



**Ninety-Ninth Legislature - First Session - 2005**  
**Committee Statement**  
**LB 150**

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**Hearing Date:** January 25, 2005  
**Committee On:** Agriculture

**Introducer(s):** (Kremer, Baker, Burling, Combs, Cudaback, Cunningham, Erdman, Fischer, Heidemann, Hudkins, Loudon, Raikes, Schrock, Smith, Stuhr, Stuthman, Wehrbein)  
**Title:** Adopt the Nebraska Beef Industry Development Act

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

6	Yes	Senator(s): Kremer, Wehrbein, Burling, Cunningham, Erdman, Fischer
	No	
1	Present, not voting	Senator(s): Preister
1	Absent	Senator(s): Chambers

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**Proponents:**

Senator Bob Kremer  
 Harry Knobbe  
 Michael Kelsey  
 Ross Garwood  
 Greg Ibach  
 Steve Stanec

**Representing:**

Introducer  
 Nebraska Cattlemen  
 Nebraska Cattlemen  
 Nebraska Farm Bureau  
 Nebraska Department of Agriculture  
 Nebraska Brand Committee

**Opponents:**

Vern Jantzen  
 Roy Barta  
 Jim Knopik

**Representing:**

Nebraska Farmers Union  
 Nebraska Livestock Markets Association  
 Mid Nebraska PRIDE

**Neutral:**

Cap Dierks

**Representing:**

Dierks Ranch

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**Summary of purpose and/or changes:**

LB 150 vests authority in the Director of Agriculture to implement a state beef development program funded by a refundable check off assessment collected from the seller in sales of live cattle contingent upon termination of collection of a national beef promotion assessment. The Director is authorized to delegate, under contractual arrangement, implementation to the qualified state beef council designated for purposes of administration of that portion of beef

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check off assessments currently collected under authority of federal law (Beef Promotion and Research Act of 1985) that may be retained by a state beef development organization. The bill sets out conditions of the contractual relationship with the qualified state beef council to enable that entity to carry out a beef development program on behalf of the Director with assessments collected under state law. The bulk of the bill provides necessary definitions, enumerates and assigns those duties and authorities necessary to carry out the program, prescribes allowable and prohibited uses of check off funds, prescribes procedures and duties for collection of the assessment, assigns collections to a state Beef Development Fund and authorizes expenditures from the fund for purposes of the Act.

Specifically, the bill may be broken down into the following elements:

- Legislative Intent and declaration of public policy

Section 3 of the bill states legislative findings that the national beef promotion program authorized under the Beef Promotion Act is facing litigation and that the purpose of the bill is to install necessary authorities to continue producer-funded beef development programs under state law should the federal assessment be terminated. It is the intent of the Legislature that the program authorized by the bill be the sole beef development program represented as the official state beef development program. Section 4 of the bill declares public policy of the state to foster the prosperity of the state by stabilization of the state's beef industry and declares the Department of Agriculture the agency of the state to carry out such purpose

- Primary authorities and duties enumerated and assigned

The primary substantive authorities and duties assigned by the bill are contained in Sections 4, 6 and 11 of the bill described as follows:

- Section 4 – Assigns basic authorities to employ personnel, prepare and approve a budget, etc. This section also specifically enumerates permitted and prohibited expenditures that may be carried out with funds collected under the Act, including express prohibition on using check off funds for lobbying or political activities.
- Section 6 directs the Director to adopt rules and regulations to provide for efficient collection of assessments and to make refunds of over-collected fees or refunds requested by a producer and otherwise to aide in carrying out the purposes of the Act.
- Section 11 directs that an annual report of income and expenditures available to the public upon request be prepared. Report contents as prescribed to include expenditures for administrative costs, requests for funding by third parties and action taken on those requests, explanation of all beef promotion programs and expenses by activity, the name and address of members of the Beef Council, and any changes in regulations.

- Assignment of program implementation

Section 5 of the bill authorizes the Director to contract with the entity that is the designated "qualified state beef council" to implement the beef development program on behalf of the Director, specifically those duties assigned under Sections 4 and

Sections 7 – 11 of the Act. Under section 1 of the bill, the qualified state beef council referred to in this section is designated the Nebraska Beef Council, and is defined as the entity that is certified as the qualifying state beef council designated for purposes of administration of that portion of beef check off assessments currently collected under authority of federal law that may be retained by a state beef promotion organization. Section 5 further specifies terms that are to be included in the contractual relationship with the Nebraska Beef Council to carry out development activities on behalf of the Director:

- Annually prepare budgets for Director's approval
- Maintain books and records open to Director's inspection
- Publish annual report of activities
- Submit to annual audit
- Continue organization governed by board of directors elected by producers
- Any other terms to assure duties assumed by Beef Council are carried out in accordance with the purpose of the Act.

- Assessment rate and collection procedures

- Section 7 of the bill imposes an assessment of \$1 / head to be collected upon each sale of cattle from a producer occurring in Nebraska. The liability for the assessment resides with the seller. A producer is defined by section 1 as any person who owns cattle or shares in the profit and risk in cattle husbandry and has sold cattle in the preceding year, but the defined term explicitly excludes sales agents whose ownership is merely incidental and any financial interest is merely a sales commission or other transaction fee. The Director may adjust the assessment rate within a statutory maximum of \$1.25 after holding at least one public hearing. The proposal for adjustment may be initiated by the Director upon unanimous request of the Beef Council or upon the Director's own initiative.
- Section 8 of the bill assigns the duty of collection of the assessment to the buyer, intermediary or sales agency as prescribed. Section 8 further authorizes that a portion of fees may be used to reimburse collection expenses.
- Section 9 prescribes procedures for reporting and remitting assessments collected pursuant to the Act. Persons with a duty to collect are to file a report and remit fees by the 15th day of the month following the month of collection. Money remitted is to be in the form of a check payable to the Nebraska Beef Industry Development Fund.
- Section 10 imposes a penalty for late remittance of assessments collected

- Refund Provisions

Section 7(5) obligates the refund of assessments to a producer requesting a refund of all or any portion of the assessment paid and submitting documentation specified by rule and regulation of the Director verifying the payment of the assessment. A producer may request a refund any time up to 30 days following the date of collection. As introduced, LB 150 provides that refunds shall be made quarterly and paid in the calendar quarter in which the request for refund is received.

- Miscellaneous

- Section 12 of the bill establishes the Nebraska Beef Industry Development Cash Fund to receive assessment collections administered by the Department of Agriculture. Expenditures from the fund for purposes of the Act are authorized including expenditures by the Director to the Nebraska Beef Council pursuant to contractual arrangement authorized elsewhere in the Act.
  - Section 13 expressly prohibits the Director or the Beef Council from establishing research divisions, and expressly requires that any research activities be carried out in cooperation with University of Nebraska or other appropriate research institutions.
  - Section 14 declares any violation of the Act a criminal violation classified as a Class IV misdemeanor.
  - Section 16 inserts the severability clause
- Operative Dates  
Section 15 assigns operative dates. Section 6 of the Act authorizing the Department to adopt rules and regulation is made effective upon the effective date. The remainder of the substantive sections have a contingency operative date of 30 days subsequent to publication in the Federal Register of notice to terminate collection of the federal beef check off or 30 days after the date check off assessments are otherwise terminated.

**Explanation of amendments, if any:**

The committee amendments make the following changes:

- Strikes provisions for adjustment of the assessment rate found in subsection 4 of section 7 of the bill.
- Amends section 7, subsection 5 of the bill to adopt monthly payment of refunds of assessments requested by producers rather than quarterly. Specifically, the amendment provides that a refund shall be paid no later than the 15<sup>th</sup> day of the month subsequent to the month in which a refund request is received
- Amends the operative date found in section 15 of the bill to provide that if the operative contingency occurs prior to September 1, 2005, the operative date is September 1, 2005. The amendment also adds the emergency clause which, in conjunction with section 15, enables section 6 of the bill to become effective upon enactment thereby enabling the Department of Agriculture to begin developing regulations to implement the bill prior to the operative date of other portions of the bill.

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**Senator Bob Kremer, Chairperson**