

AMENDMENTS TO LB106

(Amendments to Standing Committee amendments, AM521)

Introduced by Watermeier, 1.

1 1. Strike section 8 and insert the following new sections:

2 Sec. 8. (1) A person who applied to a county for a livestock
3 operation siting or expansion permit and has been denied by the county
4 may appeal the decision directly to the district court.

5 (2) In any proceeding under this section, subsequent to the initial
6 filing, the parties shall receive from the clerk of the district court
7 information regarding the availability of mediation through the farm
8 mediation service of the department. Development of the informational
9 materials and the implementation of this subsection shall be accomplished
10 through the State Court Administrator.

11 (3) With the consent of both parties, a court may refer a case to
12 mediation and may state a date for the case to return to court, but such
13 date shall be no longer than ninety days from the date the order is
14 signed unless the court grants an extension.

15 (4) If the parties consent to mediate, they shall meet with a
16 mediator from, or appointed through, the farm mediation service of the
17 department to mediate an agreement. The mediator may negotiate exceptions
18 to the guidelines of the assessment matrix factors adopted pursuant to
19 section 5 of this act that may bring about agreement between the parties
20 involved.

21 (5) If a mediation agreement is reached, the district court shall
22 enter the agreement as the judgment in the action. The costs of mediation
23 shall be shared by the parties according to the schedule of fees
24 established by the farm mediation service of the department and collected
25 directly by the farm mediation service, except that the department may
26 establish an internal fund to pay the costs of mediation on behalf of the

1 parties.

2 (6) If the case is not referred to mediation or if mediation is
3 terminated or fails to reach an agreement between the parties, the action
4 shall proceed as a civil action.

5 Sec. 10. Section 23-114.01, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 23-114.01 (1) In order to avail itself of the powers conferred by
8 section 23-114, the county board shall appoint a planning commission to
9 be known as the county planning commission. The members of the commission
10 shall be residents of the county to be planned and shall be appointed
11 with due consideration to geographical and population factors. Since the
12 primary focus of concern and control in county planning and land-use
13 regulatory programs is the unincorporated area, a majority of the members
14 of the commission shall be residents of unincorporated areas, except that
15 this requirement shall not apply to joint planning commissions. Members
16 of the commission shall hold no county or municipal office, except that a
17 member may also be a member of a city, village, or other type of planning
18 commission. The term of each member shall be three years, except that
19 approximately one-third of the members of the first commission shall
20 serve for terms of one year, one-third for terms of two years, and one-
21 third for terms of three years. All members shall hold office until their
22 successors are appointed. Members of the commission may be removed by a
23 majority vote of the county board for inefficiency, neglect of duty, or
24 malfeasance in office or other good and sufficient cause upon written
25 charges being filed with the county board and after a public hearing has
26 been held regarding such charges. Vacancies occurring otherwise than
27 through the expiration of terms shall be filled for the unexpired terms
28 by individuals appointed by the county board. Members of the commission
29 shall be compensated for their actual and necessary expenses incurred in
30 connection with their duties in an amount to be fixed by the county
31 board. Reimbursement for mileage shall be made at the rate provided in

1 section 81-1176. Each county board may provide a per diem payment for
2 members of the commission of not to exceed fifteen dollars for each day
3 that each such member attends meetings of the commission or is engaged in
4 matters concerning the commission, but no member shall receive more than
5 one thousand dollars in any one year. Such per diem payments shall be in
6 addition to and separate from compensation for expenses.

7 (2) The commission: (a) Shall prepare and adopt as its policy
8 statement a comprehensive development plan and such implemental means as
9 a capital improvement program, subdivision regulations, building codes,
10 and a zoning resolution; (b) shall consult with and advise public
11 officials and agencies, public utilities, civic organizations,
12 educational institutions, and citizens relating to the promulgation of
13 implemental programs; (c) may delegate authority to any of the groups
14 named in subdivision (b) of this subsection to conduct studies and make
15 surveys for the commission; and (d) shall make preliminary reports on its
16 findings and hold public hearings before submitting its final reports.
17 The county board shall not hold its public meetings or take action on
18 matters relating to the comprehensive development plan, capital
19 improvements, building codes, subdivision development, or zoning until it
20 has received the recommendations of the commission.

21 (3) The commission may, with the consent of the governing body, in
22 its own name: Make and enter into contracts with public or private
23 bodies; receive contributions, bequests, gifts, or grants of funds from
24 public or private sources; expend the funds appropriated to it by the
25 county board; employ agents and employees; and acquire, hold, and dispose
26 of property. The commission may, on its own authority: Make arrangements
27 consistent with its program; conduct or sponsor special studies or
28 planning work for any public body or appropriate agency; receive grants,
29 remuneration, or reimbursement for such studies or work; and at its
30 public hearings, summon witnesses, administer oaths, and compel the
31 giving of testimony.

1 (4) In all counties in the state, the county planning commission may
2 grant conditional uses or special exceptions to property owners for the
3 use of their property if the county board of commissioners or supervisors
4 has officially and generally authorized the commission to exercise such
5 powers and has approved the standards and procedures the commission
6 adopted for equitably and judiciously granting such conditional uses or
7 special exceptions. The granting of a conditional use permit or special
8 exception shall only allow property owners to put their property to a
9 special use if it is among those uses specifically identified in the
10 county zoning regulations as classifications of uses which may require
11 special conditions or requirements to be met by the owners before a use
12 permit or building permit is authorized. ~~The applicant for a conditional~~
13 ~~use permit or special exception for a livestock operation specifically~~
14 ~~identified in the county zoning regulations as a classification of use~~
15 ~~which may require special conditions or requirements to be met within an~~
16 ~~area of a county zoned for agricultural use may request a determination~~
17 ~~of the special conditions or requirements to be imposed by the county~~
18 ~~planning commission or by the county board of commissioners or~~
19 ~~supervisors if the board has not authorized the commission to exercise~~
20 ~~such authority. Upon request the commission or board shall issue such~~
21 ~~determination of the special conditions or requirements to be imposed in~~
22 ~~a timely manner. Such special conditions or requirements to be imposed~~
23 ~~may include, but are not limited to, the submission of information that~~
24 ~~may be separately provided to state or federal agencies in applying to~~
25 ~~obtain the applicable state and federal permits. The commission or the~~
26 ~~board may request and review, prior to making a determination of the~~
27 ~~special conditions or requirements to be imposed, reasonable information~~
28 ~~relevant to the conditional use or special exception. If a determination~~
29 ~~of the special conditions or requirements to be imposed has been made,~~
30 ~~final permit approval may be withheld subject only to a final review by~~
31 ~~the commission or county board to determine whether there is a~~

1 ~~substantial change in the applicant's proposed use of the property upon~~
2 ~~which the determination was based and that the applicant has met, or will~~
3 ~~meet, the special conditions or requirements imposed in the~~
4 ~~determination. For purposes of this section, substantial change shall~~
5 ~~include any significant alteration in the original application including~~
6 ~~a significant change in the design or location of buildings or~~
7 ~~facilities, in waste disposal methods or facilities, or in capacity.~~

8 (5) The power to grant conditional uses or special exceptions as set
9 forth in subsection (4) of this section shall be the exclusive authority
10 of the commission, except that the county board of commissioners or
11 supervisors may choose to retain for itself the power to grant
12 conditional uses or special exceptions for those classifications of uses
13 specified in the county zoning regulations. The county board of
14 commissioners or supervisors may exercise such power if it has formally
15 adopted standards and procedures for granting such conditional uses or
16 special exceptions in a manner that is equitable and which will promote
17 the public interest. In any county other than a county in which is
18 located a city of the primary class, an appeal of a decision by the
19 county planning commission or county board of commissioners or
20 supervisors regarding a conditional use or special exception shall be
21 made to the district court. In any county in which is located a city of
22 the primary class, an appeal of a decision by the county planning
23 commission regarding a conditional use or special exception shall be made
24 to the county board of commissioners or supervisors, and an appeal of a
25 decision by the county board of commissioners or supervisors regarding a
26 conditional use or special exception shall be made to the district court.

27 (6) Whenever a county planning commission or county board is
28 authorized to grant conditional uses or special exceptions pursuant to
29 subsection (4) or (5) of this section, the planning commission or county
30 board shall, with its decision to grant or deny a conditional use permit
31 or special exception, issue a statement of factual findings arising from

1 the record of proceedings that support the granting or denial of the
2 conditional use permit or special exception. If a county planning
3 commission's role is advisory to the county board, the county planning
4 commission shall submit such statement with its recommendation to the
5 county board as to whether to approve or deny a conditional use permit or
6 special exception.

7 2. On page 1, strike line 7; in line 8 strike "(2)" and insert
8 "(1)"; in line 9 strike "(3)" and insert "(2)"; in line 10 strike "(4)"
9 and insert "(3)"; in line 12 strike "(5)" and insert "(4)"; in line 15,
10 strike "forty-five" and insert "one hundred eighty"; in line 20 strike
11 "23-174" and insert "23-174.10"; and in line 23 after "operations" insert
12 ", which includes any land application of livestock waste" and after the
13 period insert "The act shall not apply to counties that have not enacted
14 zoning regulations pursuant to sections 23-114 to 23-114.05.".

15 3. On page 2, line 3, after "existing" insert "nonconforming uses";
16 in line 9 strike "seeking" and insert "to seek a"; in line 18 after
17 "counties" insert "and other states"; in line 23 after the semicolon
18 insert the following new subdivision:

19 "(c) Develop a set of standard minimum distance requirements from
20 neighboring residences, public use areas, and critical public areas to be
21 used in conjunction with the matrix developed pursuant to this section;";
22 in line 24 strike "(c)" and insert "(d)"; and in line 31 strike "(d)" and
23 insert "(e)".

24 4. On page 3, strike beginning with "The" in line 13 through line 14
25 and insert "Consideration of proximity of a livestock operation to
26 neighboring residences, public use areas, and critical public areas that
27 exceed the standard minimum distance requirements established in
28 subsection (1) of this section;"; and in line 17 strike "application" and
29 insert "land application sites and".

30 5. On page 4, strike lines 3 and 4; in line 5 strike "(5)" and
31 insert "(4)"; in line 6 before "matrix" insert "assessment"; in line 7

1 strike beginning with "and" through "section"; in line 10 after the
2 period insert "The committee shall review the matrix annually and
3 recommend to the department changes as needed."; in line 11 strike "(6)"
4 and insert "(5)"; in line 18 before "matrix" insert "assessment"; in line
5 29 strike "areas" and insert "zoning districts"; and in line 30 after
6 "person" insert "or entity".

7 6. On page 5, lines 27 and 28, strike "grandfather in" and insert
8 "retain".

9 7. On page 6, line 14, after the period insert "If a county planning
10 commission's role is advisory to the county board, the county planning
11 commission shall submit a statement of factual findings arising from the
12 record of proceedings with its recommendation to the county board as to
13 whether to approve or deny the livestock operation siting permit."; and
14 in line 16 strike "areas" and insert "zoning districts".

15 8. On page 7, strike beginning with "base" in line 11 through
16 "record" in line 12 and insert "issue a statement of factual findings
17 arising from the record of proceedings".

18 9. On page 12, line 7, strike "section" and insert "sections" and
19 after "23-114" insert "and 23-114.01"; and in line 8 strike "is" and
20 insert "are".

21 10. Renumber the remaining section accordingly.