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AMENDMENTS TO LB 435

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

3           "Section 1. Sections 1 to 8 of this act shall be known  
4 and may be cited as the Agricultural Suppliers Lease Protection  
5 Act.

6           Sec. 2. The Legislature finds that agricultural  
7 production in this state is highly dependent upon businesses  
8 providing inputs for agricultural producers and markets for  
9 agricultural commodities which have historically located on lands  
10 owned and served by railroads. It is vital to the continued  
11 prosperity of agriculture that such businesses maintain reasonable  
12 access to rail service and maintain reasonable terms of tenancy  
13 upon land owned by railroads or their successors in interest. The  
14 Legislature also finds that agribusiness leaseholders' substantial  
15 investments in structures and improvements unique to their rail  
16 location, as well as dependency on rail access, place them at a  
17 disadvantage in negotiating lease renewals. The Legislature  
18 further finds that given the substantial investment in structures  
19 and improvements made by agribusiness leaseholders, it is equitable  
20 that such agribusiness leaseholders have a right of first refusal  
21 to purchase the land they lease, should it be offered for sale.  
22 The purpose of the Agricultural Suppliers Lease Protection Act is  
23 to establish a system for fair resolution of lease disputes that  
24 may arise between railroad property owners or their successors and

1 agribusiness tenants, and to guard against unreasonable lease  
2 renewal terms or unjust lease termination.

3           Sec. 3. For purposes of the Agricultural Suppliers Lease  
4 Protection Act:

5           (1) Agricultural tenant means any public warehouse  
6 licensee as defined in section 88-526 or any other persons  
7 primarily engaged in the sale or distribution of fertilizer,  
8 agricultural chemicals, or farm implements, machinery, or equipment  
9 occupying railroad land owned or controlled by a railroad or its  
10 grantee or successor in interest;

11           (2) Good faith means honesty in fact in the conduct of  
12 the transaction concerned;

13           (3) Lease means any agreement between a railroad and a  
14 tenant under the terms of which a tenant occupies the surface of  
15 railroad land;

16           (4) Railroad land means any land acquired by a railroad  
17 in strips for right-of-way and any parcel or tract acquired by a  
18 railroad adjacent to its right-of-way to aid in the construction,  
19 maintenance, and accommodation of its railway and which is occupied  
20 pursuant to a lease by a tenant who owns substantial improvements  
21 thereon; and

22           (5) Substantial improvements means buildings or other  
23 fixtures to property that are permanent in nature and shall include  
24 storage and handling facilities and equipment that are affixed to  
25 real property;

26           (6) Successor in interest includes any agent, successor,  
27 assignee, trustee, receiver, or other person acquiring interests or

1 rights in railroad land, including, but not limited to, the owner  
2 or holder of any servient estate or right of reversion relating to  
3 railroad land.

4           Sec. 4. (1) At the expiration of an existing lease, the  
5 agricultural tenant shall be given the opportunity to renew the  
6 lease at fair market value.

7           (2) All controversies regarding application and  
8 reasonableness of lease terms and conditions or fair market value  
9 arising between a railroad or its successor in interest and an  
10 agricultural tenant who is the owner, lessee, or licensee of a  
11 substantial improvement situated on railroad land owned or  
12 controlled by the railroad or its successor in interest shall be  
13 resolved by negotiation or by Department of Agriculture action.

14           (3) The parties shall first negotiate in good faith to  
15 resolve any controversy. If any such controversy is not resolved  
16 within sixty days after notification is given to an agricultural  
17 tenant by a railroad or its successor in interest that it wishes to  
18 (a) renew a lease upon new terms, (b) terminate a lease, (c) not  
19 renew a lease upon the expiration of a current lease, or (d) change  
20 the terms of an existing lease, then either party may file a  
21 complaint with the department setting forth facts upon which such  
22 grievance is based.

23           (4) The department, after reasonable notice to the  
24 parties, shall hear and determine all matters in controversy and  
25 make such order as the facts of the controversy warrant. With  
26 respect to hearing and determination of the matters in controversy,  
27 the department shall have those powers granted to it under sections

1 84-913 to 84-915.01. Any party shall have the right to appeal from  
2 such order in accordance with sections 84-917 to 84-919.

3           Sec. 5. (1) If a railroad or its successor in interest  
4 wishes to sell or offer to sell property leased to an agricultural  
5 tenant upon which substantial improvements owned by the  
6 agricultural tenant are located, then, except where the sale or  
7 offer to sell is made to a purchaser which will use the property  
8 for railroad operating purposes or for interim trail use under the  
9 federal National Trails System Act, 16 U.S.C. 1243, as such act  
10 existed on the effective date of this act, the railroad or its  
11 successor in interest shall first extend to the agricultural tenant  
12 a written offer to sell the railroad land to the agricultural  
13 tenant at fair market value.

14           (2) The agricultural tenant shall have thirty days after  
15 the written offer to give written notice of either (a) acceptance  
16 of the offer to sell and of the offerer's determination of fair  
17 market value or (b) acceptance of the offer to sell and rejection  
18 of the offerer's determination of fair market value in which case  
19 the parties shall negotiate the fair market value and, if the  
20 parties cannot agree, the agricultural tenant shall have sixty days  
21 after the agricultural tenant gives notice of rejection to file a  
22 complaint with the Department of Agriculture seeking determination  
23 of fair market value.

24           (3) The Department of Agriculture, after reasonable  
25 notice to the parties, shall hear and determine the fair market  
26 value of the land offered for sale and make such order as the facts  
27 of the controversy warrant. In conducting its hearing, the

1 department shall have those powers granted it under the  
2 Administrative Procedure Act. Any person shall have the right to  
3 appeal from such order in accordance with the act.

4 (4) If the agricultural tenant fails to give timely  
5 notice or to file a timely complaint under subsection (2) of this  
6 section or to complete the purchase of the property within sixty  
7 days after the fair market value has been accepted by the  
8 agricultural tenant or determined by the department unless the  
9 delay in completing the purchase is attributable to the railroad or  
10 its successor in interest, then the railroad or its successor in  
11 interest may sell or offer to sell the property to any purchaser,  
12 and such purchaser shall not be bound by this section. If the  
13 property is sold to a purchaser which will use the property for  
14 railroad operating purposes or for interim trail use under the  
15 federal National Trails System Act, 16 U.S.C. 1243, as such act  
16 existed on the effective date of this act, then the purchaser shall  
17 be bound by all of the provisions of the Agricultural Suppliers  
18 Lease Protection Act.

19 Sec. 6. (1) The Department of Agriculture may employ the  
20 services of a certified general real estate appraiser with an MAI  
21 or an ARA designation when determination of fair market value is a  
22 matter in controversy or relevant to the hearing and determination  
23 of the matter in controversy.

24 (2) All costs incurred by the department hearing and  
25 determining all matters in controversy pursuant to the Agricultural  
26 Suppliers Lease Protection Act shall be paid equally by the  
27 parties.

1           Sec. 7. The Agricultural Suppliers Lease Protection Act  
2 shall not apply to any valid lease entered into prior to the  
3 effective date of this act or any renewal or extension thereof on  
4 the same terms and conditions, but the provisions of the act shall  
5 apply to and govern any renewal or extension of such lease on any  
6 different terms or conditions or any material modifications of any  
7 such lease effected on or after the effective date of this act.

8           Sec. 8. The Agricultural Suppliers Lease Protection Cash  
9 Fund is created. All funds collected by the Department of  
10 Agriculture under the Agricultural Suppliers Lease Protection Act  
11 shall be remitted to the State Treasurer for credit to the fund.  
12 The fund shall be used by the department to aid in defraying the  
13 expenses of administering the act. Any money in the fund available  
14 for investment shall be invested by the state investment officer  
15 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
16 State Funds Investment Act.

17           Sec. 9. Section 75-109, Revised Statutes Supplement,  
18 2000, is amended to read:

19           75-109. (1) Except as provided in sections 19-4603,  
20 86-803, and 86-808, and the Agricultural Suppliers Lease Protection  
21 Act, the commission shall regulate and exercise general control as  
22 provided by law over all common and contract carriers engaged in  
23 the transportation of freight or passengers for hire or furnishing  
24 telecommunications services for hire in Nebraska intrastate  
25 commerce.

26           (2) The commission is authorized to do all things  
27 reasonably necessary and appropriate to implement the federal

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1 Telecommunications Act of 1996, Public Law 104-104, including  
2 section 252 of the act which establishes specific procedures for  
3 negotiation and arbitration of interconnection agreements between  
4 telecommunications companies. Interconnection agreements approved  
5 by the commission pursuant to section 252 of the act may contain  
6 such enforcement mechanisms and procedures that the commission  
7 determines to be consistent with the establishment of fair  
8 competition in Nebraska telecommunications markets. In addition,  
9 the commission may administratively fine pursuant to section 75-156  
10 any person who violates any enforcement mechanism or procedure  
11 established pursuant to this subsection. The authority granted to  
12 the commission pursuant to this subsection shall be broadly  
13 construed in a manner consistent with the federal  
14 Telecommunications Act of 1996.

15           Sec. 10. Original section 75-109, Revised Statutes  
16 Supplement, 2000, is repealed."