

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 78**

Introduced by Avery, 28.

Read first time January 10, 2013

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to government; to amend sections 2-945.01,  
2 2-958.02, 54-1158, 54-1161, 54-1162, 54-1163, 54-1165,  
3 54-1168, 54-1169, 54-1170, 54-1172, 81-1361, 81-1368,  
4 81-3607, and 81-3609, Reissue Revised Statutes of  
5 Nebraska, and section 85-1643, Revised Statutes  
6 Cumulative Supplement, 2012; to eliminate the Riparian  
7 Vegetation Management Task Force, the Nebraska State  
8 Airline Authority, the Livestock Auction Market Board,  
9 the Athletic Advisory Committee, the Affirmative Action  
10 Committee, the Rural Development Commission, and the  
11 advisory council for the Private Postsecondary Career  
12 School Act; to change and provide powers and duties; to  
13 harmonize provisions; to repeal the original sections;  
14 and to outright repeal sections 2-967, 2-968, 3-801,  
15 3-802, 3-803, 3-804, 3-805, 54-1160, 81-1363, 81-1364,  
16 81-1365, 81-1366, 81-3601, 81-3603, 81-3604, and 85-1607,  
17 Reissue Revised Statutes of Nebraska and sections

LB 78

LB 78

1               81-8,139.01,   81-3602,   and   81-3605,   Revised   Statutes  
2               Cumulative Supplement, 2012.  
3   Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 2-945.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   2-945.01 Sections 2-945.01 to ~~2-968-2-966~~ shall be known  
4 and may be cited as the Noxious Weed Control Act.

5                   Sec. 2. Section 2-958.02, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7                   2-958.02 (1) From funds available in the Noxious Weed and  
8 Invasive Plant Species Assistance Fund, the director may administer a  
9 grant program to assist local control authorities and other weed  
10 management entities in the cost of implementing and maintaining  
11 noxious weed control programs and in addressing special weed control  
12 problems as provided in this section.

13                  (2) The director shall receive applications by local  
14 control authorities and weed management entities for assistance under  
15 this subsection and, in consultation with the advisory committee  
16 created under section 2-965.01, award grants for any of the following  
17 eligible purposes:

18                  (a) To conduct applied research to solve locally  
19 significant weed management problems;

20                  (b) To demonstrate innovative control methods or land  
21 management practices which have the potential to reduce landowner  
22 costs to control noxious weeds or improve the effectiveness of  
23 noxious weed control;

24                  (c) To encourage the formation of weed management  
25 entities;

1                         (d) To respond to introductions or infestations of  
2 invasive plants that threaten or potentially threaten the  
3 productivity of cropland and rangeland over a wide area;

4                         (e) To respond to introductions and infestations of  
5 invasive plant species that threaten or potentially threaten the  
6 productivity and biodiversity of wildlife and fishery habitats on  
7 public and private lands;

8                         (f) To respond to special weed control problems involving  
9 weeds not included in the list of noxious weeds promulgated by rule  
10 and regulation of the director if the director has approved a  
11 petition to bring such weeds under the county control program;

12                         (g) To conduct monitoring or surveillance activities to  
13 detect, map, or determine the distribution of invasive plant species  
14 and to determine susceptible locations for the introduction or spread  
15 of invasive plant species; and

16                         (h) To conduct educational activities.

17                         (3) The director shall select and prioritize applications  
18 for assistance under subsection (2) of this section based on the  
19 following considerations:

20                         (a) The seriousness of the noxious weed or invasive plant  
21 problem or potential problem addressed by the project;

22                         (b) The ability of the project to provide timely  
23 intervention to save current and future costs of control and  
24 eradication;

25                         (c) The likelihood that the project will prevent or

1 resolve the problem or increase knowledge about resolving similar  
2 problems in the future;

3 (d) The extent to which the project will leverage federal  
4 funds and other nonstate funds;

5 (e) The extent to which the applicant has made progress  
6 in addressing noxious weed or invasive plant problems;

7 (f) The extent to which the project will provide a  
8 comprehensive approach to the control or eradication of noxious  
9 weeds;

10 (g) The extent to which the project will reduce the total  
11 population or area of infestation of a noxious weed;

12 (h) The extent to which the project uses the principles  
13 of integrated vegetation management and sound science; and

14 (i) Such other factors that the director determines to be  
15 relevant.

16 (4) The director shall receive applications for grants  
17 under this subsection and shall award grants to recipients and  
18 programs eligible under this subsection. Priority shall be given to  
19 grant applicants whose proposed programs are consistent with  
20 vegetation management goals and priorities and plans and policies of  
21 the Riparian Vegetation Management Task Force created pursuant to  
22 section 2-968. Beginning in fiscal year 2009-10, it is the intent of  
23 the Legislature to appropriate two million dollars annually for the  
24 management of vegetation within the banks of a natural stream or  
25 within one hundred feet of the banks of a channel of any natural

1       stream. Such funds shall only be used to pay for activities and  
2       equipment as part of vegetation management programs that have as  
3       their primary objective improving conveyance of streamflow in natural  
4       streams. Grants from funds appropriated as provided in this  
5       subsection shall be disbursed only to weed management entities, local  
6       weed control authorities, and natural resources districts, whose  
7       territory includes one or more fully appropriated or overappropriated  
8       river basins as designated by the Department of Natural Resources  
9       with priority given to fully appropriated river basins that are the  
10      subject of an interstate compact or decree. The Game and Parks  
11      Commission shall assist grant recipients in implementing grant  
12      projects under this subsection, and interlocal agreements under the  
13      Interlocal Cooperation Act or the Joint Public Agency Act shall be  
14      utilized whenever possible in carrying out the grant projects. This  
15      subsection terminates on June 30, 2013.

16                 (5) (4) Nothing in this section shall be construed to  
17       relieve control authorities of their duties and responsibilities  
18       under the Noxious Weed Control Act or the duty of a person to control  
19       the spread of noxious weeds on lands owned and controlled by him or  
20       her.

21                 (6) (5) The Department of Agriculture may adopt and  
22       promulgate necessary rules and regulations to carry out this section.

23                 (7)(a) (6)(a) The director shall apply for a grant from  
24       the Nebraska Environmental Trust Fund prior to the application  
25       deadline in September of 2009 for grants to be awarded and funded in

1 April of 2010.

2 (b) The director shall apply for a grant from the Natural  
3 Resources Conservation Service of the United States Department of  
4 Agriculture prior to July 31, 2009.

5 Sec. 3. Section 54-1158, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 54-1158 As used in the Livestock Auction Market Act,  
8 unless the context otherwise requires:

9 (1) Accredited veterinarian means a veterinarian duly  
10 licensed by the State of Nebraska and approved by the deputy  
11 administrator of the United States Department of Agriculture in  
12 accordance with 9 C.F.R. part 161 as the regulations existed on  
13 September 1, 2001;

14 (2) ~~Board means the Livestock Auction Market Board;~~

15 (3)—(2) Department means the Department of Agriculture;

16 (4)—(3) Designated veterinarian means an accredited  
17 veterinarian who has been designated and authorized by the State  
18 Veterinarian to make inspections of livestock at livestock auction  
19 markets as may be required by law or regulation whether such  
20 livestock is moved in interstate or intrastate commerce;

21 (5)—(4) Director means the Director of Agriculture;

22 (6)—(5) Livestock means cattle, calves, swine, sheep, and  
23 goats;

24 (7)—(6) Livestock auction market means any place,  
25 establishment, or facility commonly known as a livestock auction

1 market, sales ring, or the like, conducted or operated for  
2 compensation as an auction market for livestock, consisting of pens  
3 or other enclosures, and their appurtenances, in which livestock are  
4 received, held, sold, or kept for sale or shipment;

5                 ~~(8)~~—(7) Livestock auction market operator means any  
6 person engaged in the business of conducting or operating a livestock  
7 auction market, whether personally or through agents or employees;

8                 ~~(9)~~—(8) Market license means the license for a livestock  
9 auction market authorized to be issued under the act;

10                 ~~(10)~~—(9) Person means any individual, firm, association,  
11 partnership, limited liability company, or corporation; and

12                 ~~(11)~~—(10) State Veterinarian means the veterinarian in  
13 charge of the Bureau of Animal Industry within the department or his  
14 or her designee, subordinate to the director.

15                 Sec. 4. Section 54-1161, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17                 54-1161 No person shall conduct or operate a livestock  
18 auction market unless he or she holds a market license therefor, upon  
19 which the current annual market license fee has been paid. Any person  
20 making application for a new market license shall do so to the ~~board~~  
21 director in writing, verified by the applicant, on a form prescribed  
22 by the ~~board~~, department, showing the following:

23                 (1) The name and address of the applicant and, if the  
24 applicant is an individual, his or her social security number, with  
25 statement of the names and addresses of all persons having any

1 financial interest in the applicant and the amount of such interest;

2 (2) Financial responsibility of the applicant in the form

3 of a statement of all assets and liabilities;

4 (3) A legal description of the property and its exact

5 location with a complete description of the facilities proposed to be

6 used in connection with such livestock auction market;

7 (4) The schedule of charges applicant proposes for all

8 services proposed to be rendered; and

9 (5) A detailed statement of the facts upon which the

10 applicant relies showing the general confines of the trade area

11 proposed to be served by such livestock auction market, the benefits

12 to be derived by the livestock industry, and the services proposed to

13 be rendered.

14 Such application shall be accompanied by the annual fee

15 as prescribed in section 54-1165.

16 Sec. 5. Section 54-1162, Reissue Revised Statutes of

17 Nebraska, is amended to read:

18 54-1162 Upon the filing of the application as provided in

19 section 54-1161, the director shall fix a reasonable time for the

20 hearing at a place designated by him or her at which time a hearing

21 shall be held on the proposed location of the livestock auction

22 market. The director forthwith shall cause a copy of such

23 application, together with notice of the time and place of hearing,

24 to be served by mail not less than fifteen days prior to such

25 hearing, upon the following:

1                             (1) All duly organized statewide livestock associations  
2     in the state who have filed written requests with the board  
3     department to receive notice of such hearings and such other  
4     livestock associations as in the opinion of the director would be  
5     interested in such application; and

6                             (2) All livestock auction market operators in the state.

7                             The director shall give further notice of such hearing by  
8     publication of the notice thereof once in a daily or weekly newspaper  
9     circulated in the city or village where such hearing is to be held,  
10    as in the opinion of the director will give reasonable public notice  
11    of such time and place of hearing to persons interested therein.

12                             Sec. 6. Section 54-1163, Reissue Revised Statutes of  
13    Nebraska, is amended to read:

14                             54-1163 The hearing required by section 54-1162 shall be  
15    heard by ~~two or more members of the board. If the board determines,~~  
16    the director and the State Veterinarian. If the director and the  
17    State Veterinarian determine, after such hearing, that the proposed  
18    livestock auction market would beneficially serve the livestock  
19    economy, ~~it—the department~~ shall issue a market license to the  
20    applicant. In determining whether or not the application should be  
21    granted or denied, ~~the board shall give reasonable consideration~~  
22    shall be given to:

23                             (1) The ability of the applicant to comply with the  
24    federal Packers and Stockyards Act, 1921, 7 U.S.C. 181 et seq., as  
25    amended;

1                         (2) The financial stability, business integrity, and  
2 fiduciary responsibility of the applicant;

3                         (3) The adequacy of the facilities described to permit  
4 the performance of market services proposed in the application;

5                         (4) The present needs for market services or additional  
6 services as expressed by livestock growers and feeders in the  
7 community; and

8                         (5) Whether the proposed livestock auction market would  
9 be permanent and continuous.

10                         Sec. 7. Section 54-1165, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12                         54-1165 Every livestock auction market operator shall pay  
13 annually, on or before August 1, a market license fee of one hundred  
14 fifty dollars to the ~~board—department~~ for each livestock auction  
15 market operated by him or her, which payment shall constitute a  
16 renewal for one year. Fees so paid shall be remitted to the State  
17 Treasurer for credit to the Livestock Auction Market Fund for ~~the use~~  
18 ~~of the board in paying the expenses of administration of the~~  
19 Livestock Auction Market Act.

20                         Sec. 8. Section 54-1168, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22                         54-1168 Every market license holder under the Livestock  
23 Auction Market Act shall keep an accurate record of all transactions  
24 conducted in the ordinary course of his or her business. Such records  
25 shall be available for examination of the ~~board, director, or its his~~

1     or her duly authorized representative, in respect to a market license  
2     issued under such act.

3                 Sec. 9. Section 54-1169, Reissue Revised Statutes of  
4     Nebraska, is amended to read:

5                 54-1169 (1) The ~~board~~ department may, upon its own  
6     motion, whenever it has reason to believe ~~the provisions of the~~  
7     Livestock Auction Market Act ~~have has~~ been violated, or upon verified  
8     complaint of any person in writing, investigate the actions of any  
9     market license holder, and if ~~it~~ the department finds probable cause  
10    to do so, shall file a complaint against the market license holder  
11    which shall be set down for hearing before ~~the board~~ director and the  
12    State Veterinarian upon fifteen days' notice served upon such market  
13    license holder either by personal service upon him or her or by  
14    registered or certified mail or telegram prior to such hearing.

15                 (2) The director shall have the power to administer  
16    oaths, certify to all official acts, and subpoena ~~and bring before~~  
17    ~~the board~~ any person in this state as a witness, to compel the  
18    producing of books and papers, and to take the testimony of any  
19    person on deposition in the same manner as is prescribed by law in  
20    the procedure before the courts of this state in civil cases.  
21    Processes issued by the director shall extend to all parts of the  
22    state and may be served by any person authorized to serve processes.  
23    Each witness who shall appear by the order of the director at any  
24    hearing ~~before the board~~ shall receive for such attendance the same  
25    fees allowed by law to witnesses in civil cases appearing in the

1 district court and mileage at the same rate provided in section  
2 81-1176, which amount shall be paid by the party at whose request  
3 such witness is subpoenaed. When any witness has not been required to  
4 attend at the request of any party, but has been subpoenaed by the  
5 director, his or her fees and mileage shall be paid by the director  
6 in the same manner as other expenses ~~of the board~~ are paid under the  
7 Livestock Auction Market Act.

8                 (3) All powers of the director as provided in this  
9 section shall likewise be applicable to hearings held on applications  
10 for the issuance of a market license.

11                 (4) Formal finding by the ~~board—director and the State~~  
12 Veterinarian after due hearing that any market license holder:—(1)  
13 ~~Has (a) has~~ ceased to conduct a livestock auction market business,  
14 ~~(b)~~;—(2) has been guilty of fraud or misrepresentation as to the  
15 titles, charges, number, brands, weights, proceeds of sale, or  
16 ownership of livestock, ~~(c)~~;—(3) has violated any of the provisions  
17 of the Livestock Auction Market Act, ~~;~~ or (4)—~~(d)~~ has violated any of  
18 the rules or regulations adopted and ~~published by the board,~~  
19 promulgated under the act, shall be sufficient cause for the  
20 suspension or revocation of the market license of the offending  
21 livestock auction market operator.

22                 Sec. 10. Section 54-1170, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24                 54-1170 The ~~board—director~~ shall keep a complete  
25 transcript of all proceedings and evidence presented in any hearing

1    ~~before it.~~ under the Livestock Auction Market Act. The applicant for  
2    a market license, any protestant formally appearing in the hearing  
3    ~~before the board~~ for such market license, the holder of any market  
4    license suspended or revoked, or any party to a transfer application  
5    may appeal the order, ~~of the board~~, and the appeal shall be in  
6    accordance with the Administrative Procedure Act.

7                 Sec. 11. Section 54-1172, Reissue Revised Statutes of  
8    Nebraska, is amended to read:

9                 54-1172 Salaries and expenses of employees, costs of  
10    hearings, and all other costs of ~~the board in the administration of~~  
11    the Livestock Auction Market Act shall be paid from the Livestock  
12    Auction Market Fund which is hereby created. Any money in the  
13    Livestock Auction Market Fund available for investment shall be  
14    invested by the state investment officer pursuant to the Nebraska  
15    Capital Expansion Act and the Nebraska State Funds Investment Act.

16                Sec. 12. Section 81-1361, Reissue Revised Statutes of  
17    Nebraska, is amended to read:

18                81-1361 Each agency shall submit a plan for that agency  
19    to the office ~~and the Affirmative Action Committee~~ for review and  
20    shall work with the administrator to insure effectiveness of the  
21    plan. Each agency shall annually update its plan based on guidelines  
22    developed by the administrator.

23                Sec. 13. Section 81-1368, Reissue Revised Statutes of  
24    Nebraska, is amended to read:

25                81-1368 Each agency plan shall be reviewed by the office

1 and approved or disapproved after submission. In every case when  
2 noncompliance is indicated, efforts shall be made to secure  
3 compliance through a corrective action plan. A specific commitment  
4 shall be put forth in writing. The commitment shall indicate the  
5 precise action to be taken and dates for completion. The time period  
6 allowed shall be no longer than thirty calendar days to effect the  
7 desired change. If an agency's plan does not comply with the rules  
8 and regulations adopted and promulgated by the office or if the  
9 agency's goals and timetables are not being met, the office shall  
10 meet with the director of the agency to discuss the deficiencies. ~~If~~  
~~an agreement cannot be reached in the informal meeting, the agency's~~  
~~noncompliance shall be reviewed by the Affirmative Action Committee.~~  
13 Agency directors shall take responsibility for all noncompliance  
14 within their particular agency. In all cases when such corrective  
15 action plan does not resolve the noncompliance, the ~~Affirmative~~  
16 ~~Action Committee office~~ shall report such noncompliance to the  
17 Governor. Such report shall be in writing and shall be made available  
18 to the news media at the same time that it is submitted to the  
19 Governor. The Governor shall take appropriate action to resolve the  
20 noncompliance elements and issues which were cited by the office, and  
21 the ~~Affirmative Action Committee.~~

22 Sec. 14. Section 81-3607, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 81-3607 The Nebraska Development Network Program is  
25 created in the ~~Rural Development Commission~~. The commission

1       Department of Economic Development. The department shall administer  
2       the program and may contract for services to carry out the purposes  
3       of the Nebraska Development Network Program.

4                   Sec. 15. Section 81-3609, Reissue Revised Statutes of  
5       Nebraska, is amended to read:

6                   81-3609 The Legislature finds and declares:

7                   (1) That it is a benefit to the state and in the best  
8       interest of the citizens of Nebraska to deliver economic and  
9       community development services in an integrated and coordinated  
10      system through increased community, state, and federal cooperation  
11      and collaboration;

12                  (2) That the Partnership for Rural Nebraska is recognized  
13      as a strategic partnership between the State of Nebraska, the  
14      University of Nebraska, and the United States Department of  
15      Agriculture, the purpose of which is to provide a formal structure of  
16      organizational collaboration and delivery of rural economic and  
17      community development resources and programs to Nebraska's rural  
18      communities;

19                  (3) That the Partnership for Rural Nebraska has earned  
20      national recognition as a model for cooperative and collaborative  
21      delivery of services; and

22                  (4) That it encourages the continued participation of the  
23      State of Nebraska, through the Department of Economic Development,  
24      the Rural Development Commission, and the University of Nebraska, in  
25      the Partnership for Rural Nebraska.

1                   Sec. 16. Section 85-1643, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3                   85-1643 (1) The Private Postsecondary Career Schools Cash  
4 Fund is created. All fees collected pursuant to the Private  
5 Postsecondary Career School Act shall be remitted to the State  
6 Treasurer for credit to the fund. The fund shall be used only for the  
7 purpose of administering the act. No fees shall be subject to refund.

8                   (2) Except as provided in subsection (4) of this section,  
9 fees collected pursuant to the act shall be the following:

10                  (a) Initial application for authorization to operate, two  
11 hundred dollars plus twenty dollars per program of study offered;

12                  (b) Renewal application for authorization to operate, one  
13 hundred dollars plus twenty dollars per program of study offered,  
14 except that the board may establish a variable fee schedule based  
15 upon the prior school year's gross tuition revenue as provided by the  
16 school pursuant to section 85-1656;

17                  (c) Approval to operate a branch facility, one hundred  
18 dollars;

19                  (d) Late submission of application, fifty dollars;

20                  (e) Initial agent's permit, fifty dollars;

21                  (f) Agent's permit renewal, twenty dollars;

22                  (g) Accreditation or reaccreditation, one hundred  
23 dollars;

24                  (h) Initial authorization to award an associate degree,  
25 one hundred dollars;

(i) Significant program change, fifty dollars;

(j) Change of name or location, twenty-five dollars; and

(k) Additional new program, one hundred dollars.

(3) Fees for out-of-state schools may include, but shall not exceed, the following:

(a) Certificate of approval to recruit, five hundred dollars annually;

(b) Initial agent's permit, one hundred dollars; and

(c) Agent's permit renewal, forty dollars.

(4)(a) ~~The board shall consult with the advisory council established pursuant to section 85-1607 regarding any increase in fees under the act. Beginning with fiscal year 2006-07 and each year thereafter, the board in consultation with the advisory council shall establish fees sufficient to cover the total cost of administration, except that such fees shall not exceed one hundred ten percent of the previous year's total cost. Such fees shall be set out in the rules and regulations adopted and promulgated by the board.~~

(b) Total cost of administration shall be determined by an annual audit of:

(i) Salaries and benefits or portions thereof for those department employees who administer the act;

(ii) Operating costs such as rent, utilities, and supplies;

(iii) Capital costs such as office equipment, computer hardware, and computer software;

10 Sec. 18. The following sections are outright repealed:  
11 Sections 2-967, 2-968, 3-801, 3-802, 3-803, 3-804, 3-805, 54-1160,  
12 81-1363, 81-1364, 81-1365, 81-1366, 81-3601, 81-3603, 81-3604, and  
13 85-1607, Reissue Revised Statutes of Nebraska and sections  
14 81-8,139.01, 81-3602, and 81-3605, Revised Statutes Cumulative  
15 Supplement, 2012.