

ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013
COMMITTEE STATEMENT
LB354

Hearing Date: Tuesday February 05, 2013
Committee On: Agriculture
Introducer: Larson
One Liner: Adopt the Nebraska Corn Promotion Act

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

Vote Results:

Aye:	5	Senators Hansen, Johnson, Lathrop, Schilz, Wallman
Nay:	1	Senator Chambers
Absent:	1	Senator Harr
Present Not Voting:	1	Senator Bloomfield

Proponents:

Senator Tyson Larson
Tim Scheer
Andy Jobman
Pete McClymont
Loran Schmit
Steve Nelson
John K Hansen
Alice Licht
Brian Herrington

Representing:

Introducer
Nebraska Corn Board
Nebraska Corn Growers Association
Nebraska Cattlemen
Self
Nebraska Farm Bureau
Nebraska Farmers Union
Nebraska Agri-Business Association
The Scotts Miracle-Gro Company- American Seed Trade Association

Opponents:

Representing:

Neutral:

Craig Floss
Julius Schaaf
Julie Kirby

Representing:

Iowa Corn
Iowa Corn
Iowa Corn Promotion Board

Summary of purpose and/or changes:

LB 354 would create the Nebraska Corn Promotion Board to implement an industry financed corn development and promotion program as authorized by sections 1-19 of the bill to be known and cited as the Nebraska Corn Promotion Act. While the purposes and funding mechanisms of the new Act would be similar to those currently carried out under the Nebraska Corn Resources Act, the bill would install a different governing structure and adopt various checkoff program features for direct participation of, and accountability to, producers. The key provisions of the bill are as follows:

Section 3 of the bill declares a public policy of the state in corn industry development and designates the Existing Corn Development, Utilization, and Marketing Board as a body politic and corporate and independent instrumentality exercising essential public functions and known as the Nebraska Corn Promotion Board having powers designated under the Act. The Board is expressly declared not to be a state agency.

Sections 4-7 provides for the membership of the Corn Promotion Board. The Board would consist of 9 grower members who meet qualification prescribed. 8 members would be selected by district and the 9th selected by the board as representative of the state at large. The Director of Agriculture, the Vice Chancellor of UNL/IANR and president of the Nebraska Corn Growers shall also be ex-officio but not voting members.

Current members of the Corn Development, Utilization and Marketing Board would serve as members of the Corn Promotion Board until the expiration of their terms. Subsequent membership would be chosen by direct election of growers conducted within the eight grower districts as vacancy by term expiration occurs and the at large member selected by the Board. Member terms would be for three years with a limit of 4 terms. Nomination and election procedures for both district and at-large election are prescribed section 6. Section 6 sets out procedures for notice of election, nomination of candidates by petition, and voting procedures. Voting is limited to growers (defined term, section 2(5)). Procedures for filling vacancies are set forth in section 7. The Board would appoint persons to fill a vacancy from among persons qualified to seek appointment by petition. For vacant district grower seats, nomination and selection would be by district, and for an at-large vacancy, the nomination and selection would be open to growers anywhere in the state.

Sections 8-9 of the bill enumerate duties and authorities of the Corn Promotion Board, including authorized purposes of expenditures of the Board and corporate powers of the Board.

Sections 10-13 impose a state excise assessment of 5/10th cent/bushel collected by the first purchaser from the producer at the time of marketing. The procedures do not substantively differ from those employed under the existing Corn Resources Act. The amount of the assessment would be deducted from the proceeds of sale and remitted to the Board by first purchasers quarterly. Section 10 prescribes documentation and record keeping requirements of first purchasers. The amount of assessment would be deducted from the proceeds of a federal farm program price support loan with refund of the assessment if the producer elects to repurchase the corn for feed. The state assessment would apply regardless of the point of storage but would not apply to purchases by the federal government where prohibited by federal preemption.

Section 14 would provide for a referendum procedure to approve any subsequent increase in the checkoff rate within a statutory maximum of 1 cent/bushel. A special referendum on a proposed increase in the checkoff rate would be submitted to producers upon approval of a super majority of at least seven board members. Voting would be limited to growers. Procedures for conducting the referendum are prescribed in a manner similar to those employed for district director elections.

Section 15 authorizes growers to secure refund of assessments paid by timely (within 60 days of the date the assessment was deducted) written application to the Board. Applications for refund are to be provided to first purchasers upon request. Such request for refund shall be accompanied by documentation of the assessment. Refund requests would be paid within 30 days of receipt of request for refund. Refunds would be limited to amounts for \$10 or more dollars.

Section 16 creates the Nebraska Corn Promotion Fund as an initial depository of checkoff assessments remitted to the State Treasurer and gifts, grants or other contributions from public or private sources, including license fees or royalties. Section 16 would provide for the Board to expend funds to an account established by the Board in a qualified financial institution, a defined term found at section 2(7). The expenditure of funds from the Corn Promotion Fund and accounts established by the Board would be subject to audit by the State Auditor. Such funds would first be expended to pay refunds requested, costs of elections and referendums, before expenditure for purposes authorized by Secs. 8 and 9.

Section 17 imposes a duty of the Board to produce an annual report and prescribes the elements of the report to include a description of expenditures and contracts entered into by the Board and explanation of programs established by the board to further the promotional purposes authorized.

Section 18 imposes additional limitation on expenditure of funds derived from state expenditure, including a prohibition

on supporting or opposing candidates or to influence state legislation. Expenditures for influencing federal legislation are limited to 25% of budget. The Board is also prohibited from establishing research entities and is required to accomplish research projects in cooperation and contract to IANR or other third-party research organizations.

Sections 20-22 make harmonizing revisions in the Accountability and Disclosure provisions and in the collections under the Ethanol Development Act to conform references to the Corn Promotion Act where appropriate.

The provisions of the current Nebraska Corn Resources Act are outright repealed by section 25. The bill carries an operative date of January 1, 2014.

Explanation of amendments:

The committee amendment (AM506) strikes original sections 1-19 (becoming a white copy amendment to those sections, although many original provisions are carried over in the amendment. Where sections 1-19 of AM506 differ from the introduced provisions are as follows.

The definition of grower at section 2(5) is amended to define the term grower for purposes of eligibility to vote in elections. As introduced, the definition of grower included both individuals and entities. As revised by AM506, the bill defines a grower as an individual having the same qualifications as one eligible to serve on the Board. For other purposes, including those subject to the checkoff and eligible to request refunds, the term grower is defined by the more expansive definition of the original bill to include both individuals and entities

As introduced, the bill would provided for referendums to be conducted by the Board. AM506 would assign the conduct of referendums to the Department of Agriculture and authorities to enable the referendum to occur are reassigned by the amendment to the Department. The Director would conduct a referendum upon a motion approved by 7 or more board members or upon petition of 2 percent of corn growers in the state. All costs incurred by the Director in conducting a referendum would be reimbursed by the Board. AM506 also inserts a mechanism omitted in the original bill to provide for a determination of results of a referendum and to provide for commencement of collection of assessments at the rate approved in the referendum to start 30 days from the certification of results.

Changes throughout the act would remove the Board as a collecting entity contracting with the Department of Ag for actual collection activities. The amendment essentially reassigns collection responsibilities to the Department of Agriculture. A revision in section 10 would insert a harmonization that checkoff collections are remitted to the Department of Agriculture rather than to the Board.

The amendment completely replaces original section 16. New section 16 would locate the Corn Promotion Fund in the Department of Agriculture for administrative purposes. The amendment provides for a transfer of the balance of the Corn Development, Utilization and Marketing Fund to the Nebraska Corn Promotion Fund on January 1, 2014 less 1 million to be retained for any outstanding debits of the existing cash fund. If all obligations are satisfied, any remaining balance would be transferred to the Nebraska Corn Promotion Fund on April 15.

The Corn promotion fund would be expended by the Department to the Board every two weeks. All funds expended to the Board would be deposited into an account established in a qualified financial institution. Note that the defined term for qualified financial institution at section 2(7) is revised to define the term consistent with financial institutions qualified as repositories of public funds under the Public Funds Deposit Security Act.

AM506 retains that the Board first satisfy refund requests and costs associated with assessment collection and administration before expending on other authorized purposes. Section 16 as rewritten relocates auditing provisions to the end of the section and revises the scope of audit to be consistent with intent that it include the expenditure of checkoff funds. Fees for audit shall be sufficient to cover the Auditor's costs. The auditors access to necessary records is expressly provided for.

Specific authorization and budget limitation for purpose of influencing federal legislation is stricken by the amendment.

Any such activity would be presumably be as contemplated in expenditures for purposes of board in section 8.

The time period for requesting refund to 90 days from the date of the assessed transaction. The amendment also eliminates the 10 minimum refund threshold.

Ken Schilz, Chairperson