



Cornhusker Economics

2023 Ag Law Legislative Update

Two bills have been introduced in the 2023 legislative session dealing with fundamental agricultural law questions: LB 591 dealing with farmland leases and LB 662 dealing with livestock nuisance lawsuits. A third bill deals with weather station funding. While school funding and property tax relief take center stage in the 2023 Unicameral, LBs 591 and 662 address foundational Nebraska agricultural law issues and are worth discussing.

Unwritten agricultural lease termination notice deadline. Nebraska court cases indicate that oral (unwritten) leases of cropland can be terminated by six months notice prior to the beginning of the next lease year. With Nebraska oral leases beginning March 1, the deadline for terminating an oral cropland lease is the previous September 1. LB 591, introduced by Senator Brian Hardin of Gering, would change the deadline for oral lease termination notice from September 1 to January 1, reducing lease termination notice from six months in advance to three. The bill would apply this to all agricultural land, including presumably pasture which has not to date been (in this writer's opinion) subject to any termination notice requirement at all.

Commentary. Coming up with a single lease year and termination deadline that works well for spring planted crops, fall planted crops, multi-year crops such as alfalfa, and pasture (among others) is impossible – the growing seasons are all different, and leases for annual crops would have different considerations than those for crops like alfalfa. These issues can be (and are) addressed through an appropriate written lease. But many Nebraska farm leases are between family members or neighbors and are based on a handshake rather than a written lease. The apparent issue that may have prompted LB 591, completing the fall harvest of a spring planted crop before the proposed January 1 lease termination decision is made by the landlord, can easily be addressed through a written lease.

LB 591 was heard by the Agriculture Committee on January 31. No committee action has been taken as of this writing. Because of the legal and practical challenges associated with

a legislatively established oral lease termination deadline that would affect a wide variety of agricultural situations, it would be appropriate to consider an interim legislative study of this issue before the 2024 legislative session if the committee decides to proceed with the bill.

Nebraska right to farm act amendments. Under current Nebraska law, neighbors who are negatively affected by a livestock operation (typically manure odors) may sue within two years of the alleged nuisance occurring. With the advent of large livestock feeding operations beginning at least in the 1980s, several successful nuisance lawsuits have been brought against livestock operations constituting a nuisance where the persons filing the lawsuits predated the offending livestock operation.

LB 662, introduced by Senator Beau Ballard of Lincoln, is intended (according to the introducer's statement of intent) to protect livestock operations from "frivolous" lawsuits. In fact, LB 662 would make it almost impossible to bring any lawsuit (frivolous or genuine) against livestock operations potentially constituting a nuisance.

First, the plaintiff in the nuisance lawsuit would be required to live within half a mile of the agricultural operation. This would exclude most neighbors and would arguably constitute an unconstitutional taking of their common law property rights.

Second, if the agricultural operation is using commonly accepted agricultural practices or is in compliance with all state, local, and federal regulations it could not be sued. Odor reduction practices could be required by county zoning requirements or state environmental permitting requirements but are not in widespread use and are not yet commonly accepted within the animal agriculture community. The threat of a nuisance lawsuit by a neighbor is today the most prominent legal reason livestock producers employ manure odor reduction practices.

Third, if the alleged nuisance is the result (among other things) of a change in the size of the operation or change in the type of farm product produced (e.g., changing from a cash grain operation to cash grain and poultry) the operation could not be sued. So, if a livestock operation that did not originally constitute a nuisance doubled or tripled in size, the enlarged operation would be protected from a nuisance lawsuit regardless of how bad the nuisance is.

Finally, lawsuits against agricultural operations would need to be filed within one year of the alleged nuisance's initial occurrence. For decades the period for filing a nuisance lawsuit was four years and was reduced to two years a few years ago.

In simple terms, LB 662 would make it nearly impossible to mount a successful nuisance lawsuit against a new or expanded livestock operation regardless of the extent of the nuisance caused.

LB 662 appears to have been introduced in response to litigation regarding new poultry operations in southeast Nebraska.

LB 662 was heard in the Agricultural Committee on February 14. No committee action has been taken as of this writing.

Mesonet system funding. A third ag-related bill worth brief mention is LB 401, which would provide state funding to operate the Nebraska mesonet system. A mesonet system is a real-time statewide weather station network. Around half of Nebraska counties have an operating mesonet station but having at least one in each county would provide greater and more accurate coverage. Rising costs have led to seven stations being closed in 2022 and ten more are now vulnerable to closure. LB 401, introduced by Senators Myron Dorn of Adams and Tom Brandt of Plymouth, would appropriate to the Nebraska Department of Natural Resources \$550,000 to fund Nebraska mesonet system operations.

According to media accounts, weather information from mesonet systems in other states have been used to (1) provide real-time weather information including temperature and wind changes to fire fighters, (2) provide tailored weather information to farmers and ranchers regarding drift forecasts for applying pesticides, or cattle comfort forecasts for assessing weather stress, (3) provide school officials with weather information when deciding whether to cancel an outdoor event, (4) helping local officials determine when to allow or disallow controlled burns and (5) providing early warning for fast-moving fires for local officials to have people and communities evacuated. This type of information will become even

more valuable in the future as climate change makes Nebraska weather more severe and unpredictable.

An Appropriations Committee hearing on LB 401 is scheduled for March 14.

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