

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 106

Introduced by Watermeier, 1; Johnson, 23; Murante, 49.

Read first time January 08, 2015

Committee: Agriculture

- 1 A BILL FOR AN ACT relating to livestock; to amend section 23-114, Reissue
- 2 Revised Statutes of Nebraska; to adopt the Livestock Operation
- 3 Siting and Expansion Act; to change powers of counties relating to
- 4 certain zoning actions; to harmonize provisions; and to repeal the
- 5 original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 1 to 6 of this act shall be known and may be
2 cited as the Livestock Operation Siting and Expansion Act.

3 Sec. 2. For purposes of the Livestock Operation Siting and
4 Expansion Act:

5 (1) Board means the Livestock Operation Siting Review Board;

6 (2) Department means the Department of Agriculture;

7 (3) Director means the Director of Agriculture;

8 (4) Expansion means an increase in the number of animals fed,
9 confined, maintained, or stabled; and

10 (5) Livestock operation means a location where beef cattle, dairy
11 cattle, horses, swine, sheep, poultry, or other livestock have been, are,
12 or will be stabled or confined and fed or maintained for a total of
13 forty-five days or more in any twelve-month period and crops, vegetation,
14 forage growth, or post-harvest residues are not sustained in the normal
15 growing season over any portion of the location.

16 Sec. 3. (1) The department shall adopt and promulgate rules and
17 regulations to develop an assessment matrix which shall be used by county
18 officials to determine whether to approve or disapprove a permit
19 application for a livestock operation siting permit pursuant to section 4
20 of this act. The rules and regulations shall be adopted and promulgated
21 within one year after the effective date of this act. In the development
22 of the assessment matrix, the department shall:

23 (a) Consider matrices already developed by the counties;

24 (b) Design the matrix to produce quantifiable results based on the
25 scoring of objective criteria according to an established value scale.
26 Each criterion shall be assigned points corresponding to the value scale.
27 The matrix shall consider risks and factors mitigating risks if the
28 livestock operation were constructed according to the application;

29 (c) Assure the matrix is a practical tool for use by persons when
30 completing permit applications and by county officials when scoring
31 livestock operation siting permit applications. To every extent feasible,

1 the matrix shall include criteria that may be readily scored according to
2 ascertainable data and upon which reasonable persons familiar with the
3 location of a proposed construction site would not ordinarily disagree;
4 and

5 (d) Provide for definite point selections for all criteria included
6 in the matrix and provide for a minimum threshold total score required to
7 receive approval by county officials.

8 (2) The department may develop criteria in the matrix which include
9 factors referencing the following:

10 (a) Size of operation;

11 (b) Type of operation;

12 (c) Whether the operation has received a permit from the Department
13 of Environmental Quality;

14 (d) Environmental practices adopted by the operation operator which
15 may exceed those required by the Department of Environmental Quality;

16 (e) Odor control practices;

17 (f) The proximity to neighboring residences, public use areas, and
18 critical public areas;

19 (g) Community support and communication with neighbors and other
20 community members;

21 (h) Manure storage and application practices;

22 (i) Traffic;

23 (j) Economic impact to the community; and

24 (k) Landscape and aesthetic appearance.

25 (3) In developing the matrix, the department shall consider whether
26 the proposed criteria are:

27 (a) Protective of public health or safety;

28 (b) Practical and workable;

29 (c) Cost effective;

30 (d) Objective;

31 (e) Based on available scientific information that has been

1 subjected to peer review;

2 (f) Designed to promote the growth and viability of animal
3 agriculture in this state;

4 (g) Designed to balance the economic viability of farm operations
5 with protecting natural resources and other community interests; and

6 (h) Usable by county officials.

7 (4) The department shall review the assessment matrix at least once
8 every four years.

9 (5) The director shall appoint a committee of experts, not to exceed
10 ten persons, to advise the department on the development of the matrix
11 and on the review of the matrix under subsection (4) of this section.
12 Experts shall include representation from the Nebraska Association of
13 County Officials, livestock production agriculture, the University of
14 Nebraska, and other experts as may be determined by the director.

15 (6) The department shall adopt and promulgate rules and regulations
16 to:

17 (a) Specify the forms to be used by counties to receive an
18 application for a livestock operation siting permit if the county decides
19 to require a permit under section 4 of this act;

20 (b) Specify information and documentation that must be provided in a
21 livestock operation siting permit application in order that county
22 officials can quantify and score applications under the matrix; and

23 (c) Specify the information and documentation that must be included
24 in a record of decisionmaking under section 4 of this act.

25 Sec. 4. (1) County authority or resolutions to grant conditional
26 use or special exceptions for siting livestock operations under sections
27 23-114 to 23-114.05 shall expire two years after the date the rules and
28 regulations and assessment matrix adopted, promulgated, and developed
29 pursuant to section 3 of this act are adopted and approved by the
30 department.

31 (2)(a) Beginning on the date the rules and regulations and

1 assessment matrix are adopted and promulgated and approved by the
2 department, a county may enact a requirement in areas zoned for
3 agricultural uses only that a person must obtain a permit from the county
4 for the siting or expansion of a livestock operation when the operation
5 will have more than:

6 (i) Two hundred mature dairy cows, whether milked or dry;

7 (ii) Three hundred veal calves;

8 (iii) Three hundred cattle other than mature dairy cows or veal
9 calves. Cattle include, but are not limited to, heifers, steers, bulls,
10 and cow/calf pairs;

11 (iv) Seven hundred fifty swine each weighing fifty-five pounds or
12 more;

13 (v) Three thousand swine each weighing less than fifty-five pounds;

14 (vi) One hundred fifty horses;

15 (vii) Three thousand sheep or lambs;

16 (viii) Sixteen thousand five hundred turkeys;

17 (ix) Nine thousand laying hens or broilers, if the operation uses a
18 liquid manure handling system;

19 (x) Thirty-seven thousand five hundred chickens, other than laying
20 hens, if the operation uses other than a liquid manure handling system;

21 (xi) Twenty-five thousand laying hens, if the animal feeding
22 operation uses other than a liquid manure handling system;

23 (xii) One thousand five hundred ducks, if the operation uses a
24 liquid manure handling system; or

25 (xiii) Ten thousand ducks, if the operation uses other than a liquid
26 manure handling system.

27 (b) Counties with regulations existing on the date the rules and
28 regulations and assessment matrix are adopted and promulgated by the
29 department, with livestock operation size thresholds requiring a
30 conditional use permit or special exception exceeding the animal numbers
31 listed in subdivision (2)(a) of this section, may choose to grandfather

1 in its existing size thresholds for purposes of requiring a permit under
2 this subsection.

3 (3) Beginning on the date the rules and regulations and assessment
4 matrix are adopted and promulgated and approved by the department, a
5 county may enact a requirement that a person obtain a permit for the
6 expansion of a livestock operation in existence when the county enacted
7 the requirement under subdivision (2)(a) of this section when the number
8 of animals the livestock operation will have after the proposed expansion
9 will exceed the animal size threshold under such subdivision.

10 (4) The power to grant livestock operation siting permits as set
11 forth in the Livestock Operation Siting and Expansion Act shall be the
12 exclusive authority of the county planning commission, except that the
13 county board of commissioners or supervisors may choose to retain for
14 itself the power to grant livestock operation siting permits.

15 (5) If a county chooses under subsection (2) or (3) of this section
16 to require a livestock operation siting permit in areas zoned for
17 agricultural uses only, it can either grant or deny a livestock operation
18 siting permit application. A county may deny a livestock operation siting
19 or expansion permit if:

20 (a) The site is located in a zoning district that is not zoned for
21 agricultural use only;

22 (b) The proposed new or expanded livestock operation will exceed the
23 size thresholds set forth in subsection (2) of this section and does not
24 meet the minimum threshold score required under the matrix developed
25 under section 3 of this act to receive approval;

26 (c) The proposed new or expanded livestock operation exceeds the
27 size thresholds set forth in subsection (2) of this section and the
28 county determines that denial of the permit is necessary based on
29 reasonable and defensible findings of fact to protect public health,
30 safety, and welfare.

31 Sec. 5. If a county determines to require a permit under section 4

1 of this act, the following procedures shall apply:

2 (1) No later than forty-five days after a county receives a permit
3 application to site a livestock operation, the county shall notify the
4 applicant whether the application is complete and, if it is not complete,
5 what information is needed to complete the application. As soon as the
6 applicant has provided all of the required information, the county shall
7 notify the applicant that the application is complete;

8 (2) Except as provided in subdivision (3) of this section, a county
9 shall grant or deny a permit application no more than ninety days after
10 the day on which it notifies the applicant the application is complete. A
11 county shall base its decision on written findings of fact that are
12 supported by the evidence in the record as described under subdivision
13 (4) of this section. If an application meets the minimum threshold score
14 on the assessment matrix as set by the department, and the information
15 and documentation provided by the applicant is sufficient to establish
16 that the application complies with applicable requirements for approval,
17 the county shall grant the permit unless it finds, based on information
18 or documentation in the record, that denial of the permit is necessary
19 based on reasonable and defensible findings of fact to protect the public
20 health, safety, and welfare;

21 (3) A county may extend the time limit in subdivision (2) of this
22 section an additional forty-five days if the county needs additional
23 information to determine whether to approve or disapprove the
24 application, the applicant makes a material modification to the
25 application for approval, or for other good cause specified in writing by
26 the county; and

27 (4) A county shall make a record of its decisionmaking on an
28 application which shall include copies of any documents submitted at any
29 public hearing, copies of the completed matrix and score, and copies of
30 any other documents provided to the county in connection with the
31 application. If it is a standard practice for a county to record board

1 meetings or hearings, that shall also be considered part of the record.

2 Sec. 6. (1) There is created a Livestock Operation Siting Review
3 Board within the department. The board shall consist of the following
4 members:

5 (a) Two members representing the interests of counties selected from
6 a list of names submitted by the Nebraska Association of County
7 Officials;

8 (b) Two members representing livestock farming interests, selected
9 from a list of names submitted by statewide agricultural organizations;
10 and

11 (c) Three members at-large representing local economic development
12 interests, community planning interests, local chambers of commerce,
13 small business owners, or environmental or conservation interests.

14 (2) Members of the board shall be appointed by the Governor for
15 staggered five-year terms as determined by the Governor. Future
16 appointments shall be for five-year terms. Members whose terms have
17 expired shall continue to serve until their successors have been
18 appointed. In the case of a vacancy, the Governor shall appoint a
19 successor for the unexpired term. Members may be removed for cause.
20 Initial appointees shall begin serving immediately following notice of
21 appointment.

22 (3) A person who applied to a county for a livestock operation
23 siting or expansion permit and has been denied by the county may appeal
24 the decision by requesting a review by the board. A request for review
25 shall be filed with the board within thirty days after the county denies
26 the permit application.

27 (4) Upon receiving a request under subsection (3) of this section,
28 the board shall notify the county of the request. The county shall
29 provide a certified copy of the record created under section 5 of this
30 act to the board within thirty days after the day on which it receives
31 the notice.

1 (5) Upon receiving the certified copy of the record, the board shall
2 meet to determine whether the county decision is correct. Such meeting
3 can occur in person or through conference call, video communication, or
4 other forms of technology. The board will uphold a county decision unless
5 it is unreasonable, arbitrary, or an abuse of discretion. A person who
6 appeals to the board must present evidence to show the decision by the
7 county was unreasonable, arbitrary, or an abuse of discretion. Failure to
8 make such a claim or bring forth evidence to that effect will result in
9 an automatic denial of the appeal.

10 (6) If the board determines the county decision is incorrect, the
11 board shall reverse the decision of the county. The decision of the board
12 is binding on the county. If a county fails to comply with a decision of
13 the board that has not been appealed to district court, the person may
14 bring an action to enforce the decision.

15 (7) The person or the county may appeal the decision of the board to
16 district court. Service of a notice of appeal shall act to automatically
17 stay the effect of a decision of the board.

18 (8) A district court to which a decision of the board is appealed
19 shall review the decision of the board de novo on the record.

20 (9) The department shall adopt and promulgate rules and regulations
21 as necessary to carry out the provisions of this section.

22 Sec. 7. Section 23-114, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 23-114 (1) Except as provided in the Livestock Operation Siting and
25 Expansion Act, the The county board shall have power: (a) To create a
26 planning commission with the powers and duties set forth in sections
27 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02,
28 23-373, and 23-376; (b) to make, adopt, amend, extend, and implement a
29 county comprehensive development plan; (c) to adopt a zoning resolution,
30 which shall have the force and effect of law; and (d) to cede and
31 transfer jurisdiction pursuant to section 13-327 over land otherwise

1 subject to the authority of the county board pursuant to this section.

2 (2) The zoning resolution may regulate and restrict: (a) The
3 location, height, bulk, number of stories, and size of buildings and
4 other structures, including tents, cabins, house trailers, and automobile
5 trailers; (b) the percentage of lot areas which may be occupied; (c)
6 building setback lines; (d) sizes of yards, courts, and other open
7 spaces; (e) the density of population; (f) the uses of buildings; and (g)
8 the uses of land for agriculture, forestry, recreation, residence,
9 industry, and trade, after considering factors relating to soil
10 conservation, water supply conservation, surface water drainage and
11 removal, or other uses in the unincorporated area of the county. If a
12 zoning resolution or regulation affects the Niobrara scenic river
13 corridor as defined in section 72-2006, the Niobrara Council shall act on
14 the measure as provided in section 72-2010.

15 (3)(a) The county board shall not adopt or enforce any zoning
16 resolution or regulation which prohibits the use of land for a proposed
17 residential structure for the sole reason that the proposed structure is
18 a manufactured home if such manufactured home bears an appropriate seal
19 which indicates that it was constructed in accordance with the standards
20 of the Uniform Standard Code for Manufactured Homes and Recreational
21 Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act,
22 or the United States Department of Housing and Urban Development. The
23 county board may require that a manufactured home be located and
24 installed according to the same standards for foundation system,
25 permanent utility connections, setback, and minimum square footage which
26 would apply to a site-built, single-family dwelling on the same lot. The
27 county board may also require that manufactured homes meet the following
28 standards:

29 (i) The home shall have no less than nine hundred square feet of
30 floor area;

31 (ii) The home shall have no less than an eighteen-foot exterior

1 width;

2 (iii) The roof shall be pitched with a minimum vertical rise of two
3 and one-half inches for each twelve inches of horizontal run;

4 (iv) The exterior material shall be of a color, material, and scale
5 comparable with those existing in residential site-built, single-family
6 construction;

7 (v) The home shall have a nonreflective roof material which is or
8 simulates asphalt or wood shingles, tile, or rock; and

9 (vi) The home shall have wheels, axles, transporting lights, and
10 removable towing apparatus removed.

11 (b) The county board may not require additional standards unless
12 such standards are uniformly applied to all single-family dwellings in
13 the zoning district.

14 (c) Nothing in this subsection shall be deemed to supersede any
15 valid restrictive covenants of record.

16 (4) For purposes of this section, manufactured home shall mean (a) a
17 factory-built structure which is to be used as a place for human
18 habitation, which is not constructed or equipped with a permanent hitch
19 or other device allowing it to be moved other than to a permanent site,
20 which does not have permanently attached to its body or frame any wheels
21 or axles, and which bears a label certifying that it was built in
22 compliance with National Manufactured Home Construction and Safety
23 Standards, 24 C.F.R. 3280 et seq., promulgated by the United States
24 Department of Housing and Urban Development, or (b) a modular housing
25 unit as defined in section 71-1557 bearing a seal in accordance with the
26 Nebraska Uniform Standards for Modular Housing Units Act.

27 (5) Special districts or zones may be established in those areas
28 subject to seasonal or periodic flooding, and such regulations may be
29 applied as will minimize danger to life and property.

30 (6) The powers conferred by this section shall not be exercised
31 within the limits of any incorporated city or village nor within the area

1 over which a city or village has been granted or ceded zoning
2 jurisdiction and is exercising such jurisdiction. At such time as a city
3 or village exercises control over an unincorporated area by the adoption
4 or amendment of a zoning ordinance, the ordinance or amendment shall
5 supersede any resolution or regulation of the county.

6 Sec. 8. Original section 23-114, Reissue Revised Statutes of
7 Nebraska, is repealed.