

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 354**

Introduced by Carlson, 38; Dubas, 34; Karpisek, 32; Larson, 40;  
Schilz, 47; Wallman, 30.

Read first time January 13, 2011

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 66-1519 and  
2 89-187, Reissue Revised Statutes of Nebraska, and section  
3 89-1,100, Revised Statutes Cumulative Supplement, 2010;  
4 to transfer funds to the Weights and Measures  
5 Administrative Fund; to provide for a late registration  
6 fee and use; to harmonize provisions; and to repeal the  
7 original sections.

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

1                   Section 1. Section 66-1519, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   66-1519 (1) There is hereby created the Petroleum Release  
4 Remedial Action Cash Fund to be administered by the department.  
5 Revenue from the following sources shall be remitted to the State  
6 Treasurer for credit to the fund:

7                   (a) The fees imposed by sections 66-1520 and 66-1521;

8                   (b) Money paid under an agreement, stipulation, cost-  
9 recovery award under section 66-1529.02, or settlement; and

10                  (c) Money received by the department in the form of  
11 gifts, grants, reimbursements, property liquidations, or  
12 appropriations from any source intended to be used for the purposes  
13 of the fund.

14                  (2) Money in the fund may be spent for: (a) Reimbursement  
15 for the costs of remedial action by a responsible person or his or  
16 her designated representative and costs of remedial action undertaken  
17 by the department in response to a release first reported after July  
18 17, 1983, and on or before June 30, 2012, including reimbursement for  
19 damages caused by the department or a person acting at the  
20 department's direction while investigating or inspecting or during  
21 remedial action on property other than property on which a release or  
22 suspected release has occurred; (b) payment of any amount due from a  
23 third-party claim; (c) fee collection expenses incurred by the State  
24 Fire Marshal; (d) direct expenses incurred by the department in  
25 carrying out the Petroleum Release Remedial Action Act; (e) other

1 costs related to fixtures and tangible personal property as provided  
2 in section 66-1529.01; (f) interest payments as allowed by section  
3 66-1524; (g) claims approved by the State Claims Board authorized  
4 under section 66-1531; (h) a grant to a city of the metropolitan  
5 class in the amount of three hundred thousand dollars, provided no  
6 later than September 15, 2005, to carry out the federal Residential  
7 Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et  
8 seq., as such act existed on October 1, 2003; and (i) methyl tertiary  
9 butyl ether testing, to be conducted randomly at terminals within the  
10 state for up to two years ending June 30, 2003. The amount expended  
11 on the testing shall not exceed forty thousand dollars. The testing  
12 shall be conducted by the Department of Agriculture. The department  
13 may enter into contractual arrangements for such purpose. The results  
14 of the tests shall be made available to the Department of  
15 Environmental Quality.

16 (3) Transfers may be made from the Petroleum Release  
17 Remedial Action Cash Fund to the General Fund at the direction of the  
18 Legislature. Transfers may be made from the Petroleum Release  
19 Remedial Action Cash Fund to the Water Policy Task Force Cash Fund at  
20 the direction of the Legislature. The State Treasurer shall transfer  
21 one million five hundred thousand dollars from the Petroleum Release  
22 Remedial Action Cash Fund to the Ethanol Production Incentive Cash  
23 Fund on July 1 of each of the following years: 2004 through 2011. The  
24 State Treasurer shall, on July 1, 2012, transfer four hundred  
25 thousand dollars from the Petroleum Release Remedial Action Cash Fund

1 to the Weights and Measures Administrative Fund, and on each of July  
2 1, 2013, and July 1, 2014, shall transfer two hundred thousand  
3 dollars from the Petroleum Release Remedial Action Cash Fund to the  
4 Weights and Measures Administrative Fund.

5 (4) Any money in the Petroleum Release Remedial Action  
6 Cash Fund available for investment shall be invested by the state  
7 investment officer pursuant to the Nebraska Capital Expansion Act and  
8 the Nebraska State Funds Investment Act.

9 Sec. 2. Section 89-187, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 89-187 The director shall:

12 (1) Maintain traceability of the primary standards to the  
13 National Institute of Standards and Technology;

14 (2) Enforce the provisions of the Weights and Measures  
15 Act;

16 (3) Adopt and promulgate reasonable rules and regulations  
17 for the enforcement of the act including the following:

18 (a) Requirements for the voluntary registration of sales  
19 and repair personnel for commercial weighing and measuring devices  
20 including:

21 (i) Registration fees for such personnel which shall not  
22 exceed the actual cost to defray the operation of the voluntary  
23 registration program;

24 (ii)(A) Qualifications for registration, which may  
25 include examinations, (B) performance standards to maintain

1 registration, (C) types of equipment necessary for the work to be  
2 performed by the personnel, (D) responsibilities and privileges of  
3 registration, and (E) revocation and suspension of such registration  
4 and probation of the registrant; and

5 (iii) Minimum standards for the installation and  
6 maintenance of commercial weighing and measuring devices;

7 (b) Additional standards not specifically provided for in  
8 the act;

9 (c) Standards for (i) attachments or parts entering into  
10 the construction or installation of commercial weighing and measuring  
11 devices which shall tend to secure correct results in the use of such  
12 devices and (ii) the setting of laboratory fees which shall not  
13 exceed the actual cost for testing, correcting, calibrating, and  
14 verifying secondary standards and the establishment of standard  
15 laboratory operating procedures;

16 (d) Requirements for the suitable use of commercial  
17 weighing and measuring devices; and

18 (e) Guidelines for the appropriate method of weighing or  
19 measuring whenever the director determines that such guidelines would  
20 further the purpose of the act;

21 (4) Establish standards of weight, measure, or count,  
22 reasonable standards of fill, and standards for the presentation of  
23 cost-per-unit information for any commodity;

24 (5) Upon an application filed with the department by the  
25 applicant, grant exemptions, including specific exemptions for

1 single-use commercial weighing and measuring devices, from the  
2 provisions of the act or the rules and regulations when the applicant  
3 on such application provides assurances, acceptable to the director,  
4 that such exemption is appropriate to the maintenance of good  
5 commercial practices within the state. Notwithstanding any other  
6 provision of the act, meters used by a public utility system for the  
7 measurement of electricity, natural or manufactured gas, water, or  
8 the usage of communication services, the appliances or accessories  
9 associated with such meters, and all weighing and measuring devices  
10 inspected or tested by the Public Service Commission shall be exempt  
11 from the registration, inspection, and testing requirements of the  
12 act, except that this exemption shall not apply to meters which  
13 determine the weight or measurement of motor fuel;

14 (6) Conduct investigations to insure compliance with the  
15 act;

16 (7) Delegate to appropriate personnel any of these  
17 responsibilities for the proper administration of the director's  
18 office;

19 (8) In his or her discretion, inspect and test weighing  
20 and measuring devices kept for sale or sold;

21 (9) Inspect and test annually and from time to time, as  
22 in the director's judgment seems necessary, to ascertain whether  
23 commercial weighing and measuring devices are correct;

24 (10) Register and test as far as practical all commercial  
25 weighing and measuring devices used in checking the receipt or

1 disbursement of supplies in every institution for which funds are  
2 appropriated by the Legislature;

3           (11) Test annually and at the request of the Nebraska  
4 State Patrol all weighing and measuring devices used for the  
5 enforcement of sections 60-3,144, 60-3,147, and 60-6,294. The agency  
6 responsible for such weighing and measuring devices shall pay the  
7 department for the actual cost of such tests. The department shall  
8 bill test fees to such agency upon completion of the test;

9           (12) Approve for use and may mark commercial weighing and  
10 measuring devices which the director finds to be correct and shall  
11 reject and mark or tag as rejected such commercial weighing and  
12 measuring devices which the director finds to be not correct or not  
13 registered and inspected in accordance with the Weights and Measures  
14 Act. Commercial weighing and measuring devices that have been  
15 rejected may be seized if not made correct within the time specified  
16 or if used or disposed of in a manner not specifically authorized.  
17 The director shall condemn and may seize commercial weighing and  
18 measuring devices which are found not to be correct and not capable  
19 of being made correct;

20           (13) Weigh, measure, or inspect commodities kept for  
21 sale, sold, or in the process of delivery to determine whether they  
22 contain the amounts represented and whether they are kept for sale or  
23 sold in accordance with the act or the rules and regulations. When  
24 commodities are found not to contain the amounts represented or are  
25 found to be kept for sale, sold, or in the process of delivery in

1 violation of the act, the director may issue stop-sale, hold, or  
2 removal orders and may mark or tag such commodities as being in  
3 violation of the act. In carrying out the provisions of this section,  
4 the director shall employ recognized procedures pursuant to  
5 subdivisions (1)(b) through (d) of section 89-186;

6 (14) Provide for the weights and measures training of  
7 inspection personnel and adopt and promulgate by rule and regulation  
8 minimum training requirements which shall be met by all inspection  
9 personnel;

10 (15) Adopt and promulgate rules and regulations  
11 prescribing the appropriate term or unit of measurement to be used  
12 whenever the director determines in the case of a specific commodity  
13 that an existing practice of declaring the quantity by weight,  
14 measure, numerical count, or combination thereof does not facilitate  
15 value comparisons by consumers or offers an opportunity for consumer  
16 confusion;

17 (16) Allow reasonable variations from the stated quantity  
18 of contents which shall include those caused by loss or gain of  
19 moisture during the course of good distribution practice or by  
20 unavoidable deviations in good manufacturing practice only after the  
21 commodity has entered intrastate commerce;

22 (17) Verify advertised prices, price representations, and  
23 point-of-sale systems, as deemed necessary, to determine: (a) The  
24 accuracy of prices, quantity, and computations; (b) the correct use  
25 of the equipment; and (c) if such systems utilize scanning or coding



1 means in lieu of manual entry, the accuracy of prices and quantity  
2 printed or recalled from a data base;

3 (18) On or before July 1 of each year, notify all persons  
4 who have registered any commercial weighing or measuring device of  
5 the amount of fees which are due and that the fees are due on August  
6 1 and shall be delinquent after such date;

7 (19) Require all persons who operate a weighing and  
8 measuring establishment to obtain a permit to operate such  
9 establishment pursuant to section 89-187.01 and to pay to the  
10 department an application permit fee pursuant to section 89-187.02;

11 (20) Require all persons who operate a weighing and  
12 measuring establishment to, on or before August 1 of each year:

13 (a) Register each commercial weighing and measuring  
14 device with the department upon forms furnished by the director;

15 (b) Pay to the department a registration fee of four  
16 dollars; and

17 (c) Pay to the department a device inspection fee.

18 (i) The device inspection fee due August 1, 2003, shall  
19 be the amount in column A of subdivision (20)(c)(iii) of this  
20 section.

21 (ii) The device inspection fee due August 1, 2004, and  
22 each August 1 thereafter shall be set by the director on or before  
23 July 1 of each year. The director may raise or lower the device  
24 inspection fees each year to meet the criteria in this subdivision,  
25 but the fee shall not be greater than the amount in column B of

1 subdivision (20)(c)(iii) of this section. The same percentage shall  
 2 be applied to each device category for all device inspection fee  
 3 increases or decreases. The director shall use the device inspection  
 4 fees set for the fees due August 1, 2003, as a base for future fee  
 5 increases or decreases. The director shall determine the fees based  
 6 on estimated annual revenue and fiscal year-end cash fund balances as  
 7 follows:

8 (A) The estimated annual revenue shall not be greater  
 9 than one hundred seven percent of program cash fund appropriations  
 10 allocated for the Weights and Measures Act; and

11 (B) The estimated fiscal year-end cash fund balance shall  
 12 not be greater than seventeen percent of program cash fund  
 13 appropriations allocated for the act.

14 (iii)

15 Scales:	A	B
16 Up through 35 pounds capacity	7.96	14.34
17 Multiunit Scales	51.00	80.37
18 Over 35 through 1,000 pounds capacity	15.13	25.35
19 Over 1,000 through 4,000 pounds capacity	31.87	51.03
20 Over 4,000 through 50,000 pounds capacity	36.65	58.36
21 Over 50,000 through 150,000 pounds capacity	39.04	62.03
22 Over 150,000 pounds capacity	86.87	135.40
23 Length Measuring Devices:		

1	Cordage or fabric	16.56	27.55
2	Pumps:		
3	Service Station Dispensers -- per		
4	measuring element	5.09	9.94
5	High-capacity service station		
6	dispensers over 20 gallons per		
7	minute -- per dispensing element	17.52	29.02
8	Compressed natural gas -- per		
9	dispensing element	91.65	142.74
10	Meters:		
11	Vehicle tank meters	14.17	23.88
12	Loading rack meters	31.87	51.03
13	Liquid petroleum gas meters	40.00	63.50
14	Liquid fertilizer and herbicide meters	36.65	58.36
15	Liquid feed meters	36.65	58.36
16	Cryogenic	53.39	84.04
17	Mass Flow Metering Systems:		
18	Mass flow meters (all liquid)	78.26	122.19;
19	and		

20                   (21) Require persons delinquent under subdivision (20) of  
21 this section to pay a ~~penalty~~late registration fee of twenty-five  
22 percent of the annual fees due for each month any such fees are

1 delinquent not to exceed one hundred percent of such fees. Such late  
2 registration fees ~~penalties paid~~ shall be in addition to the annual  
3 fees due. The department may waive the ~~penalty~~ late registration fees  
4 based upon the existence and extent of any mitigating circumstances  
5 that have resulted in the late payment of such fees. The late  
6 registration fees collected shall be remitted to the State Treasurer  
7 for credit to the Weights and Measures Administrative Fund and used  
8 to defray the administrative costs associated with collecting fees  
9 under the act.

10           Sec. 3. Section 89-1,100, Revised Statutes Cumulative  
11 Supplement, 2010, is amended to read:

12           89-1,100 The director shall collect registration, permit,  
13 laboratory, test, and inspection fees, penalties, and money required  
14 to be reimbursed as provided for in the Weights and Measures Act and  
15 shall remit such funds to the State Treasurer. The State Treasurer  
16 shall credit such funds and transfers from the Petroleum Release  
17 Remedial Action Cash Fund to the Weights and Measures Administrative  
18 Fund, which fund is hereby created. All fees, penalties, and  
19 reimbursements collected pursuant to the act and transfers credited  
20 to the fund shall be appropriated to the uses of the department to  
21 aid in defraying the expenses of administering the act. For fiscal  
22 years 2012-13 through 2014-15, the transfers to the fund from the  
23 Petroleum Release Remedial Action Cash Fund shall be used by the  
24 Department of Agriculture to conduct petroleum product dispenser  
25 licensing and inspection functions. Transfers , except that transfers

1 may be made from the ~~fund~~ Weights and Measures Administrative Fund to  
2 the General Fund at the direction of the Legislature. Any unexpended  
3 balance in the ~~Weights and Measures Administrative Fund~~ fund at the  
4 close of any biennium shall, when reappropriated, be available for  
5 the uses and purposes of the fund for the succeeding biennium. Any  
6 money in the fund available for investment shall be invested by the  
7 state investment officer pursuant to the Nebraska Capital Expansion  
8 Act and the Nebraska State Funds Investment Act. The registration,  
9 permit, laboratory, test, and inspection fees, penalties, and money  
10 required to be reimbursed as provided for in the Weights and Measures  
11 Act shall constitute a lien on the weighing and measuring devices or  
12 standards required to be registered or approved for use in this state  
13 until such fees, penalties, and reimbursements are paid. The director  
14 may sue for such fees, penalties, and reimbursements and may seek to  
15 foreclose on any lien in the name of the state. The county attorney  
16 of the county in which the device is located or the Attorney  
17 General's office shall, upon the request of the director, take  
18 appropriate action to establish and foreclose on any such lien.

19           Sec. 4. Original sections 66-1519 and 89-187, Reissue  
20 Revised Statutes of Nebraska, and section 89-1,100, Revised Statutes  
21 Cumulative Supplement, 2010, are repealed.