public or private, having a claim against the
3 producer when the actual or constructive possession of such swine
4 is taken as part payment or in satisfaction of such mortgage,
5 pledge, lien, or claim;

6 (5) Qualified pork producer means any person engaged in
7 the production of swine in Nebraska who owns, or who shares the
8 ownership and risk of loss of, such swine and who has paid an
9 assessment within the previous two years pursuant to the federal
10 act or pursuant to the state act;

11 (6) State act means the Nebraska Pork Industry
12 Development Act;

13 (7) Swine means porcine animals raised for slaughter,
14 feeder pigs, or breeding stock;

15 (8) Pork means the flesh of a porcine animal; and

16 (9) Pork products means a product produced or processed
17 in whole or in part from pork.

18 Sec. 5. Any time within one year after the effective
19 date of this act, the Governor, upon the recommendation of the
20 director made pursuant to section 7 of this act, may designate a
21 single association of pork producers as the recognized state
22 association for purposes of the federal act and the state act.
23 Such association shall meet the criteria set out in section 6 of
24 this act. The recognized state association shall be known as the
25 Nebraska Pork Industry Development Board.

26 Sec. 6. An association of pork producers seeking to be
27 designated by the Governor as the recognized state association

1 pursuant to the federal act or the state act shall be organized as
2 a nonprofit corporation and have articles of incorporation and
3 bylaws which include provisions providing that:

4 (1) Except for the selection of an at-large member,
5 members of the corporation's board of directors shall be nominated
6 and elected by districts delineated to achieve a nearly equal
7 distribution of swine sales within each district. A member of the
8 corporation's board of directors representing a district shall be
9 elected by qualified pork producers who reside in such district.
10 The at-large member of the corporation's board of directors shall
11 be appointed by the elected members;

12 (2) The terms of members of the board of directors shall
13 be three years, except for initial board members whose terms may be
14 less than three years and of varying lengths to achieve a
15 staggering of terms of the members of the corporation's board of
16 directors;

17 (3) The periodic revision of district boundaries,
18 utilizing the data pertaining to swine from the table Market Value
19 of Agricultural Products Sold from the most recent volume of the
20 Census of Agriculture: Nebraska State and County Data published by
21 the National Agricultural Statistics Service of the United States
22 Department of Agriculture and adhering to the following standards:

23 (a) District boundaries shall consist of whole counties;

24 (b) District boundaries shall, to the extent practicable,
25 be redrawn in a manner that minimizes changes in existing district
26 boundaries;

27 (c) District boundaries shall be redrawn to maintain the

1 district residency of existing board members in the district from
2 which elected for any such board member who would be eligible for
3 reelection to the board at the expiration of his or her term; and

4 (d) Such revision of district boundaries are adopted at a
5 public meeting of the board of directors of the association;

6 (4) The financial records of the corporation are audited
7 annually in accordance with any requirements of the federal act;

8 (5) The corporation assumes all existing and future
9 liabilities of the existing state association recognized by the
10 federal Secretary of Agriculture pertaining to projects initiated
11 and ongoing for purposes of the federal act and funded through
12 assessments collected pursuant to the federal act; and

13 (6) The duties and purposes of the corporation are those
14 provided for a recognized state association under the federal act
15 or under the state act if assessments are commenced and collected
16 pursuant to the state act.

17 Sec. 7. A nonprofit corporation seeking to be the
18 recognized state association pursuant to section 5 of this act
19 shall submit to the director copies of its articles of
20 incorporation and bylaws, written documentation that the
21 corporation has been certified by the federal Secretary of
22 Agriculture that it is capable and qualified to carry out the
23 functions of a recognized state association pursuant to the federal
24 act, and any other information or documentation deemed necessary by
25 the director for purposes of determining the suitability of the
26 corporation pursuant to the criteria in section 6 of this act. The
27 director shall complete the review of the articles and bylaws and

1 other documentation received by the corporation within thirty days
2 and make a recommendation to the Governor on the question of
3 whether to designate such corporation under section 5 of this act.

4 Sec. 8. A nonprofit corporation which is the recognized
5 state association under section 5 of this act shall contract with
6 the existing state association recognized by the federal Secretary
7 of Agriculture for purposes of the federal act for the transfer of
8 any funds, furniture, equipment, and other property purchased with
9 funds remitted to the state association pursuant to the federal act
10 and for the transfer of books, files, and records kept or
11 maintained for purposes of carrying out the purposes of the federal
12 act.

13 Sec. 9. The powers and duties of the board shall include
14 the following:

15 (1) To develop and direct a pork promotion program to
16 enhance pork development, utilization, and marketing. Such program
17 may include a program to make grants and enter into contracts for
18 research, accumulation of data, and educational and promotional
19 activities. The board shall not set up research or development
20 units or agencies of its own, but shall cooperate and contract with
21 the University of Nebraska Institute of Agriculture and Natural
22 Resources and other proper local, state, or national organizations,
23 public or private, in carrying out the pork promotion program;

24 (2) To prepare and approve a budget consistent with the
25 receipts and the scope of the pork promotion program;

26 (3) To adopt and promulgate such rules and regulations as
27 are necessary to enforce the state act in accordance with the

1 Administrative Procedure Act;

2 (4) To procure and evaluate data and information
3 necessary for the proper administration and operation of the pork
4 promotion program;

5 (5) To employ personnel and contract for services which
6 are necessary for the proper operation of the pork promotion
7 program;

8 (6) To establish a means whereby any producer of swine
9 has the opportunity at least annually to offer his or her ideas and
10 suggestions relative to board policy for the upcoming year;

11 (7) To authorize the expenditure of funds and contracting
12 of expenditures to conduct proper activities of the pork promotion
13 program;

14 (8) To bond the treasurer and such other persons
15 necessary to insure adequate protection of funds;

16 (9) To keep minutes of its meetings and other books and
17 records which will clearly reflect all of the acts and transactions
18 of the board and to keep these records open to examination by any
19 producer-participant during normal business hours;

20 (10) To prohibit any funds collected or administered by
21 the board from being expended directly or indirectly to promote or
22 oppose any candidate for public office or to influence state or
23 federal legislation; and

24 (11) To make refunds for overpayment of fees according to
25 rules and regulations adopted and promulgated by the board.

26 Sec. 10. (1) Within sixty days after the publication of
27 a final rule of the United States Department of Agriculture in the

1 Federal Register to terminate the collection of assessments under
2 the federal act, the director shall conduct an initial referendum
3 among qualified pork producers. The referendum shall be conducted
4 under administrative procedures prescribed by the director on the
5 question of whether an assessment for purposes of the pork
6 promotion program as authorized in the state act shall be
7 commenced.

8 (2) Notice of the call for a referendum shall be
9 delivered by the director to the Cooperative Extension Service of
10 the University of Nebraska for delivery to all extension agents
11 within the state. In addition, the director shall take such steps
12 as may be reasonably necessary to inform qualified pork producers
13 of the period during which the referendum shall be held and the
14 manner in which such producers may vote in the referendum.

15 (3) Voting shall be on ballots prescribed by the director
16 which may be distributed as determined by the director to
17 facilitate the availability of ballots to qualified pork producers.
18 The form of the ballot shall be determined by the director but
19 shall, at a minimum, contain an affidavit by the person casting a
20 ballot that he or she meets the requirements to vote in the
21 referendum. The director may, in the rules for conducting the
22 referendum, require that a person voting in the referendum provide
23 documentation of the types determined by the director to be useful
24 in verifying that person's qualification to vote.

25 (4) The director shall count and tabulate the ballots
26 filed during the referendum within thirty days after the close of
27 the referendum. The director shall certify the results of the

1 referendum by submitting a tabulation of the results to the
2 Governor and the Secretary of State.

3 Sec. 11. The director may cooperate or contract with any
4 other state, local, or federal agency for purposes of distributing,
5 collecting, and tabulating ballots or for the verification of the
6 qualification of persons voting in the referendum under section 10
7 of this act and may utilize other funds in the department for any
8 amount necessary to defray the cost of conducting the referendum.
9 If an assessment is commenced pursuant to section 12 of this act
10 following the results of the referendum, the board shall reimburse
11 department funds utilized pursuant to this section from the
12 assessments collected within a period not to exceed one hundred
13 twenty days after such assessments commence.

14 Sec. 12. If the director determines that a majority of
15 the total number of qualified pork producers voting in the
16 referendum conducted pursuant to section 10 of this act favors the
17 assessment, there shall be paid to the board a mandatory assessment
18 of fifteen-hundredths percent of the gross sales price of all swine
19 beginning one hundred twenty days after the date of the termination
20 of the collection of assessments under the federal act. The
21 assessment shall be made at the time of delivery of the swine for
22 sale and shall be deducted by the purchaser from the price paid to
23 the seller. The purchaser, at the time of sale, shall make and
24 deliver to the seller an invoice for each purchase showing the
25 names and addresses of the seller and the purchaser, the number and
26 kind of swine sold, the date of sale, and the assessment made on
27 the sale. Assessments shall be paid to the board by purchasers at

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1 the time prescribed by the board, but no later than the last day of
2 the month following the month in which the swine were purchased.

3 Sec. 13. The assessment levied pursuant to section 12 of
4 this act shall not vary from the rate specified in that section
5 unless an increase or decrease in the rate of assessment is
6 approved by the majority of qualified pork producers voting in a
7 referendum conducted pursuant to section 14 of this act. In no
8 case shall the rate of assessment exceed five-tenths percent nor be
9 less than fifteen-hundredths percent of the gross sales price. The
10 question of whether to place on the ballot for referendum an
11 increase or decrease in the rate of assessment shall be approved by
12 a majority of two-thirds of the members of the board. The question
13 of a rate increase or decrease shall be included in the next
14 regularly scheduled referendum pursuant to section 14 of this act
15 and shall be approved or disapproved as a separate ballot question
16 from the question of whether the assessments collected pursuant to
17 the state act shall continue.

18 Sec. 14. In November of the third calendar year after
19 the initial referendum conducted pursuant to section 10 of this act
20 and every third year thereafter, the board shall conduct a
21 referendum of qualified pork producers on the question of whether
22 the assessments collected pursuant to the state act shall continue.
23 Such referendum shall be conducted pursuant to administrative
24 procedures determined by the board and conducted pursuant to the
25 manner provided for the initial referendum pursuant to section 10
26 of this act.

27 Sec. 15. The board shall make and publish an annual

1 report on or before January 1 of each year, which report shall set
2 forth in detail the income received from the assessment for the
3 previous fiscal year and shall include:

4 (1) The expenditure of all funds by the board during the
5 previous year for the administration of the state act;

6 (2) The action taken by the board on all contracts
7 requiring the expenditure of funds by the board;

8 (3) Descriptions of all such contracts;

9 (4) Detailed explanation of all programs of the pork
10 promotion program relating to the discovery, promotion, and
11 development of markets and industries for pork and pork products,
12 the direct expense associated with each program, and copies of such
13 programs if in writing; and

14 (5) The name and address of each member of the board and
15 a copy of all rules and regulations promulgated by the board.

16 Such report shall be available to the public upon
17 request.

18 Sec. 16. All expenses for any referendum or election of
19 board members pursuant to the state act shall be paid from funds
20 available to the board, including funds derived from assessments
21 collected pursuant to the state act.

22 Sec. 17. Any person violating the state act shall be
23 guilty of a Class III misdemeanor."