

LEGISLATIVE BILL 639

Approved by the Governor April 24, 1978

Introduced by Agriculture and Environment Committee,
Schmit, 23, Chmn.; Hefner, 19, Kahle, 37;
Burrows, 30; R. Maresh, 32;

AN ACT to adopt the Nebraska Corn Resources Act; to define terms; to create a board; to provide duties; to create a fund; to provide for a referendum as prescribed; to provide a penalty; to provide for termination; and to declare an emergency.

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

Section 1. This act shall be known and may be cited as the Nebraska Corn Resources Act.

Sec. 2. It is declared to be in the interest of the public welfare of the state that the producers of corn be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of this act to provide the authorization and to prescribe the necessary procedures whereby corn producers in this state may finance programs to achieve the activities expressed in this act.

Sec. 3. Unless the context other requires, the definitions found in sections 4 to 10 of this act shall be used.

Sec. 4. Board shall mean the Corn Development, Utilization, and Marketing Board.

Sec. 5. Grower shall mean any landowner personally engaged in growing corn, a tenant of the landowner personally engaged in growing corn, and both the owner and tenant jointly, and shall include a person, partnership, association, corporation, cooperative, trust, sharecropper, and any other business unit, device and arrangement.

Sec. 6. First purchaser shall mean any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring the property in or to corn from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of

such corn is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

Sec. 7. Commercial channels shall mean the sale of corn for any use, to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any corn or product produced from corn.

Sec. 8. Trial period shall mean the first three years of the program after the initial board takes office.

Sec. 9. Sale shall include any pledge or mortgage of corn after harvest to any person, public or private.

Sec. 10. Corn shall not include popcorn or sweet corn.

Sec. 11. The board shall be composed of nine members who (1) are citizens of Nebraska, (2) are at least twenty-one years of age, (3) have been actually engaged in growing corn in this state for a period of at least five years, and (4) derive a substantial portion of their income from growing corn.

The Director of Agriculture, the Vice Chancellor of the Institute of Agriculture and Natural Resources of the University of Nebraska, and the president of the Nebraska Corn Growers Association shall be ex officio members of the board but shall have no vote in board matters.

Sec. 12. Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that of the at-large member, the appointment to fill such vacancy shall be made at large.

Sec. 13. Within sixty days after the effective date of this act, eight members shall be appointed by the Governor to the initial board. Members shall be appointed from districts as provided in section 15 of this act.

Sec. 14. Members shall be appointed by the Governor on a nonpartisan basis. Candidates for appointment by the Governor to the initial board may place their names on a candidacy list for the respective district by filing a petition signed by at least fifty growers of such district with the Governor. Candidates

for appointment to subsequent boards shall file such petitions with the existing board. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district.

Sec. 15. One member shall be appointed from each of the following districts:

(a) District 1. The counties of Butler, Saunders, Douglas, Sarpy, Seward, Lancaster, Cass, Otoe, Saline, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(b) District 2. The counties of Adams, Clay, Fillmore, Franklin, Webster, Nuckolls, and Thayer;

(c) District 3. The counties of Merrick, Polk, Hamilton, and York;

(d) District 4. The counties of Knox, Cedar, Dixon, Dakota, Pierce, Wayne, Thurston, Madison, Stanton, Cuming, Burt, Colfax, Dodge, and Washington;

(e) District 5. The counties of Sherman, Howard, Dawson, Buffalo, and Hall;

(f) District 6. The counties of Hayes, Frontier, Gosper, Phelps, Kearney, Hitchcock, Red Willow, Furnas, and Harlan;

(g) District 7. The counties of Boyd, Holt, Antelope, Garfield, Wheeler, Boone, Platte, Valley, Greeley, and Nance; and

(h) District 8. The counties of Sioux, Daves, Box Butte, Sheridan, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, Cherry, Keya Paha, Brown, Rock, Grant, Hooker, Thomas, Blaine, Loup, Arthur, McPherson, Logan, Custer, Keith, Lincoln, Perkins, Chase, and Dundy.

Sec. 16. Within thirty days after the appointment of the initial board, such board shall conduct its first regular meeting. At this meeting, the board shall appoint the ninth member to the board. Such appointment shall be made at large and the appointee shall meet the same qualifications as the other members on the board.

Sec. 17. (1) The initial term of office for members of the appointed board shall be as follows: Three district members shall be appointed for one year; three district members shall be appointed for two years;

and two district members shall be appointed for three years. The term of the member appointed at large shall be three years.

(2) Upon completion of the initial term, the term of office for members of the board shall be for three years.

Sec. 18. The board shall elect from its members a chairperson and such other officers as may be necessary.

Sec. 19. The voting members of the board, while engaged in the performance of their official duties, shall receive compensation at the rate of twenty-five dollars per day while so serving, including travel time. In addition, members of the board shall receive reimbursement for actual and necessary expenses on the same basis and subject to the same conditions as full-time state employees.

Sec. 20. A member of the board shall be removable by the Governor for cause. He shall first be given a copy of written charges against him and also an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he was appointed, or (3) be actually engaged in growing corn in the state shall be deemed sufficient cause for removal from office.

Sec. 21. The board shall meet at least once every three months and at such other times as called by the chairperson or by any four members of the board.

Sec. 22. The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following:

(1) To develop and direct any corn commodity program;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the corn commodity program;

(3) To adopt and promulgate such rules and regulations as are necessary to enforce the provisions of this act in accordance with Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

(4) To procure and evaluate data and information necessary for the proper administration and operation of the corn commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby the grower of corn has the opportunity at least annually to offer his ideas and suggestions relative to board policy for the upcoming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings, and other books and records which will clearly reflect all of the acts and transactions of the board, and to keep these records open to examination by any grower participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence legislation; and

(11) To make refunds for overpayment of fees according to rules and regulations adopted by the board.

Sec. 23. There is hereby levied a fee of not to exceed four tenths of a cent per bushel upon all corn grown in the State of Nebraska and sold through commercial channels. The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the provisions of this act, no corn shall be subject to the fee more than once.

Sec. 24. (1) After the trial period, a referendum shall be held to determine (a) whether the corn checkoff program shall continue and (b) whether there shall be an appointed or an elected board to administer the program, when ten per cent of the corn growers in each of the eight districts of the state indicate a desire to place such propositions on the ballot by signing a petition to that effect. Ballots shall be mailed to each grower on record who was subject to a checkoff during such trial period.

(2) If the corn producers shall not approve the program by such referendum, all future checkoffs shall cease and all funds withheld during the previous sixty days shall be refunded to producers. The remainder of the funds shall be appropriated by the Legislature to be used for research.

(3) If the corn producers shall disapprove having an appointed board in favor of an elected board by such referendum, the Director of Agriculture shall within thirty days after the referendum notify those corn growers subject to the checkoff that candidates for election to the initial elected board may place their names on the ballot in the respective district by filing a petition signed by at least fifty qualified corn producers of such district, who were subject to the checkoff during the trial period.

Sixty days after the referendum the Director of Agriculture shall mail ballots to each producer subject to the checkoff in each district. The ballots shall be returned by such growers within fourteen days to the director designating the candidate of their choice, and one week thereafter the director shall have the results of such election published in a newspaper of general circulation in each district.

(4) If the proposed program and the existence of an appointed board are approved by a majority of those growers voting in the referendum, no additional referendum on such issues shall be held for three years from the date of the close of such referendum.

Sec. 25. (1) Within thirty days after the election of the board, such board shall conduct its first regular meeting. At such meeting the board shall appoint a ninth member to the board. Such appointment shall be made at large and the appointee shall meet the same qualifications as the elected members on the board.

(2) The board shall elect from its members a chairman, treasurer, and such other officers as may be necessary. The term of office for members of the board shall be for five years, except that the terms of the members of the board first taking office shall be for one, three, or five years as determined by lot. Such board shall have the same powers and duties and receive the same expense reimbursement as the appointed board.

Sec. 26. Whenever a vacancy occurs on the elected board for any reason, the board shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that

of the at-large member, the appointment to fill such vacancy shall be made at large. Vacancies on the board during the term of office shall be filled by the board until the next regular election. No state or federal officeholder may be elected to or jointly hold a position on the board.

Sec. 27. Until December 31, 1978, the fee levied pursuant to section 23 of this act shall not exceed one tenth of one cent per bushel. Beginning January 1, 1979, the board may, whenever it shall determine that the fees provided by section 23 of this act are yielding more than is required to carry out the intent and purposes of this act, reduce such fees for such period as it shall deem justified, but not less than one year. If the board, after reducing such fees finds that sufficient revenue is not being produced by such reduced fees, it may restore in full or in part such fees not to exceed four tenths of a cent per bushel.

Sec. 28. In the case of a pledge or mortgage of corn as security for a loan under the federal price support program or other government agricultural loan programs, the fee shall be deducted from the proceeds of such loan at the time the loan is made. If, within six months of the collection of a fee for corn that is mortgaged as security for a loan under the federal price support program or other government agricultural loan programs, the grower decides to purchase the corn and use it as feed, the grower shall be entitled to a refund of the checkoff fee previously paid. The refund shall be payable by the board upon the grower's written application to the board for a refund of the amount deducted. Each application for a refund by a grower shall have attached thereto proof of the tax deducted.

Sec. 29. The fee, provided for by section 23 of this act, shall be deducted, as provided by this act, whether such corn is stored in this state or any other state.

Sec. 30. The fee imposed by section 23 of this act shall not apply to the sale of corn to the federal government for the ultimate use of consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Sec. 31. (1) The purchaser, at the time of settlement, shall deduct the corn fee and shall maintain the necessary record of the fee for each purchase of corn on the grain settlement form or check stub showing payment to the grower for each purchase.

Such records maintained by the purchaser shall provide the following information:

- (a) Name and address of the grower and seller;
- (b) The date of the purchase;
- (c) The number of bushels of corn sold; and
- (d) The amount of fees collected on each purchase.

Such records shall be open for inspection during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October, on forms prescribed by the board, a statement of the number of bushels of corn purchased in Nebraska. At the time the statement is filed, the purchaser shall pay and remit to the board the fee as provided for in section 23 of this act.

Sec. 32. The board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the income received from the corn assessment for the previous year and shall include:

(1) The expenditure of all funds by the board during the previous year for the administration of this act;

(2) The action taken by the board on all contracts requiring the expenditure of funds by the board;

(3) Copies of all such contracts;

(4) Detailed explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of corn, the direct expense associated with each program, and copies of such programs if in writing; and

(5) The name and address of each member of the board and a copy of all rules and regulations promulgated by the board.

Such report shall be available to the public upon request.

Sec. 33. The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Corn Development, Utilization, and Marketing Fund, to which fund shall be credited, for the uses and purposes of this act and its enforcement, all taxes collected by the board pursuant to the provisions of this act. Such fund shall be expended solely for the administration of the provisions of this act. Any money in the Nebraska Corn Development, Utilization, and Marketing Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

Sec. 34. The board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the Institute of Agriculture and Natural Resources of the University of Nebraska and other proper local, state, or national organizations, public or private, in carrying out the purposes of this act.

Sec. 35. Any person violating any of the provisions of this act shall be guilty of a Class III misdemeanor.

Sec. 36. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.