

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 175

FINAL READING

Introduced by Schilz, 47.

Read first time January 12, 2015

Committee: Agriculture

1 A BILL FOR AN ACT relating to law; to amend sections 54-2801, 54-2802,
2 77-27,187.01, 77-27,188, 81-2,147.01, and 81-2,147.05, Reissue
3 Revised Statutes of Nebraska, and section 77-27,187.02, Revised
4 Statutes Cumulative Supplement, 2014; to name and adopt the
5 Livestock Growth Act; to restate findings; to provide for grants; to
6 create a fund; to change application procedures and credits allowed
7 under the Nebraska Advantage Rural Development Act; to exempt seed
8 libraries from certain provisions of the Nebraska Seed Law; to
9 define and redefine terms; to adopt the Community Gardens Act; to
10 harmonize provisions; to repeal the original sections; and to
11 declare an emergency.

12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 54-2801, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 54-2801 (1) Sections 54-2801 and 54-2802 and sections 3 to 5 of
4 this act shall be known and may be cited as the Livestock Growth Act.

5 (2) The Legislature finds that livestock production has
6 traditionally served a significant role in the economic vitality of rural
7 areas of the state and in the state's overall economy and that the growth
8 and vitality of the state's livestock sector are critical to the
9 continued prosperity of the state and its citizens. The Legislature
10 further finds that a public interest exists in assisting efforts of the
11 livestock industry and rural communities to preserve and enhance
12 livestock development as an essential element of economic development and
13 that a need exists to provide aid, resources, and assistance to rural
14 communities and counties seeking opportunities in the growth of livestock
15 production trends in livestock production suggest a need to identify and
16 address factors that affect the viability and expansion of livestock
17 production. Those factors include the impact of livestock production on
18 the state's economy and its communities, all applicable regulatory
19 agencies, and the latest technology available to enhance the livestock
20 industry. It is the intent of the Legislature to seek reasonable means to
21 nurture and support the livestock sector of this state.

22 Sec. 2. Section 54-2802, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 54-2802 (1) The Director of Agriculture shall establish a process,
25 including criteria and standards, to recognize and assist efforts of
26 counties to maintain or expand their livestock sector. A county that
27 meets the criteria may apply to the director to be designated a livestock
28 friendly county. A county may remove itself from the process at any time.
29 Such criteria and standards may include, but are not limited to, the
30 following factors: Consideration of the diversity of activities currently
31 underway or being initiated by counties; a formal expression of interest

1 by a county board, by a duly enacted resolution following a public
2 hearing, in developing the livestock production and processing sectors of
3 such county's economy; an assurance that such county intends to work with
4 all other governmental jurisdictions within its boundaries in
5 implementing livestock development within the county; flexible and
6 individual treatment allowing each county to design its own development
7 program according to its own timetable; and a commitment to compliance
8 with the Livestock Waste Management Act.

9 (2) The designation of any county or counties as a livestock
10 friendly county shall not be an indication nor shall it suggest that any
11 county that does not seek or obtain such a designation is not friendly to
12 livestock production.

13 (3) In order to assist any county with information and technology,
14 the Department of Agriculture shall establish a resource data base to
15 provide, upon written request of the county zoning authority or county
16 board, information sources that may be useful to the county in evaluating
17 and crafting livestock facility conditional use permits that meet the
18 objectives of the county and the livestock producer applicant.

19 ~~(4) The Department of Agriculture shall adopt and promulgate rules
20 and regulations to carry out this section.~~

21 (4 5) Nothing in this section shall prohibit or prevent any county
22 board from adopting a resolution that designates the county a livestock
23 friendly county.

24 Sec. 3. (1) From funds available in the Livestock Growth Act Cash
25 Fund, the Director of Agriculture may administer a grant program to
26 assist counties designated by the director as livestock friendly counties
27 pursuant to section 54-2802 in livestock development planning and
28 associated public infrastructure improvements. The director shall receive
29 applications submitted by county boards or county planning authorities
30 for assistance under this section and award grants for any of the
31 following eligible purposes:

1 (a) Strategic planning to accommodate and encourage investment in
2 livestock production, including one or more of the following activities:

3 (i) Reviewing zoning and land-use regulations;
4 (ii) Evaluating workforce availability, educational, institutional,
5 public infrastructure, marketing, transportation, commercial service,
6 natural resource, and agricultural assets, and needs of the county and
7 surrounding areas to support livestock development;

8 (iii) Identifying livestock development goals and opportunities for
9 the county;

10 (iv) Identifying and evaluating a location or locations suitable for
11 placement of livestock production facilities; and

12 (v) Developing a marketing strategy to promote and attract
13 investment in new or expanded livestock production and related livestock
14 service and marketing businesses within the county; and

15 (b) Improvements to public infrastructure to accommodate one or more
16 livestock development projects, including modifications to roads and
17 bridges, drainage, and sewer and water systems. An application for a
18 grant under this subdivision shall identify specific infrastructure
19 improvements relating to a project for the establishment, expansion, or
20 relocation of livestock production to which the grant funds would be
21 applied and shall include a copy of the county conditional use permit
22 issued for the livestock operation if required by county zoning
23 regulations.

24 (2) A grant award under subdivision (1)(a) of this section shall not
25 exceed fifteen thousand dollars. A grant award under subdivision (1)(b)
26 of this section shall not exceed one-half of the unobligated balance of
27 the Livestock Growth Act Cash Fund or two hundred thousand dollars,
28 whichever is less.

29 Sec. 4. The Livestock Growth Act Cash Fund is created. The fund may
30 be used to carry out the Livestock Growth Act. The State Treasurer shall
31 credit to the fund any funds transferred or appropriated to the fund by

1 the Legislature and funds received as gifts or grants or other private or
2 public funds obtained for the purposes of the act. Any money in the fund
3 available for investment shall be invested by the state investment
4 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
5 State Funds Investment Act.

6 Sec. 5. The Department of Agriculture may adopt and promulgate
7 rules and regulations to carry out the Livestock Growth Act.

8 Sec. 6. Section 77-27,187.01, Reissue Revised Statutes of Nebraska,
9 is amended to read:

10 77-27,187.01 For purposes of the Nebraska Advantage Rural
11 Development Act, unless the context otherwise requires:

12 (1) Any term has the same meaning as used in the Nebraska Revenue
13 Act of 1967;

14 (2) Equivalent employees means the number of employees computed by
15 dividing the total hours paid in a year to employees by the product of
16 forty times the number of weeks in a year;

17 (3) Livestock means all animals, including cattle, horses, sheep,
18 goats, hogs, dairy animals, chickens, turkeys, and other species of game
19 birds and animals raised and produced subject to permit and regulation by
20 the Game and Parks Commission or the Department of Agriculture;

21 (4) Livestock modernization or expansion means the construction,
22 improvement, or acquisition of buildings, facilities, or equipment for
23 livestock housing, confinement, feeding, production, and waste
24 management. Livestock modernization or expansion does not include any
25 improvements made to correct a violation of the Environmental Protection
26 Act, the Integrated Solid Waste Management Act, the Livestock Waste
27 Management Act, a rule or regulation adopted and promulgated pursuant to
28 such acts, or any order of the Department of Environmental Quality
29 undertaken within five years after a complaint issued from the Director
30 of Environmental Quality under section 81-1507;

31 (5) Livestock production means the active use, management, and

1 operation of real and personal property (a) for the commercial production
2 of livestock, (b) for the commercial breeding, training, showing, or
3 racing of horses, or for the use of horses in a recreational or tourism
4 enterprise, and (c) for the commercial production of dairy and eggs. The
5 activity will be considered commercial if the gross income derived from
6 an activity for two or more of the taxable years in the period of seven
7 consecutive taxable years which ends with the taxable year exceeds the
8 deductions attributable to such activity or, if the operation has been in
9 existence for less than seven years, if the activity is engaged in for
10 the purpose of generating a profit;

11 (6) Qualified employee leasing company means a company which places
12 all employees of a client-lessee on its payroll and leases such employees
13 to the client-lessee on an ongoing basis for a fee and, by written
14 agreement between the employee leasing company and a client-lessee,
15 grants to the client-lessee input into the hiring and firing of the
16 employees leased to the client-lessee;

17 (7) Related taxpayers includes any corporations that are part of a
18 unitary business under the Nebraska Revenue Act of 1967 but are not part
19 of the same corporate taxpayer, any business entities that are not
20 corporations but which would be a part of the unitary business if they
21 were corporations, and any business entities if at least fifty percent of
22 such entities are owned by the same persons or related taxpayers and
23 family members as defined in the ownership attribution rules of the
24 Internal Revenue Code of 1986, as amended;

25 (8) Taxpayer means a corporate taxpayer or other person subject to
26 either an income tax imposed by the Nebraska Revenue Act of 1967 or a
27 franchise tax under Chapter 77, article 38, or a partnership, limited
28 liability company, subchapter S corporation, cooperative, including a
29 cooperative exempt under section 521 of the Internal Revenue Code of
30 1986, as amended, limited cooperative association, or joint venture that
31 is or would otherwise be a member of the same unitary group if

1 incorporated, which is, or whose partners, members, or owners
2 representing an ownership interest of at least ninety percent of the
3 control of such entity are, subject to or exempt from such taxes, and any
4 other partnership, limited liability company, subchapter S corporation,
5 cooperative, including a cooperative exempt under section 521 of the
6 Internal Revenue Code of 1986, as amended, limited cooperative
7 association, or joint venture when the partners, members, or owners
8 representing an ownership interest of at least ninety percent of the
9 control of such entity are subject to or exempt from such taxes; and
10 (9) Year means the taxable year of the taxpayer.

11 Sec. 7. Section 77-27,187.02, Revised Statutes Cumulative
12 Supplement, 2014, is amended to read:

13 77-27,187.02 (1) To earn the incentives set forth in the Nebraska
14 Advantage Rural Development Act, the taxpayer shall file an application
15 for an agreement with the Tax Commissioner.

16 (2) The application shall contain:

17 (a) A written statement describing the full expected employment or
18 type of livestock production and the investment amount for a qualified
19 business, as described in section 77-27,189, in this state;

20 (b) Sufficient documents, plans, and specifications as required by
21 the Tax Commissioner to support the plan and to define a project; and

22 (c) An application fee of five hundred dollars. The fee shall be
23 remitted to the State Treasurer for credit to the Nebraska Incentives
24 Fund. The application and all supporting information shall be
25 confidential except for the name of the taxpayer, the location of the
26 project, and the amounts of increased employment or investment.

27 (3)(a) The Tax Commissioner shall approve the application and
28 authorize the total amount of credits expected to be earned as a result
29 of the project if he or she is satisfied that the plan in the application
30 defines a project that (i) meets the requirements established in section
31 77-27,188 and such requirements will be reached within the required time

1 period and (ii) for projects other than livestock modernization or
2 expansion projects, is located in an eligible county, city, or village.

3 (b) ~~The Tax Commissioner shall not approve further applications once~~
4 ~~the expected credits from the approved projects total two million five~~
5 ~~hundred thousand dollars in each of fiscal years 2004-05 and 2005-06,~~
6 ~~three million dollars in each of fiscal years 2006-07 through 2008-09,~~
7 ~~and four million dollars in fiscal year 2009-10. For applications filed~~
8 ~~in calendar years 2010 and 2011, the Tax Commissioner shall not approve~~
9 ~~further applications once the expected credits from the approved projects~~
10 ~~total four million dollars. For applications filed in calendar year 2015~~
11 ~~2012 and each year thereafter, the Tax Commissioner shall not approve~~
12 ~~further applications once the expected credits from the approved projects~~
13 ~~total one million dollars. For applications filed in calendar year 2016~~
14 ~~and each year thereafter, the Tax Commissioner shall not approve further~~
15 ~~applications from applicants described in subsection (1) of section~~
16 ~~77-27,188 once the expected credits from approved projects from this~~
17 ~~category total one million dollars. For applications filed in calendar~~
18 ~~year 2016 and each year thereafter, the Tax Commissioner shall not~~
19 ~~approve further applications from applicants described in subsection (2)~~
20 ~~of section 77-27,188 once the expected credits from approved projects in~~
21 ~~this category total: For calendar year 2016, five hundred thousand~~
22 ~~dollars; for calendar years 2017 and 2018, seven hundred fifty thousand~~
23 ~~dollars; and for calendar year 2019 and each calendar year thereafter,~~
24 ~~one million dollars. Four hundred dollars of the application fee shall be~~
25 ~~refunded to the applicant if the application is not approved because the~~
26 ~~expected credits from approved projects exceed such amounts. It is the~~
27 ~~intent of the Legislature that all tax credits deemed unallocated for~~
28 ~~this section for calendar year 2011 shall be used for purposes of the~~
29 ~~Angel Investment Tax Credit Act.~~

30 (c) Applications for benefits shall be considered separately and in
31 the order in which they are received for the categories represented by

1 subsections (1) and (2) of section 77-27,188.

2 (d)(i) For applications filed in calendar year 2011, applications
3 shall be filed by July 1 and shall be complete by August 1 of the
4 calendar year. Any application that is filed after July 1 or that is not
5 complete on August 1 shall be considered to be filed during the following
6 calendar year.

7 (d) Applications (ii) For applications filed in calendar year 2012
8 and each year thereafter, applications shall be filed by November 1 and
9 shall be complete by December 1 of each calendar year. Any application
10 that is filed after November 1 or that is not complete on December 1
11 shall be considered to be filed during the following calendar year.

12 (4) After approval, the taxpayer and the Tax Commissioner shall
13 enter into a written agreement. The taxpayer shall agree to complete the
14 project, and the Tax Commissioner, on behalf of the State of Nebraska,
15 shall designate the approved plans of the taxpayer as a project and, in
16 consideration of the taxpayer's agreement, agree to allow the taxpayer to
17 use the incentives contained in the Nebraska Advantage Rural Development
18 Act up to the total amount that were authorized by the Tax Commissioner
19 at the time of approval. The application, and all supporting
20 documentation, to the extent approved, shall be considered a part of the
21 agreement. The agreement shall state:

22 (a) The levels of employment and investment required by the act for
23 the project;

24 (b) The time period under the act in which the required level must
25 be met;

26 (c) The documentation the taxpayer will need to supply when claiming
27 an incentive under the act;

28 (d) The date the application was filed; and

29 (e) The maximum amount of credits authorized.

30 Sec. 8. Section 77-27,188, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 77-27,188 (1) A refundable credit against the taxes imposed by the
2 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an
3 approved application pursuant to the Nebraska Advantage Rural Development
4 Act, who is engaged in a qualified qualifying business as described in
5 section 77-27,189, and who after January 1, 2006:

6 (a)(i) Increases employment by two new equivalent employees and
7 makes an increased investment of at least one hundred twenty-five
8 thousand dollars prior to the end of the first taxable year after the
9 year in which the application was submitted in (A) any county in this
10 state with a population of fewer than fifteen thousand inhabitants,
11 according to the most recent federal decennial census, (B) any village in
12 this state, or (C) any area within the corporate limits of a city of the
13 metropolitan class consisting of one or more contiguous census tracts, as
14 determined by the most recent federal decennial census, which contain a
15 percentage of persons below the poverty line of greater than thirty
16 percent, and all census tracts contiguous to such tract or tracts; or

17 (ii) Increases employment by five new equivalent employees and makes
18 an increased investment of at least two hundred fifty thousand dollars
19 prior to the end of the first taxable year after the year in which the
20 application was submitted in any county in this state with a population
21 of less than twenty-five thousand inhabitants, according to the most
22 recent federal decennial census, or any city of the second class; and

23 (b) Pays a minimum qualifying wage of eight dollars and twenty-five
24 cents per hour to the new equivalent employees for which tax credits are
25 sought under the Nebraska Advantage Rural Development Act. The Department
26 of Revenue shall adjust the minimum qualifying wages required for
27 applications filed after January 1, 2004, and each January 1 thereafter,
28 as follows: The current rural Nebraska average weekly wage shall be
29 divided by the rural Nebraska average weekly wage for 2003; and the
30 result shall be multiplied by the eight dollars and twenty-five cents
31 minimum qualifying wage for 2003 and rounded to the nearest one cent. The

1 amount of increase or decrease in the minimum qualifying wages for any
2 year shall be the cumulative change in the rural Nebraska average weekly
3 wage since 2003. For purposes of this subsection, rural Nebraska average
4 weekly wage means the most recent average weekly wage paid by all
5 employers in all counties with a population of less than twenty-five
6 thousand inhabitants as reported by October 1 by the Department of Labor.

7 For purposes of this section, a teleworker working in Nebraska from
8 his or her residence for a taxpayer shall be considered an employee of
9 the taxpayer, and property of the taxpayer provided to the teleworker
10 working in Nebraska from his or her residence shall be considered an
11 investment. Teleworker includes an individual working on a per-item basis
12 and an independent contractor working for the taxpayer so long as the
13 taxpayer withholds Nebraska income tax from wages or other payments made
14 to such teleworker. For purposes of calculating the number of new
15 equivalent employees when the teleworkers are paid on a per-item basis or
16 are independent contractors, the total wages or payments made to all such
17 new employees during the year shall be divided by the qualifying wage as
18 determined in subdivision (b) of this subsection, with the result divided
19 by two thousand eighty hours.

20 (2) A refundable credit against the taxes imposed by the Nebraska
21 Revenue Act of 1967 shall be allowed to any taxpayer who (a) has an
22 approved application pursuant to the Nebraska Advantage Rural Development
23 Act, (b) is engaged in livestock production, and (c) after January 1,
24 2007, invests at least fifty thousand dollars for livestock modernization
25 or expansion.

26 (3) The amount of the credit allowed under subsection (1) of this
27 section shall be three thousand dollars for each new equivalent employee
28 and two thousand seven hundred fifty dollars for each fifty thousand
29 dollars of increased investment. For applications filed before January 1,
30 2016, the The amount of the credit allowed under subsection (2) of this
31 section shall be ten percent of the investment, not to exceed a credit of

1 thirty thousand dollars. For applications filed on or after January 1,
2 2016, the amount of the credit allowed under subsection (2) of this
3 section shall be ten percent of the investment, not to exceed a credit of
4 one hundred fifty thousand dollars per application. For each application,
5 a taxpayer engaged in livestock production may qualify for a credit under
6 either subsection (1) or (2) of this section, but cannot qualify for more
7 than one credit per application.

8 (4) An employee of a qualified employee leasing company shall be
9 considered to be an employee of the client-lessee for purposes of this
10 section if the employee performs services for the client-lessee. A
11 qualified employee leasing company shall provide the Department of
12 Revenue access to the records of employees leased to the client-lessee.

13 (5) The credit shall not exceed the amounts set out in the
14 application and approved by the Tax Commissioner.

15 (6)(a) If a taxpayer who receives tax credits creates fewer jobs or
16 less investment than required in the project agreement, the taxpayer
17 shall repay the tax credits as provided in this subsection.

18 (b) If less than seventy-five percent of the required jobs in the
19 project agreement are created, one hundred percent of the job creation
20 tax credits shall be repaid. If seventy-five percent or more of the
21 required jobs in the project agreement are created, no repayment of the
22 job creation tax credits is necessary.

23 (c) If less than seventy-five percent of the required investment in
24 the project agreement is created, one hundred percent of the investment
25 tax credits shall be repaid. If seventy-five percent or more of the
26 required investment in the project agreement is created, no repayment of
27 the investment tax credits is necessary.

28 (7) For taxpayers who submitted applications for benefits under the
29 Nebraska Advantage Rural Development Act before January 1, 2006,
30 subsection (1) of this section, as such subsection existed immediately
31 prior to such date, shall continue to apply to such taxpayers. The

1 changes made by Laws 2005, LB 312, shall not preclude a taxpayer from
2 receiving the tax incentives earned prior to January 1, 2006.

3 Sec. 9. Section 81-2,147.01, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 81-2,147.01 As used in the Nebraska Seed Law:

6 (1) Advertisement means all representations, other than those on the
7 label, disseminated in any manner or by any means relating to seed,
8 including farm grain represented as suitable for sowing, within the scope
9 of the Nebraska Seed Law;

10 (2) Agricultural seed includes the seeds of grass, forage, cereal,
11 oil and fiber crops, and lawn and mixtures of such seeds and any other
12 kinds of seed commonly recognized within this state as agricultural seeds
13 and may include the seed of any plant that is being used as an
14 agricultural crop when the Director of Agriculture establishes in rules
15 and regulations that such seed is being used as agricultural seed;

16 (3) Blend means seeds consisting of more than one variety of a kind,
17 each in excess of five percent by weight of the whole;

18 (4) Brand means a word, name, symbol, number, or design to identify
19 seed of one person to distinguish it from seed of another person;

20 (5) Certifying agency means (a) an agency authorized under the laws
21 of a state, territory, or possession of the United States to officially
22 certify seed and which has standards and procedures approved by the
23 United States Secretary of Agriculture to assure genetic purity and
24 identity of the seed certified or (b) an agency of a foreign country
25 which is determined by the United States Secretary of Agriculture to
26 adhere to procedures and standards for seed certification comparable to
27 those adhered to generally by certifying agencies under subdivision (a)
28 of this subdivision;

29 (6) Conditioning means drying, cleaning, scarifying, or other
30 operations which could change the purity or germination of the seed and
31 require the seed lot or any definite amount of seed to be retested to

1 determine the label information;

2 (7) Director means the Director of Agriculture or his or her
3 designated employee or representative or authorized agent;

4 (8) Dormant seed means viable seeds, other than hard seeds, which
5 fail to germinate when provided the specified germination conditions for
6 the kind of seed in question;

7 (9) Flower seed includes seeds of herbaceous plants grown for their
8 blooms, ornamental foliage, or other ornamental parts and commonly known
9 and sold under the name of flower or wildflower seeds in this state;

10 (10) Germination means the emergence and development from the seed
11 embryo of those essential structures which for the kind of seed in
12 question are indicative of the ability to produce a normal plant under
13 favorable conditions;

14 (11) Hard seed means seeds which remain hard at the end of the
15 prescribed test period because they have not absorbed water due to an
16 impermeable seed coat;

17 (12) Hybrid means the first generation seed of a cross produced by
18 controlling the pollination and by combining (a) two or more inbred
19 lines, (b) one inbred or a single cross with an open-pollinated variety,
20 or (c) two varieties or species except open-pollinated varieties of corn
21 (*Zea mays*). The second generation and subsequent generations from such
22 crosses shall not be regarded as hybrids. Hybrid designations shall be
23 treated as variety names;

24 (13) Inert matter means all matter not seed which includes broken
25 seeds, sterile florets, chaff, fungus bodies, and stones as established
26 by rules and regulations;

27 (14) Kind means one or more related species or subspecies which
28 singly or collectively are known by one common name, such as corn, oats,
29 alfalfa, and timothy;

30 (15) Labeling includes all labels and other written, printed,
31 stamped, or graphic representations, in any form whatsoever, accompanying

1 or pertaining to any seed, whether in bulk or in containers, and includes
2 representations on invoices;

3 (16) Lot means a definite quantity of seed in containers or bulk
4 identified by a lot number or other mark, every portion of which is
5 uniform within recognized tolerances for the factors that appear in the
6 labeling;

7 (17) Mixture, mix, or mixed means seeds consisting of more than one
8 kind, each present in excess of five percent by weight of the whole;

9 (18) Mulch means a protective covering of any suitable material
10 placed with seed which acts to retain sufficient moisture to support seed
11 germination and sustain early seedling growth and aids in preventing the
12 evaporation of soil moisture, controlling weeds, and preventing erosion;

13 (19) Origin means a foreign country or designated portion thereof, a
14 state, the District of Columbia, Puerto Rico, or a possession of the
15 United States, where the seed was grown;

16 (20) Other crop seed means seed of plants grown as crops, other than
17 the kind or variety included in the pure seed, as established by rules
18 and regulations;

19 (21) Person includes any corporation, company, society, association,
20 body politic and corporate, community, individual, partnership, limited
21 liability company, or joint-stock company or the public generally;

22 (22) Primary noxious weed seeds means the seeds of any plant
23 designated by the director as a noxious weed pursuant to the Noxious Weed
24 Control Act. Pursuant to subdivision (1)(c) of section 81-2,147.06, the
25 director may add to or subtract from this primary noxious weed seeds
26 list;

27 (23) Prohibited noxious weed seeds means the seeds of plants which
28 are highly destructive and difficult to control in this state by ordinary
29 good cultural practice, the use of herbicides, or both and includes field
30 bindweed (*Convolvulus arvensis*), hoary cress (*Cardaria draba*), Russian
31 knapweed (*Centaurea repens*), johnsongrass (*Sorghum halepense*), Scotch

1 thistle (*Onopordum acanthium*), morning glory (*Ipomoea purpurea*) when
2 found in field crop seeds, skeletonleaf bursage (*Ambrosia discolor*),
3 woollyleaf bursage (*Ambrosia tomentosa*), serrated tussock (*Nassella*
4 *trichotoma*), and puncturevine (*Tribulus terrestris*). Pursuant to
5 subdivision (1)(c) of section 81-2,147.06, the director may add to or
6 subtract from this prohibited noxious weed seeds list;

7 (24) Pure live seed means the product of the percent of germination
8 plus percent of hard or dormant seed multiplied by the percent of pure
9 seed divided by one hundred. The result shall be expressed as a whole
10 number;

11 (25) Pure seed means seed exclusive of inert matter and all other
12 seeds not of the seed being considered as established by rules and
13 regulations;

14 (26) Record means any and all information which relates to the
15 origin, treatment, germination, purity, kind, and variety of each lot or
16 definite amount of seed handled in this state. Such information includes
17 seed samples and records of declarations, labels, purchases, sales,
18 conditioning, bulking, treatment, handling, storage, analyses, tests, and
19 examinations;

20 (27) Restricted noxious weed seeds means the seeds of plants which
21 are objectionable in fields, lawns, and gardens of this state but can be
22 controlled by ordinary good cultural practice, the use of herbicides, or
23 both and includes dodder (*Cuscuta spp.*), wild mustard (*Brassica spp.*),
24 dock (*Rumex spp.*), quackgrass (*Elytrigia repens*), pennycress (*Thlaspi*
25 *arvense*), purple loosestrife (*Lythrum salicaria*), and horse nettle (*Solanum*
26 *carolinense*). Pursuant to subdivision (1)(c) of section 81-2,147.06, the
27 director may add to or subtract from this restricted noxious weed seeds
28 list;

29 (28) Sale in any of its variant forms means sale, to barter,
30 exchange, offer for sale, expose for sale, move, or transport, in any of
31 their variant forms, or otherwise supplying. Sale does not mean the

1 donation, exchange, or other transfer of seeds to or from a seed library
2 or among members of, or participants in, a seed library;

3 (29) Screenings means the results of the process which removes, in
4 any way, weed seed, inert matter, and other materials from any
5 agricultural, vegetable, or flower seed in any kind of cleaning process;

6 (30) Seed library means a nonprofit, governmental, or cooperative
7 organization, association, or activity for the purpose of facilitating
8 the donation, exchange, preservation, and dissemination of seeds of open
9 pollinated, public domain plant varieties by or among its members or
10 members of the public when the use, exchange, transfer, or possession of
11 seeds acquired by or from the seed library is free of any charge or
12 consideration;

13 (31 30) Seizure means a legal process carried out by court order
14 against a definite amount or lot of seed;

15 (32 31) Stop-sale order means an administrative order provided by
16 law restraining the sale, use, disposition, and movement of a definite
17 amount or lot of seed;

18 (33 32) Tetrazolium (TZ) test means a type of test in which
19 chemicals are used to produce differential staining of strong, weak, and
20 dead tissues, which is indicative of the potential viability of seeds;

21 (34 33) Treated means that the seed has been given an application of
22 a substance or subjected to a process or coating for which a claim is
23 made or which is designed to reduce, control, or repel disease organisms,
24 insects, or other pests which attack seeds or seedlings growing
25 therefrom;

26 (35 34) Variety means a subdivision of a kind which is distinct,
27 uniform, and stable. For purposes of this subdivision: (a) Distinct means
28 that the variety can be differentiated by one or more identifiable
29 morphological, physiological, or other characteristics from all other
30 varieties of public knowledge; (b) uniform means that variations in
31 essential and distinctive characteristics are describable; and (c) stable

1 means that the variety will remain unchanged in its essential and
2 distinctive characteristics and its uniformity when reproduced or
3 reconstituted as required by the different categories of varieties;

4 (36 35) Vegetable seed includes the seeds of those crops which are
5 grown in gardens and on truck farms and are generally known and sold
6 under the name of vegetable or herb seeds in this state; and

7 (37 36) Weed seed includes the seeds of any plant generally
8 recognized as a weed within this state as established in rules and
9 regulations and includes the primary noxious weed seeds, prohibited
10 noxious weed seeds, and restricted noxious weed seeds.

11 Sec. 10. Section 81-2,147.05, Reissue Revised Statutes of Nebraska,
12 is amended to read:

13 81-2,147.05 (1) Sections 81-2,147.02 and 81-2,147.03 shall not
14 apply:

15 (a) To seed or grain not intended for sowing purposes;

16 (b) To seed in storage in, or being transported or consigned to, a
17 cleaning or conditioning establishment for cleaning or conditioning,
18 except that the invoice or labeling accompanying any shipment of such
19 seed shall bear the statement Seed for Conditioning, and any labeling or
20 other representation which may be made with respect to the uncleared
21 unconditioned seed shall be subject to the Nebraska Seed Law;—or

22 (c) To any carrier in respect to any seed transported or delivered
23 for transportation in the ordinary course of its business as a carrier if
24 such carrier is not engaged in producing, conditioning, or marketing
25 agricultural, vegetable, or flower seeds subject to the Nebraska Seed
26 Law; or .

27 (d) To seed libraries.

28 (2) No person shall be subject to the penalties of the Nebraska Seed
29 Law for having sold agricultural, vegetable, or flower seed which was
30 incorrectly labeled or represented as to kind, variety, or origin, if
31 required, which seeds cannot be identified by examination thereof, unless

1 he or she has failed to obtain an invoice, genuine grower's declaration,
2 or other labeling information and to take such other precautions as may
3 be reasonable to insure the identity to be as stated.

4 Sec. 11. Sections 11 to 15 of this act shall be known and may be
5 cited as the Community Gardens Act.

6 Sec. 12. (1) The Legislature finds and declares that:

7 (a) Community gardens provide significant health, educational, and
8 social benefits to the general public, especially for those who reside in
9 urban and suburban areas of this state;

10 (b) The community garden movement (i) continues to provide low-cost
11 food that is fresh and nutritious for those who may be unable to readily
12 afford fresh fruits and vegetables for themselves or their families, (ii)
13 promotes public health and healthier individual lifestyles by encouraging
14 better eating habits and increased physical activity by growing food,
15 (iii) fosters the retention and expansion of open spaces, particularly in
16 urban environments, (iv) enhances urban and suburban environmental
17 quality and community beautification, (v) provides inexpensive community
18 building activities, recreation, and physical exercise for all age
19 groups, (vi) establishes a safe place for community involvement and helps
20 to reduce the incidence of crime, (vii) engenders a closer relationship
21 between urban residents, nature, and the local environment, and (viii)
22 fosters green job training and ecological education at all levels; and

23 (c) It is the public policy of this state to promote and foster
24 growth in the number of community gardens and the acreage of such
25 gardens.

26 (2) It is the intent of the Legislature and the purpose of the
27 Community Gardens Act to foster growth in the number, size, and scope of
28 community gardens in this state by encouraging state agencies,
29 municipalities, and private parties in their efforts to promote community
30 gardens.

31 Sec. 13. For purposes of the Community Gardens Act:

1 (1) Community garden means public or private land upon which
2 individuals have the opportunity to raise a garden on land which they do
3 not themselves own;

4 (2) Garden means a piece or parcel of land appropriate for
5 cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg
6 production, maple syrup, ornamental or vegetable plants, nursery
7 products, or vegetables;

8 (3) Municipality means any county, village, or city or any office or
9 agency of a county, village, or city;

10 (4) State agency means any department or other agency of the State
11 of Nebraska;

12 (5) Use means to avail oneself of or to employ without conveyance of
13 title gardens on vacant public land by any individual or organization;
14 and

15 (6) Vacant public land means any land owned by the state or another
16 governmental subdivision, including a municipality, that is not in use
17 for a public purpose, is otherwise unoccupied, idle, or not being
18 actively utilized for a period of at least six months, and is suitable
19 for garden use.

20 Sec. 14. (1) A state agency or municipality having title to vacant
21 public land may permit community organizations to use such lands for
22 community garden purposes. Such use of vacant public land may be
23 conditioned on the community organization having liability insurance and
24 accepting liability for injury or damage resulting from use of the vacant
25 public land for community garden purposes. State agencies and
26 municipalities may adopt and promulgate rules, regulations, ordinances,
27 or resolutions to establish an application process for a community
28 garden. The applicant may include a request for access to a fire hydrant
29 or other source of water owned or operated by the state agency or
30 municipality or by a utility district in order to provide water to the
31 community garden. The state agency, municipality, or utility district

1 shall consider whether to supply the water to the applicant at a reduced
2 or fixed rate.

3 (2) A state agency or municipality which receives an application
4 pursuant to this section shall respond to the applicant within sixty days
5 from the date on which the application is received and shall make a final
6 determination within one hundred eighty days from such date.

7 Sec. 15. (1) The Director of Agriculture shall establish a
8 community gardens task force on or before August 1, 2015, to identify and
9 develop ways to encourage state agencies, municipalities, and individuals
10 to establish and expand community gardens. The director shall designate a
11 chairperson of the task force. The members of the task force shall be
12 appointed by the director and shall include no more than nine members. At
13 least three of the members shall be representatives of nonprofit
14 organizations involved with community gardens. The remaining members may
15 include representation from appropriate state agencies, existing
16 community gardens, counties, cities, towns, villages, utility districts,
17 and school districts.

18 (2) The director may request the assistance of other state agencies
19 to carry out the work of the task force.

20 (3) The goals of the task force may include, but are not limited to,
21 the study, evaluation, and development of recommendations (a) to
22 encourage the establishment and expansion of community gardens by state
23 agencies, municipalities, and individuals, (b) to encourage cooperation
24 between the activities and operations of community gardens and the
25 provision of donated food to local voluntary food assistance programs for
26 the poor and disadvantaged, and (c) to increase the benefits that
27 community gardens may provide to the community in which they are located.

28 (4) In carrying out its duties under subsection (3) of this section,
29 the task force may consider recommendations that (a) encourage the
30 execution of conservation easements by state agencies, municipalities, or
31 individuals to establish or protect community gardens, (b) encourage the

1 donation or lease of lands for community gardens, (c) encourage
2 development of model zoning codes, local land-use laws, or other
3 municipal policies that could encourage the establishment or retention of
4 community gardens, and (d) provide for any other activity to achieve the
5 goals deemed appropriate by the task force.

6 (5) The task force shall issue a preliminary report to the
7 Department of Agriculture and electronically to the Legislature no later
8 than December 15, 2015, and shall issue a final report to the Department
9 of Agriculture and electronically to the Legislature no later than
10 December 15, 2016.

11 Sec. 16. Original sections 54-2801, 54-2802, 77-27,187.01,
12 77-27,188, 81-2,147.01, and 81-2,147.05, Reissue Revised Statutes of
13 Nebraska, and section 77-27,187.02, Revised Statutes Cumulative
14 Supplement, 2014, are repealed.

15 Sec. 17. Since an emergency exists, this act takes effect when
16 passed and approved according to law.