

House File 591

H-1504

1 Amend House File 591 as follows:

2 1. By striking everything after the enacting clause
3 and inserting:

4 <Section 1. Section 459.501, subsections 1, 3, and
5 5, Code 2011, are amended to read as follows:

6 1. A ~~manure storage indemnity~~ livestock remediation
7 fund is created as a separate fund in the state
8 treasury under the control of the department. The
9 general fund of the state is not liable for claims
10 presented against the fund.

11 3. a. The moneys collected under this section
12 shall be deposited in the fund and shall be
13 appropriated to the department for the following
14 exclusive purpose of providing purposes:

15 (1) To provide moneys for cleanup of abandoned
16 facilities as provided in section 459.505, and to pay
17 the department for costs related to administering the
18 provisions of this subchapter. For each fiscal year,
19 the department shall not use more than one percent of
20 the total amount which is available in the fund or ten
21 thousand dollars, whichever is less, to pay for the
22 costs of administration.

23 (2) To allocate moneys to the department of
24 agriculture and land stewardship for the payment of
25 expenses incurred by the department of agriculture and
26 land stewardship associated with providing for the
27 sustenance and disposition of livestock in immediate
28 need of sustenance pursuant to chapter 717. The
29 department of natural resources shall allocate any
30 amount of unencumbered and unobligated moneys demanded
31 in writing by the department of agriculture and land
32 stewardship as provided in this subparagraph. The
33 department of natural resources shall complete the
34 allocation upon receiving the demand.

35 b. Moneys in the fund shall not be subject to
36 appropriation or expenditure for any other purpose than
37 provided in this section.

38 5. The following shall apply to moneys in the fund:

39 a. (1) The executive council may allocate moneys
40 from the general fund of the state as provided in
41 section 7D.10A in an amount necessary to support the
42 fund, including the following:

43 (a) The payment of claims as provided in section
44 459.505.

45 (b) The allocation of moneys to the department
46 of agriculture and land stewardship for the payment
47 of expenses incurred by the department of agriculture
48 and land stewardship associated with providing for the
49 sustenance and disposition of livestock pursuant to
50 chapter 717.

1 (2) However, an Notwithstanding subparagraph (1),
2 the allocation of moneys from the general fund of the
3 state shall be made only if the amount of moneys in the
4 fund, which are not obligated or encumbered, and not
5 counting the department's estimate of the cost to the
6 fund for pending or unsettled claims, the amount to be
7 allocated to the department of agriculture and land
8 stewardship, and any amount required to be credited to
9 the general fund of the state under this subsection, is
10 less than one million dollars.

11 b. The department of natural resources shall credit
12 an amount to the general fund of the state which
13 is equal to an amount allocated to the fund by the
14 executive council under paragraph "a". The department
15 shall credit the moneys to the general fund of the
16 state if the moneys in the fund which are not obligated
17 or encumbered, and not counting the department's
18 estimate of the cost to the fund for pending or
19 unsettled claims, the amount to be allocated to the
20 department of agriculture and land stewardship, and
21 any amount required to be transferred to the general
22 fund under this paragraph, are in excess of two million
23 five hundred thousand dollars. The department is not
24 required to credit the total amount to the general fund
25 of the state during any one fiscal year.

26 Sec. 2. Section 579A.2, subsection 5, Code 2011, is
27 amended to read as follows:

28 5. a. Except as provided in this paragraph, a A
29 custom cattle feedlot lien that is perfected under
30 this section is superior to and shall have priority
31 over a conflicting lien or security interest in the
32 cattle, including a lien or security interest that was
33 perfected prior to the perfection of the custom cattle
34 feedlot lien. However

35 b. Notwithstanding paragraph "a", a custom cattle
36 feedlot lien shall not be superior to a court-ordered
37 lien provided in section 717.4 or a veterinarian's
38 lien created under chapter 581, that if such lien
39 is perfected as an agricultural lien as provided in
40 chapter 554, article 9.

41 b. c. A custom cattle feedlot lien that is
42 effective but not perfected under this section has
43 priority as provided in section 554.9322.

44 Sec. 3. Section 579B.4, subsection 4, paragraph a,
45 Code 2011, is amended to read as follows:

46 a. (1) Except as provided in this paragraph, a A
47 commodity production contract lien that is perfected
48 under this section is superior to and shall have
49 priority over a conflicting lien or security interest
50 in the commodity, including a lien or security interest

1 that was perfected prior to the perfection of the
2 commodity production contract lien under this chapter.
3 However

4 (2) Notwithstanding subparagraph (1), a commodity
5 production contract lien shall not be superior to a
6 court ordered lien provided in section 717.4 or a
7 veterinarian's lien created under chapter 581, that if
8 such lien is perfected as an agricultural lien.

9 Sec. 4. Section 581.2, subsection 2, Code 2011, is
10 amended to read as follows:

11 2. a. A veterinarian's lien that is perfected
12 under section 581.3 shall have priority over any
13 conflicting security interest or lien in livestock
14 treated by a veterinarian, regardless of when such
15 security interest or lien is perfected.

16 b. Notwithstanding paragraph "a", a veterinarian's
17 lien shall not be superior to a court ordered lien
18 provided in section 717.4, if such lien is perfected as
19 an agricultural lien.

20 Sec. 5. Section 717.1, Code 2011, is amended by
21 adding the following new subsections:

22 NEW SUBSECTION. 01. "*Department*" means the
23 department of agriculture and land stewardship.

24 NEW SUBSECTION. 001. "*Electronic mail*" means any
25 message transmitted through the internet including but
26 not limited to messages transmitted from or to any
27 address affiliated with an internet site.

28 Sec. 6. NEW SECTION. 717.3 **Livestock in immediate**
29 **need of sustenance — court order.**

30 1. This section applies only to livestock which are
31 cattle, sheep, swine, or poultry.

32 2. For purposes of this section, "*interested person*"
33 means all of the following:

34 a. An owner of the livestock.

35 b. A person caring for the livestock, if different
36 from the owner of the livestock.

37 c. A person holding a perfected agricultural lien
38 or security interest in the livestock under chapter
39 554.

40 3. The department may determine that some or all
41 of the livestock kept by a person are in immediate
42 need of sustenance. Upon making the determination the
43 department may file a petition with a district court
44 in a county where some or all of the livestock are
45 kept requesting the court to issue an order to provide
46 sustenance of the livestock. The petition may be made
47 separately or with a petition filed pursuant to section
48 717.5. The petition must at least include all of the
49 following:

50 a. A statement signed by a veterinarian licensed

1 pursuant to chapter 169 stating that the livestock are
2 in immediate need of sustenance.

3 *b.* The address of each location where the livestock
4 are kept.

5 *c.* A brief description of the livestock.

6 *d.* The name and address of each interested person,
7 if known.

8 *e.* The name and address of each qualified person
9 appointed by the department to provide sustenance to
10 the livestock.

11 4. Upon receiving the petition, the court may do
12 any of the following:

13 *a.* Notify any interested person that the petition
14 has been filed with the court. The notification must
15 be made in writing and may be delivered by ordinary,
16 certified, or restricted certified mail by United
17 States postal service; delivered by a common carrier;
18 or transmitted by electronic mail.

19 *b.* Hold a hearing to determine whether the
20 livestock are in immediate need of sustenance.

21 5. If the court determines that the livestock are
22 in immediate need of sustenance, the court shall issue
23 an order which at least declares all of the following:

24 *a.* That the livestock are in immediate need of
25 sustenance.

26 *b.* That the department shall assume supervision of
27 and provide for the sustenance of the livestock and as
28 provided in section 717.4.

29 *c.* That a lien is created attaching to the
30 livestock and associated proceeds and products as
31 provided in section 717.4.

32 6. The department shall assume supervision of
33 the livestock as provided in the court order. The
34 department may directly provide for the sustenance of
35 the livestock or appoint a qualified person to provide
36 for such sustenance.

37 **Sec. 7. NEW SECTION. 717.4 Livestock in immediate**
38 **need of sustenance — lien.**

39 1. This section applies to a lien created by a
40 court order entered pursuant to section 717.3 or 717.5.
41 The court ordered lien is an agricultural lien subject
42 to chapter 554 except as otherwise provided in this
43 section.

44 2. The court ordered lien shall be for the benefit
45 of the department. The amount of the lien shall be not
46 more than expenses incurred in providing sustenance to
47 the livestock pursuant to section 717.3 and providing
48 for the disposition of the livestock pursuant to
49 section 717.5.

50 3. The court ordered lien shall attach to the

1 livestock, identifiable proceeds from the disposition
2 of the livestock, and products from the livestock in
3 the products' unmanufactured states.

4 4. The court ordered lien becomes effective on the
5 date that the court order is entered. To perfect the
6 lien, the department must file a financing statement
7 in the office of the secretary of state as provided
8 in sections 554.9308 and 554.9310 on or after but not
9 later than twenty days after the effective date of
10 the lien. For purposes of chapter 554, article 9,
11 the department is a secured party; the owner of the
12 livestock is a debtor; and the livestock and associated
13 proceeds and products as provided in subsection 3 are
14 the collateral.

15 5. The court ordered lien that is perfected under
16 this section is superior to and shall have priority
17 over a conflicting lien or security interest in the
18 livestock and associated proceeds and products as
19 provided in subsection 3, including a lien or security
20 interest that was perfected prior to the perfection of
21 the court ordered lien.

22 Sec. 8. NEW SECTION. 717.4A Livestock in immediate
23 need of sustenance — livestock remediation fund.

24 The department may utilize the moneys deposited
25 into the livestock remediation fund pursuant to
26 section 459.501 to pay for any expenses associated
27 with providing sustenance to or the disposition of the
28 livestock pursuant to a court order entered pursuant to
29 section 717.3 or 717.5. The department shall utilize
30 moneys from the fund only to the extent that the
31 department determines that expenses cannot be timely
32 paid by utilizing the available provisions of sections
33 717.4 and 717.5. The department shall deposit any
34 unexpended and unobligated moneys in the fund. The
35 department shall pay the fund the proceeds from the
36 disposition of the livestock and associated products
37 less expenses incurred by the department in providing
38 for the sustenance and disposition of the livestock, as
39 provided in section 717.5.

40 Sec. 9. Section 717.5, subsections 1 through 3,
41 Code 2011, are amended to read as follows:

42 1. a. A court shall order the disposition of
43 livestock neglected as provided in section 717.2
44 ~~after a hearing upon application or petition to the~~
45 ~~court or livestock in immediate need of sustenance and~~
46 ~~associated products as provided in sections 717.3 and~~
47 ~~717.4 in accordance with this section.~~

48 (1) A petition may be filed by a local authority or
49 a person owning or caring for the livestock pursuant
50 to section 717.2.

1 (2) A petition may be filed by the department.
2 The court shall notify interested persons in the same
3 manner as provided in section 717.3. The petition may
4 be filed separately or with a petition filed pursuant
5 to section 717.3.

6 b. The matter shall be heard by the court within
7 ten days from the filing of a the petition by the local
8 authority or the person.

9 (1) For livestock alleged to be neglected under
10 section 717.2, the court may continue the hearing for
11 up to forty days upon petition by the person. However,
12 the person shall post a bond or other security with the
13 local authority in an amount determined by the court,
14 which shall not be more than the amount sufficient to
15 provide for the maintenance of the livestock for forty
16 days. The court may grant a subsequent continuance by
17 the person for the same length of time if the person
18 submits a new bond or security.

19 (2) For livestock alleged to be in immediate need
20 of sustenance under section 717.3, the court may
21 continue the hearing for up to forty days upon petition
22 by the department. The department may file and the
23 court may grant one or more subsequent continuances
24 each for up to forty days. The department is not
25 required to post a bond or other security.

26 c. However, the Notwithstanding paragraph "b", the
27 court shall order the immediate disposition of the
28 livestock if the livestock is permanently distressed
29 by disease or injury to a degree that would result in
30 severe or prolonged suffering.

31 2. The hearing to determine if livestock has
32 been neglected under section 717.2 for purposes of
33 disposition shall be a civil proceeding. If the case
34 is related to a criminal proceeding under section
35 717.2, the disposition shall not be part of that
36 proceeding and shall not be considered a criminal
37 penalty imposed on a person found in violation of
38 section 717.2.

39 3. A court may order a person owning the neglected
40 livestock neglected under section 717.2 or in immediate
41 need of sustenance under section 717.3 to pay an amount
42 associated with expenses associated with the livestock
43 as follows:

44 a. (1) which For livestock neglected under section
45 717.2, the amount shall not be more than the for
46 expenses incurred by the local authority in maintaining
47 and disposing the neglected livestock rescued pursuant
48 to section 717.2A, and reasonable attorney fees and
49 expenses related to the investigation of the case. The
50 remaining amount of a bond or other security posted

1 pursuant to ~~this section~~ subsection 1 shall be used to
2 reimburse the local authority.

3 (2) For livestock in immediate need of sustenance
4 under section 717.3, the amount shall not be more than
5 for expenses incurred by the department in providing
6 sustenance to and disposing of the neglected livestock
7 as provided in section 717.3 and this section. The
8 amount paid to the department shall be sufficient to
9 allow the department to repay the livestock remediation
10 fund as provided in section 459.501.

11 b. If more than one person has a divisible
12 ownership interest in the livestock, the amount
13 required to be paid shall be prorated based on the
14 percentage of interest in the livestock owned by
15 each person. The moneys shall be paid to the local
16 authority or department incurring the expense as
17 provided in paragraph "a". The amount shall be
18 subtracted from proceeds owed to the owner or owners of
19 the livestock, which are received from the sale of the
20 livestock ordered by the court.

21 c. (1) Moneys owed to the local authority from
22 the sale of neglected livestock that have been rescued
23 by a local authority pursuant to section 717.2A shall
24 be paid to the local authority before satisfying
25 indebtedness secured by any security interest in or
26 lien on the livestock. Moneys owed to the department
27 from the sale of livestock in immediate need of
28 sustenance and associated products shall be paid to
29 the department according to its priority status as a
30 lienholder as provided in section 717.4.

31 (2) If an owner of the livestock is a landowner,
32 the local authority may submit an amount of the moneys
33 owed to the clerk of the county board of supervisors
34 who shall report the amount to the county treasurer.
35 The amount shall equal the balance remaining after the
36 sale of the livestock. If the livestock owner owns a
37 percentage of the livestock, the reported amount shall
38 equal the remaining balance owed by all landowners
39 who own a percentage of the livestock. That amount
40 shall be prorated among the landowners based on the
41 percentage of interest in the livestock attributable to
42 each landowner. The amount shall be placed upon the
43 tax books, and collected with interest and penalties
44 after due, in the same manner as other unpaid property
45 taxes. The county shall reimburse a city within thirty
46 days from the collection of the property taxes.

47 **Sec. 10. NEW SECTION. 717.6 Rulemaking.**

48 The department may adopt rules pursuant to chapter
49 17A as required to implement and administer sections
50 717.3 through 717.5.

1 Sec. 11. CODE EDITOR DIRECTIVE. Sections 7D.10A,
2 459.303, 459.503A, and 460.206, Code 2011, are amended
3 by striking from the sections the words "manure storage
4 indemnity fund" and inserting in lieu thereof the words
5 "livestock remediation fund".>
6 2. By renumbering as necessary.

SWEENEY of Hardin