

**ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009**  
**COMMITTEE STATEMENT**  
**LB56**

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**Hearing Date:** Wednesday January 28, 2009  
**Committee On:** Natural Resources  
**Introducer:** Fischer  
**One Liner:** Change the Livestock Waste Management Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Carlson, Cook, Dubas, Fischer, Haar, Langemeier, McCoy, Schilz  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Proponents:**

Senator Deb Fischer  
Russ Vering  
Steve Ott  
Duane Gangwish  
Andy Pollock

**Representing:**

Introducer  
Nebraska Pork Producers  
Self  
Nebraska Cattlemen  
Feller and Co., Morrison Enterprises, Nebraska Pork Partners, Wilke Farms, Dinsdale Brothers, Progressive Swine Technologies, Gottrich Enterprises, Hayes Feed Yard

**Opponents:**

Ken Winston  
Mary Harding  
John Hansen  
Kara Harbert

**Representing:**

Nebraska Sierra Club  
Nebraska League of Concerned Voters  
Nebraska Farmers Union  
Self

**Neutral:**

Mike Linder

**Representing:**

Department of Environmental Quality

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**Summary of purpose and/or changes:**

LB 56 changes the effect of Livestock Waste Management Act violations on permit holders and their partners so that penalties are assigned based on the offending facility.

This bill addresses the "three strikes" provision in statute that allows revocation of a livestock producer's permit after a third charge for unlawful spilling, leaking, pumping, pouring, emitting, emptying or dumping of pollutants into waters of the state (discharge). The bill also requires a finding that a violation was intentionally or willfully committed before a "strike" is assessed, rather than a strike for a discharge regardless of how it happened.

Details

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Section 1 amends 54-2417, which contains definitions for purposes of the Livestock Waste Management Act, by eliminating the words "accidental or intentional" from the definition of discharge.

Section 2 amends 54-2422, relating to inspection and construction approval requirements, by adding the requirement that an operation discharge must have been done intentionally or with willful negligence for that operation to lose the exemption from inspection, construction and operating permit requirements. Currently, any operation discharge, whether negligent or not, takes away an operation's exempt status under this section.

Section 3 amends 54-2431, relating to permit applications under the act, by adding new language providing definitions for applicant, discharge violation, and permit holder. It clarifies that "applicant" and "permitholder" do not include a relative or any person with a business relationship with the applicant or permit holder, and a discharge violation occurs when an applicant or permit holder has acted intentionally or with willful negligence.

It further allows the Department of Environmental Quality to have discretion when deciding on applicants for permits, rather than requiring the department to reject certain applicants. States that an applicant or permit holder is unsuited to hold a permit if he or she has committed three separate and distinct discharge violations within the past five years at the same animal feeding operation. Also requires an investigation and hearing process. Current law states that one is unsuited to hold a permit after three discharges at any facility owned or operated by the applicant.

Section 4 amends 54-2435, relating to the Environmental Quality Council, by authorizing the council to adopt and promulgate rules and regulations on permit suspensions and reinstatements and procedures for determining discharge violations.

Section 5 repeals the original sections.

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**Explanation of amendments:**

The committee amendment eliminates that the producer's discharge must be "willfully" committed before a discharge violation can be charged, leaving only that the discharge must be intentionally or negligently committed before a discharge violation, or "strike", can be assessed.

It also increases the number of discharges, or strikes, from three to five that a producer must commit before being determined unsuited to hold a permit.

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Chris Langemeier, Chairperson