

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB227

Hearing Date: Tuesday February 12, 2019
Committee On: Agriculture
Introducer: Hughes
One Liner: Redefine terms and change determination of a public or private nuisance under the Nebraska Right to Farm Act

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

Vote Results:
Aye: 6 Senators Blood, Brandt, Hansen, B., Halloran, Moser, Slama
Nay: 2 Senators Chambers, Lathrop
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Dan Hughes
Jacob Mayer
Heather Voegele
Debbie Borg
Jessica Kolterman
Kristi Block

Representing:

Introducer
Agriculture Leaders Working Group
Nebraska Cattlemen's Association
TD Borg Farms
Lincoln Premium Poultry
Nebraska Grain & Feed Association

Opponents:

Jonathan S. Leo

Representing:

Nebraska Interfaith Power & Light

Neutral:

Anthony Schutz
Ed Woepfel

Representing:

Self
Nebraska Cooperative Council

Summary of purpose and/or changes:

Amends the Nebraska Right-to-Farm Act (Neb. Rev. Stat. Sections 2-4401 to 2-4404) by expanding conditions under which a farm or public grain warehouse is shielded from liability as a public or private nuisance.

Section-by-Section Description:

Section 1: Amends Section 2-4402 which defines the terms "farm or farm operation" and "public grain warehouse or public grain warehouse operation" for purposes of the Right-to-Farm Act. As introduced, LB 227 included a revisor's amendment omitting "or farm operation" and "or public grain warehouse operation" from these terms to remove unnecessary verbiage. The condensed defined term is substituted for the current expanded term elsewhere throughout the bill.

Section 2: Amends Section 2-4403 which currently provides that a farm or grain warehouse shall not be found to be a nuisance provided that the farm or warehouse preceded a change in surrounding land use and the farm or grain

warehouse was not a nuisance prior to the surrounding land use change. LB 227 sets out this current provision as subsection (1) and inserts two new subsections describing additional conditions under which a farm or public grain warehouse is afforded right-to-farm protections. These circumstances contained in new subsections (2) and (3) include:

- The farm or grain warehouse has not undergone significant change in type of farming operation, the farm or warehouse had been in operation for more than one year and was not a nuisance at the time it began. For purposes of this subsection, LB 227 provides that for purposes of the subsection, certain events or changes are excluded from being a significant change; or

- Reasonable measures are employed to minimize dust, odors, etc. and the farm or grain warehouse complies with applicable laws.

Explanation of amendments:

The committee amendment (AM746) strikes the original sections and becomes the bill.

The amendment omits section 1 of the bill as introduced. Since the full terms "farm or farming operation" and "public grain warehouse or public grain warehouse operation" remain utilized throughout the remainder of the bill as amended by AM746, original section 1 is unnecessary.

Revisions to section 2-4403 are rewritten to clarify conjunctive/disjunctive intent. The existing shield in Section 2-4403 from nuisance liability if a farming operation existed prior to changes in surrounding land use remains unchanged as subsection (1). The amendment inserts a new subsection (2) describing conditions separate and independent from subsection (1) under which a farm or warehouse could retain right-to-farm protections for changes to the farming operation or public grain warehouse operations. Subsection (2) provides that a farm or warehouse shall not be found to be a nuisance if:

- Reasonable measures are employed to minimize dust, odors, etc. and the farm or grain warehouse complies with applicable laws and regulations, including zoning; and

- There is no significant change in the operation (LB 227 as introduced confined to no significant change in type of operation), the farm or warehouse has been in operation more than 1 year and was not a nuisance when it began. The exclusion of certain events or changes from being a significant change are made applicable to the purposes of subsection (2) as inserted by the amendment.

Steve Halloran, Chairperson