COMPILATION OF STATUTES

REGARDING THE

NATURAL RESOURCES COMMISSION AUTHORITIES AND FUNDS AND OTHER FUND ADMINISTRATION

Includes:

I. Chapter 2, Article 15: Natural Resources Commission Authorities and Funds
   - (a) GENERAL STATUTES REGARDING THE NATURAL RESOURCES COMMISSION
   - (b) SMALL WATERSHED FLOOD CONTROL FUND
   - (c) WATER SUSTAINABILITY FUND
   - (d) NEBRASKA SOIL AND WATER CONSERVATION ACT
   - (e) NEBRASKA RESOURCES DEVELOPMENT FUND
   - (f) WATER PLANNING AND REVIEW PROCESS
   - (g) NATURAL RESOURCES WATER QUALITY FUND

II. *Neb. Rev. Stat*. §§ 2-3202 – 2-3212.01: Natural Resources Districts

III. *Neb. Rev. Stat.* §§ 2-3276 – 2-3280: NRD Master Plans

IV. Chapter 2, Article 46: Erosion and Sediment Control Act

V. Chapter 2, Article 53: Carbon Sequestration

VI. Chapter 46, Article 14: Water Well Decommissioning

VII. *Neb. Rev. Stat*. § 46-719: Interrelated Water Review Board

VIII. *Neb. Rev. Stat*. § 61-204: Department Rules and Regulations

AUGUST 2015

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CHAPTER 2

ARTICLE 15

NATURAL RESOURCES COMMISSION AUTHORITIES AND FUNDS

(a) GENERAL STATUTES REGARDING THE
NATURAL RESOURCES COMMISSION

2-1501. Terms, defined.

As used in sections 2-1501 to 2-15,123, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) State means the State of Nebraska;

(3) Agency of this state means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(4) United States or agencies of the United States means the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(5) Government or governmental means the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them;

(6) Lands, easements, and rights-of-way means lands and rights or interests in lands whereon channel improvements, channel rectifications, or water-retarding or gully-stabilization structures are located, including those areas for flooding and flowage purposes, spoil areas, borrow pits, access roads, and similar purposes;

(7) Local organization means any natural resources district, drainage district, irrigation district, or other public district, county, city, or state agency;

(8) Subwatershed means a portion of a watershed project as divided by the department on a complete hydrologic unit;

(9) Rechanneling means the channeling of water from one watercourse to another watercourse by means of open ditches;

(10) Watercourse means any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well-defined banks and, upon order of the commission, also includes any particular depression which would not otherwise be within the definition of watercourse;

(11) Director means the Director of Natural Resources;

(12) Department means the Department of Natural Resources; and

(13) Combined sewer overflow project means a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environmental Quality.

Source: Laws 1937, c. 8, § 3, p. 93; C.S.Supp.,1941, § 2-1903; R.S.1943, § 2-1503; Laws 1951, c. 7, § 1, p. 73; Laws 1959, c. 6, § 2, p. 75; Laws 1961, c. 4, § 1, p. 65; Laws 1961, c. 3, § 2, p. 62; Laws 1963, c. 8, § 2, p. 73; Laws 1963, c. 9, § 1, p. 76; Laws 1969, c. 16, § 1, p. 164; Laws 1969, c. 9, § 66, p. 138; Laws 1971, LB 415, § 1; Laws 1972, LB 542, § 1; Laws 1977, LB 510, § 1; Laws 1984, LB 1106, § 11; Laws 1999, LB 403, § 1; R.S.Supp.,1999, § 2-1503; Laws 2000, LB 900, § 17; Laws 2014, LB1098, § 1.
Operative date: April 17, 2014.

2-1504. Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.

(1) The Nebraska Natural Resources Commission is established. The commission shall advise the department as requested by the director and shall perform such other functions as are specifically conferred on the commission by law. The commission shall have no jurisdiction over matters pertaining to water rights.

(2) The voting members of the commission, all of whom shall have attained the age of majority, shall be:

(a) One resident of each of the following river basins, with delineations being those on the Nebraska river basin map officially adopted by the commission and on file with the department: (i) The Niobrara River, White River, and Hat Creek basin, (ii) the North Platte River basin, (iii) the South Platte River basin, (iv) the middle Platte River basin, (v) the lower Platte River basin, (vi) the Loup River basin, (vii) the Elkhorn River basin, (viii) the Missouri tributaries basin, (ix) the Republican River basin, (x) the Little Blue River basin, (xi) the Big Blue River basin, and (xii) the Nemaha River basin;

(b) One additional resident of each river basin which encompasses one or more cities of the metropolitan class; and

(c) Fourteen members appointed by the Governor, subject to confirmation by the Legislature. Of the members appointed by the Governor, one shall represent each of the following categories: Agribusiness interests; agricultural interests; ground water irrigators; irrigation districts; manufacturing interests; metropolitan utilities districts; municipal users of water from a city of the primary class; municipal users of water from a city of the first or second class or a village;

outdoor recreation users; public power districts; public power and irrigation districts; range livestock owners; surface water irrigators; and wildlife conservation interests.

(3) Members of the commission described in subdivision (2)(a) of this section shall be selected for four-year terms at individual caucuses of the natural resources district directors residing in the river basin from which the member is selected. Such caucuses shall be held for each basin within ten days following the first Thursday after the first Tuesday of the year the term of office of the member from that basin expires. The dates and locations for such caucuses shall be established by the commission, and the commission shall provide notice to the public by issuing press releases for publication in a newspaper of general circulation in each county that comprises the river basin for which a caucus election will be held. Terms of office of such members shall follow the sequence originally determined by the river basin representatives to the commission at their first meeting on the third Thursday after the first Tuesday in January 1975. All river basin members shall take office on the third Thursday after the first Tuesday in January following their selection and any vacancy shall be filled for the unexpired term by a caucus held within thirty days following the date such vacancy is created. Each member of the commission representing a river basin shall qualify by filing with the other members of the commission an acceptance in writing of his or her selection.

(4) Members of the commission described in subdivision (2)(b) of this section shall be residents of natural resources districts which encompass one or more cities of the metropolitan class and shall be selected in the same manner, at the same time, and for a four-year term having the same term sequence as provided for the other members from such basin under subsection (3) of this section.

(5) For members of the commission described in subdivision (2)(c) of this section:

(a) The Governor shall appoint the eleven additional members added by Laws 2014, LB1098, within thirty days after April 17, 2014. The eleven additional appointments shall be for staggered four-year terms, as determined by the Governor. The Governor shall also set the terms of the current members of the commission appointed under such subdivision and serving on April 17, 2014, to staggered four-year terms. Future appointments shall be for four-year terms. Members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Members may be removed for cause. Initial appointees shall begin serving immediately following notice of appointment, except that the member appointed representing municipal users of water from the class of city or a village that is being represented by the current member representing municipal users of water and the members representing surface water irrigators and ground water irrigators shall not begin serving until the term of the current member representative of the category expires or such member resigns or is otherwise removed; and

(b) In appointing such members, the Governor shall:

(i) Create a broad-based commission which has knowledge of, has experience with, and is representative of Nebraska's water use and economy;

(ii) Give recognition to the importance of both water quantity and water quality; and

(iii) Appoint members who represent diverse geographic regions of the state, including urban and rural areas, and represent, to the extent possible, the racial and ethnic diversity of the state.

(6) After the members have been appointed as required under this section, the commission shall revise or adopt and promulgate rules and regulations as necessary to administer the Water Sustainability Fund pursuant to sections 2-1506 to 2-1513.

Source: Laws 1937, c. 8, § 4, p. 94; C.S.Supp.,1941, § 2-1904; R.S.1943, § 2-1504; Laws 1951, c. 7, § 2, p. 74; Laws 1957, c. 3, § 2, p. 82; Laws 1959, c. 6, § 3, p. 76; Laws 1961, c. 4, § 2, p. 66; Laws 1963, c. 9, § 2, p. 78; Laws 1967, c. 7, § 1, p. 78; Laws 1967, c. 5, § 1, p. 73; Laws 1969, c. 9, § 67, p. 140; Laws 1972, LB 542, § 2; Laws 1973, LB 337, § 1; Laws 1977, LB 510, § 2; Laws 1980, LB 423, § 1; Laws 1983, LB 36, § 1; Laws 1983, LB 37, § 1; Laws 1984, LB 1106, § 13; Laws 2000, LB 900, § 22; Laws 2014, LB1098, § 2.
Operative date: April 17, 2014.

Cross References

Department of Natural Resources, powers, see Chapter 61, article 2.

Designation by Legislature of University of Nebraska officers as members of Natural Resources Commission was a legislative appointment in violation of Constitution; but designation of Director of Water Resources was valid as simply adding to the duties of a state officer. Neeman v. Nebraska Nat. Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974).

2-1504.01. Repealed. Laws 1972, LB 542, § 7.
2-1504.02. Repealed. Laws 2000, LB 900, § 256.
2-1504.03. Repealed. Laws 2000, LB 900, § 256.

2-1505. Commission; organization; compensation of members.

The commission shall designate a chairperson, a vice-chairperson, and such other officers as it may desire and may, from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Each of the members of the commission shall receive a per diem of fifty dollars per day for each day in the performance of his or her duties on the commission, but no member shall receive more than two thousand dollars in any one year, and in addition shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his or her duties on the commission, as provided in sections 81-1174 to 81-1177.

Source: Laws 1937, c. 8, § 4, p. 95; C.S.Supp.,1941, § 2-1904; R.S.1943, § 2-1505; Laws 1957, c. 3, § 3, p. 84; Laws 1961, c. 4, § 3, p. 68; Laws 1972, LB 542, § 3; Laws 1978, LB 653, § 2; Laws 1980, LB 701, § 1; Laws 1981, LB 204, § 5; Laws 2000, LB 900, § 23.

(b) SMALL WATERSHED FLOOD CONTROL FUND

2-1502. Soil and water conservation and flood control needs; state financial assistance; conditions.

(1) The purpose of the Small Watersheds Flood Control Fund is to assist local organizations by paying all or part of the cost of purchase of needed lands, easements, and rights-of-way for soil and water conservation and flood control needs when the following conditions have been met:

(a) The local organizations have agreed on a program of work;

(b) Such a program of work has been found to be feasible, practicable, and will promote the health, safety, and general welfare of the people of the state;

(c) The department has either participated in the planning or reviewed the plans and has approved the program of work;

(d) Local organizations have obtained a minimum of seventy-five percent of the needed number of easements and rights-of-way in the project or a subwatershed prior to the use of state funds for this purpose;

(e) Local organizations have made a formal request or application to the department for state funds for the purpose of purchasing lands, easements, and rights-of-way;

(f) Local organizations and the department have entered into an agreement on the administration and expenditure of these state funds;

(g) The purchase price of the land, easement, or right-of-way has been established either by the courts or by one credentialed real property appraiser approved by the department, which appraisal costs shall be a nonstate cost; and

(h) Local organizations have given assurance to the department that they have obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

(2) State funds to be used for lands, easements, and rights-of-way shall be granted to the local organizations in whose name the land, easement, or right-of-way shall be recorded. Rental or lease revenue from these lands may be used subject to the approval of the department by the local organization in the proper management of these lands, such management to include, but not be limited to, weed control, construction, and maintenance of conservation measures, seeding of grass, planting of trees, and construction and maintenance of fences. Within ten years from the purchase date of lands and rights-of-way, and if the lands and rights-of-way are not granted or retained for public purposes as otherwise provided by this section, it shall be the duty of the local organization to sell the property purchased wholly or partially from state funds and to remit to the department a pro rata share of the proceeds of such sale equal to the percentage of the total

cost of the acquisition of such real property made from any state allocation made hereunder and all such remittances shall be deposited in the Small Watersheds Flood Control Fund. The local organization shall retain any easement or right-of-way needed to assure the continued operation, maintenance, inspection, and repair of the works of improvement constructed on the land to be sold. The commission and local organization may grant for public purposes title to lands and rights-of-way acquired in whole or in part with funds from the Small Watersheds Flood Control Fund to any public district, city, county, political subdivision of the state, or agency of the state or federal government, or the local organization, with approval of the commission, may retain for public purposes the title to such lands and rights-of-way. Whenever any such grant or retention is approved, the department shall be reimbursed in the amount of the pro rata share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Small Watersheds Flood Control Fund. All such proceeds to the department shall be remitted to the State Treasurer for credit to the Small Watersheds Flood Control Fund.

Source: Laws 1937, c. 8, § 2, p. 92; C.S.Supp.,1941, § 2-1902; R.S.1943, § 2-1502; Laws 1957, c. 3, § 1, p. 80; Laws 1963, c. 8, § 1, p. 69; Laws 1965, c. 12, § 1, p. 131; Laws 1969, c. 9, § 65, p. 136; Laws 1979, LB 31, § 1; Laws 1981, LB 224, § 1; Laws 1990, LB 1153, § 51; Laws 1991, LB 203, § 1; Laws 1994, LB 1107, § 1; Laws 2000, LB 900, § 18; Laws 2006, LB 778, § 1.

2-1503. Transferred to section 2-1501.

2-1503.01. Small Watersheds Flood Control Fund; created; use; investment.

The Small Watersheds Flood Control Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated during any session of the Legislature. The State Treasurer shall also credit such fund with money contributed to or remitted by local organizations which was obtained through the sale or lease of property procured through the use of state funds as authorized in sections 2-1502 to 2-1503.03. In addition, funds, services, and properties made available by the United States or one of its departments or agencies may be credited to the fund. The money in the fund shall not be subject to fiscal year or biennium limitations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Small Watersheds Flood Control Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 8, § 3, p. 74; Laws 1969, c. 584, § 26, p. 2357; Laws 1986, LB 258, § 2; Laws 1995, LB 7, § 5; Laws 2000, LB 900, § 19; Laws 2009, First Spec. Sess., LB3, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1503.02. Commission; flood control funds; allocations; acquisition of land or easements.

The commission shall adopt and promulgate rules and regulations for the administration of the Small Watersheds Flood Control Fund. The commission may allocate to any local organization in this state, from the Small Watersheds Flood Control Fund, such sum or sums as in the judgment of the commission may be necessary to enable such local organization to acquire real property or easements needed to permit the local organizations to install upstream flood control or watershed protection and flood prevention structures on rivers, tributaries, streams, or watersheds thereof, including cooperative projects between the local organization and the United States. When any property or easement has been acquired by the use of any funds allocated under this section and the property is thereafter sold or leased, it shall be the duty of the local organization to remit to the department a pro rata share of the proceeds of such sale or lease equal to the percentage of total state funds involved.

Source: Laws 1963, c. 8, § 4, p. 75; Laws 1963, c. 3, § 1, p. 62; Laws 2000, LB 900, § 20.

2-1503.03. Commission; department; powers; authority.

The commission shall have sole power and authority to specify the date and all other terms for the sale of any lands or rights-of-way acquired wholly or in part with funds from the Small Watersheds Flood Control Fund and to require the execution of all necessary documents to complete such sales. The department shall, upon acquisition by the local organization of any such lands or rights-of-way, prepare and file with the register of deeds in the county where such lands or rights-of-way are located an affidavit stating that state funds were utilized for the acquisition of such lands or rights-of-way by the organization receiving such funds and that such lands or rights-of-way cannot be sold, conveyed, granted, or in any way transferred by such organization except at the direction of the commission and in compliance with its rules and regulations.

Source: Laws 1973, LB 188, § 3; Laws 2000, LB 900, § 21.

(c) WATER SUSTAINABILITY FUND

2-1506. Water Sustainability Fund; goals; legislative findings.

(1) The goals of the Water Sustainability Fund are to: (a) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow; (b) remediate or mitigate threats to drinking water; (c) promote the goals and objectives of approved integrated management plans or ground water management plans; (d) contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources; (e) assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project; (f) provide increased water productivity and enhance

water quality; (g) use the most cost-effective solutions available; and (h) comply with interstate compacts, decrees, other state contracts and agreements and federal law.

(2) The Legislature finds that the goals of the Water Sustainability Fund can be met by equally considering programs, projects, or activities in the following categories: (a) Research, data, and modeling; (b) rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance or flood prevention for protection of critical infrastructure; (c) conjunctive management, storage, and integrated management of ground water and surface water; and (d) compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

Source: Laws 2014, LB1098, § 3.
Operative date: April 17, 2014.

2-1507. Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(1) It is the intent of the Legislature that the Water Sustainability Fund be equitably distributed statewide to the greatest extent possible for the long term and give priority funding status to projects which are the result of federal mandates.

(2) Distributions to assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project shall be based on a demonstration of need and shall equal ten percent of the total annual appropriation to the Water Sustainability Fund if (a) applicants have applied for such funding as required under section 2-1509 and (b) any such application has been recommended for further consideration by the director and is subsequently approved for allocation by the commission pursuant to subsection (1) of section 2-1511. If more than one municipality demonstrates a need for funds pursuant to this subsection, funds shall be distributed proportionally based on population.

(3) Any money in the Water Sustainability Fund may be allocated by the commission to applicants in accordance with sections 2-1506 to 2-1513. Such money may be allocated in the form of grants or loans for water sustainability programs, projects, or activities undertaken within the state. The allocation of funds to a program, project, or activity in one form shall not of itself preclude additional allocations in the same or any other form to the same program, project, or activity.

(4) A natural resources district is eligible for funding from the Water Sustainability Fund only if the district has adopted or is currently participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.

(5) The commission shall utilize the resources and expertise of and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environmental Quality, the Nebraska Environmental Trust Board, and the Game and Parks Commission on funding and planning for water programs, projects, or activities.

(6) A biennial report shall be made to the Clerk of the Legislature describing the work accomplished by the use of funds towards the goals of the Water Sustainability Fund beginning on December 31, 2015. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB1098, § 4.
Operative date: April 17, 2014.

2-1508. Commission; rank and score applications for funding; criteria.

The commission shall rank and score applications for funding based on criteria that demonstrate the extent to which a program, project, or activity:

(1) Remediates or mitigates threats to drinking water;

(2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;

(3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;

(4) Contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;

(5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;

(6) Is cost-effective;

(7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts or agreements or federal law;

(8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;

(9) Improves water quality;

(10) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;

(11) Has a local jurisdiction with plans in place that support sustainable water use;

(12) Addresses a statewide problem or issue;

(13) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;

(14) Contributes to watershed health and function; and

(15) Uses objectives described in the annual report and plan of work for the state water planning and review process issued by the department.

Source: Laws 2014, LB1098, § 5.
Operative date: April 17, 2014.

2-1509. Application; form; contents; director; duties; state participation; request.

(1) Applicants for funds may file an application with the department for a grant or loan from the Water Sustainability Fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program, project, or activity;

(b) Set forth or be accompanied by a plan for development of the proposed program, project, or activity, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program, project, or activity costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the program, project, or activity and related lands and has or may acquire all water rights necessary for the proposed program, project, or activity;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program, project, or activity; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program, project, or activity.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program, project, or activity and the proposed schedule for development and completion of such program, project, or activity, determine eligibility for funding, and make appropriate recommendations to the commission pursuant to sections 2-1506 to 2-1513. As a part of his or her investigation, the director shall consider whether the plan for development of the

program, project, or activity is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Water Sustainability Fund for state participation in any water and related land-water resources projects shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 2014, LB1098, § 6.
Operative date: April 17, 2014.

2-1510. Program, project, or activity; funding request; director; powers; findings; conflict of interest.

(1) Each program, project, or activity for which funding is requested, whether such request has as its origin an application or the action of the department itself, shall be reviewed as provided in sections 2-1506 to 2-1513 by the director prior to the approval of any allocation for such program, project, or activity by the commission.

(2) The director may recommend approval of and the commission may approve grants or loans, including the appropriate repayment period and the rate of interest, for program, project, or activity costs or acquisition of interests in programs, projects, or activities if after investigation and evaluation the director finds that:

(a) The plan does not conflict with any existing Nebraska state land plan;

(b) The proposed program, project, or activity is economically and financially feasible based upon standards adopted by the commission pursuant to sections 2-1506 to 2-1513;

(c) The plan for development of the proposed program, project, or activity is satisfactory;

(d) The plan of development minimizes any adverse impacts on the natural environment;

(e) The applicant is qualified, responsible, and legally capable of carrying out the program, project, or activity;

(f) In the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the program, project, or activity;

(g) The plan considers other plans and programs of the state and resources development plans of the political subdivisions of the state; and

(h) The money required from the Water Sustainability Fund is available.

(3) The director and staff of the department shall carry out their powers and duties under sections 2-1506 to 2-1513 independently of and without prejudice to their powers and duties under other provisions of law.

(4) No member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The director may be delegated additional responsibilities consistent with the purposes of sections 2-1506 to 2-1513. It shall be the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs, projects, or activities under section 2-1508.

Source: Laws 2014, LB1098, § 7.
Operative date: April 17, 2014.

2-1511. Director; recommendations; agreement; contents; loan; repayment period; successor; contract; lien; filing.

(1) The director shall make recommendations based upon his or her review of the criteria set forth in section 2-1510 of whether an application should be considered further or rejected and the form of allocation he or she deems appropriate. The commission shall act in accordance with such recommendations according to the application procedures adopted and promulgated in rules and regulations.

(2) If, after review of the recommendation by the director, the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to sections 2-1506 to 2-1513 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the department shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program, project, or activity to which funds shall be applied. The department shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of an interest in any qualified program, project, or activity when such acquisition is initiated by the department itself pursuant to section 2-1512. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant or loan or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

(3) If the allocation to be approved is a loan, the department and the applicant or applicants shall include in the agreement provisions for repayment to the Water Sustainability Fund of money loaned together with any interest at reasonable rates as established by the commission.

The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after construction of the project or implementation of the program or activity is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of and security for repayment of the loan as shall be considered necessary by the department.

(4) With the express approval of the commission, an applicant may convey its interest in a program, project, or activity to a successor. The department shall contract with the qualified successor in interest of the original obligor for repayment of the loan together with any interest thereon and for succession to its rights and obligations in any contract with the department.

(5) The state shall have a lien upon a program, project, or activity constructed, improved, or renovated with money from the Water Sustainability Fund for the amount of the loan together with any interest thereon. This lien shall attach to all program, project, or activity facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the program, project, or activity. The department shall file a statement of the lien, its amount, terms, and a description of the program, project, or activity with the register of deeds of each county in which the program, project, or activity or any part thereof is located. The register of deeds shall record the lien, and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same program, project, or activity.

Source: Laws 2014, LB1098, § 8.
Operative date: April 17, 2014.

2-1512. Department; powers; Water Sustainability Fund; use.

In order to develop Nebraska's water resources, the department, using the process provided for in subsection (4) of section 2-1509, and with the approval of the commission, may acquire interests in water and related land resources projects in the name of the state utilizing the Water Sustainability Fund. Such use of the fund shall be made when the public benefits obtained from the projects or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the department and the commission that such acquisition is appropriate under sections 2-1506 to 2-1513. The department, with the approval of the commission, may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such water resource projects may include, but not be limited to, the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals, the department may contract with the federal

government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Source: Laws 2014, LB1098, § 9.
Operative date: April 17, 2014.

2-1513. Water Sustainability Fund; legislative analysis.

The Appropriations Committee of the Legislature shall, beginning with the FY2019-21 biennial budget review process, conduct a biennial analysis of the financial status of the Water Sustainability Fund, including a review of the committed and uncommitted balance of the fund and the financial impact of pending programs, projects, or activities. The committee shall base its recommendation for transfers to the Water Sustainability Fund upon information provided in the review process.

Source: Laws 2014, LB1098, § 10.
Operative date: April 17, 2014.

2-1514 to 2-1517.03. Repealed. Laws 1977, LB 510, § 10.
2-1517.04. Repealed. Laws 1973, LB 335, § 5.
2-1518 to 2-1528. Repealed. Laws 1977, LB 510, § 10.
2-1529. Repealed. Laws 1983, LB 36, § 5.
2-1530 to 2-1546. Repealed. Laws 1977, LB 510, § 10.
2-1547. Transferred to section 61-210.
2-1548 to 2-1567. Repealed. Laws 1977, LB 510, § 10.
2-1570. Repealed. Laws 2005, LB 342, § 4.
2-1571 to 2-1574. Repealed. Laws 1983, LB 36, § 5.

(d) NEBRASKA SOIL AND WATER CONSERVATION ACT

2-1575. Act, how cited.

Sections 2-1575 to 2-1585 shall be known and may be cited as the Nebraska Soil and Water Conservation Act.

Source: Laws 1977, LB 450, § 1; Laws 1983, LB 236, § 1; Laws 2000, LB 900, § 26; Laws 2002, LB 1003, § 8; Laws 2003, LB 619, § 1.

2-1576. Legislative intent.

The Legislature recognizes and hereby declares that it is the public policy of this state to properly conserve, protect, and utilize the water and related land resources of the state, to better utilize surface waters and available precipitation, to encourage ground water recharge to protect the state's dwindling ground water supply, to protect the quality of surface water and ground water resources, and to reduce soil erosion and sediment damages. The Legislature further declares that it is in the public interest of this state to financially assist in encouraging water and

related land resource conservation and protection measures on privately owned land and that this will produce long-term benefits for the general public.

Source: Laws 1977, LB 450, § 2; Laws 1983, LB 236, § 2; Laws 1986, LB 474, § 14; Laws 1993, LB 247, § 1; Laws 2002, LB 1003, § 9.

2-1577. Nebraska Soil and Water Conservation Fund; created; investment.

(1) There is hereby created the Nebraska Soil and Water Conservation Fund to be administered by the department. The State Treasurer shall credit to the fund such money as is (a) appropriated to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any agency of the United States may also be credited to such fund if so directed by such agency.

(2) The money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any such fiscal year or biennium. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(3) Any money in the Nebraska Soil and Water Conservation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1977, LB 450, § 3; Laws 1983, LB 236, § 3; Laws 1986, LB 258, § 3; Laws 1995, LB 7, § 7; Laws 2000, LB 900, § 27; Laws 2009, First Spec. Sess., LB3, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1578. Commission; rules and regulations.

The commission shall adopt and promulgate appropriate rules and regulations necessary for the administration of the Nebraska Soil and Water Conservation Fund.

Source: Laws 1977, LB 450, § 4; Laws 1983, LB 236, § 4; Laws 2000, LB 900, § 28.

2-1579. Fund; grants; conditions; acceptance, how construed.

(1) Except as provided in subsection (2) of this section, expenditures may be made from the Nebraska Soil and Water Conservation Fund as grants to individual landowners of not to exceed seventy-five percent of the actual cost of eligible projects and practices for soil and water conservation or water quality protection, with priority given to those projects and practices providing the greatest number of public benefits.

(2) The department shall reserve at least two percent of the funds credited to the fund for grants to landowners ordered by a natural resources district pursuant to the Erosion and Sediment Control Act to install permanent soil and water conservation practices. Such funds shall be made available for ninety percent of the actual cost of the required practices and shall be granted on a first-come, first-served basis until exhausted. Applications not served shall receive priority in ensuing fiscal years.

(3) The commission shall determine which specific projects and practices are eligible for the funding assistance authorized by this section and shall adopt, by reference or otherwise, appropriate standards and specifications for carrying out such projects and practices. A natural resources district assisting the department in the administration of the program may, with commission approval, further limit the types of projects and practices eligible for funding assistance in that district.

(4) As a condition for receiving any cost-share funds pursuant to this section, the landowner shall be required to enter into an agreement that if a conservation practice is terminated or a project is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the department or its delegated agent, for a period of ten years after the date of receiving payment, the landowner shall refund to the fund any public funds used for the practice or project. When deemed necessary by the department or its delegated agent, the landowner may as a further condition for receiving such funds be required to grant a right of access for the operation and maintenance of any eligible project constructed with such assistance. Acceptance of money from the fund shall not in any other manner be construed as affecting land ownership rights unless the landowner voluntarily surrenders such rights.

(5) To the extent feasible, the department and the commission shall administer the fund so that federal funds available within the state for the same general purposes are supplemented and not replaced with state funds.

Source: Laws 1977, LB 450, § 5; Laws 1978, LB 707, § 1; Laws 1979, LB 326, § 1; Laws 1980, LB 687, § 1; Laws 1983, LB 236, § 5; Laws 1986, LB 474, § 15; Laws 1990, LB 906, § 1; Laws 1993, LB 247, § 2; Laws 2000, LB 900, § 29; Laws 2002, LB 1003, § 11; Laws 2011, LB2, § 1.

Cross Reference

Erosion and Sediment Control Act, see section 2-4601.

2-1580. Fund; erosion and sediment control payments; conditions.

Payments may be made from the Nebraska Soil and Water Conservation Fund to owners of private land which is being converted to urban use for the purpose of controlling erosion and sediment loss from construction and development. As a condition for receiving any funds pursuant to this section, the landowner shall agree in writing that the erosion and sediment control practices will be installed prior to the land-disturbing activity, when possible, and that the practices will be adequately maintained or replaced at the landowner's expense until ninety-five percent of the site is permanently stabilized. Payments made pursuant to this section shall be in

accordance with and conditional upon such terms as are established by the commission. Such terms may be different from those established by section 2-1579 for payments relating to other types of projects and practices.

Source: Laws 2002, LB 1003, § 10.

2-1581. Fund; payments to reduce consumptive use of water; conditions.

Payments may be made from the Nebraska Soil and Water Conservation Fund to the owners of private land for the purpose of adopting or implementing practices or measures to reduce the consumptive use of water in river basins in which an interstate agreement, compact, or decree could require reduction in water usage.

Payments made pursuant to this section may be made as part of research, cost-sharing, or other programs implemented by natural resources districts, irrigation districts, or other entities to develop incentive-based practices or measures to reduce the consumptive use of water.

Payments made pursuant to this section shall be in accordance with terms and conditions established by the commission. The commission may establish terms and conditions for receipt of payments under this section which are different than those established for receipt of payments pursuant to section 2-1579.

Source: Laws 2003, LB 619, § 2.

2-1582. Repealed. Laws 1983, LB 1, § 1.

2-1583. Fund; land diversion payments; authorized.

Expenditures may be made from the Nebraska Soil and Water Conservation Fund to individual landowners as land diversion payments for the purpose of encouraging alternate cropping patterns which, when implemented, will assure a longer conservation practice construction period. No such payments shall be made until the intended projects or practices have been completed.

Source: Laws 1983, LB 236, § 6.

2-1584. Department; assistance from local, state, or federal agencies.

The department may request and utilize assistance in the administration of the Nebraska Soil and Water Conservation Fund from natural resources districts, from the Natural Resources Conservation Service and the Farm Service Agency of the United States Department of Agriculture, and from any other appropriate local, state, or federal agencies. Such assistance may

include accepting and approving applications for funds and designing, laying out, and certifying the proper completion of projects and practices.

Source: Laws 1983, LB 236, § 7; Laws 1993, LB 247, § 3; Laws 1999, LB 403, § 3; Laws 2000, LB 900, § 30.

2-1585. Long-term agreements; authorized; conditions.

If the commission determines that more effective soil and water conservation or water quality protection could be achieved if financial assistance from the Nebraska Soil and Water Conservation Fund were available for multiyear implementation of comprehensive conservation plans, the department may enter into long-term agreements with landowners for such purposes. Such long-term agreements shall be for a term not to exceed ten years and shall specify the eligible projects and practices to be installed and applied, the year of intended installation, and the estimated cost of each such project or practice. Such agreements shall also provide that financial assistance in any year of the agreement be subject to the appropriation of adequate funds by the Legislature and may provide that priority shall be given to funding such projects and practices over those not identified in other long-term agreements and over those identified in more recently executed long-term agreements. The department shall not in any biennium approve any long-term agreements which would cause the total of then existing state obligations under all such agreements to exceed the amount of new funds appropriated for that biennium.

Source: Laws 1983, LB 236, § 8; Laws 1986, LB 258, § 4; Laws 1993, LB 247, § 4; Laws 2000, LB 900, § 31.

(e) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1586. Statement of purpose.

The Legislature finds that it is a public purpose of the state to properly develop the water and related land resources of the state and that it is in the public interest (1) to provide financial assistance to programs and projects essential to the development, preservation, and maintenance of the state's water and related land resources, including programs and projects for the (a) abatement of pollution, (b) reduction of potential flood damages, (c) reservation of lands for resource development projects, (d) provision of public irrigation facilities, (e) preservation and development of fish and wildlife resources, (f) protection and improvement of public lands, (g) provision of public outdoor recreation lands and facilities, (h) provision and preservation of the waters of the state for all beneficial uses, including domestic, agricultural, and manufacturing uses, (i) conservation of land resources, and (j) protection of the health, safety, and general welfare of the people, and (2) to provide financial assistance to natural resources districts in the preparation of management plans pursuant to section 46-709.

Source: Laws 1974, LB 975, § 1; R.S.1943, (1977), § 2-3263; Laws 1984, LB 1106, § 16; Laws 1996, LB 108, § 1; Laws 2004, LB 962, § 1.

2-1587. Nebraska Resources Development Fund; created; reserve fund; administration; investment.

(1) There is hereby created the Nebraska Resources Development Fund to be administered by the department. The State Treasurer shall credit to the fund, to carry out sections 2-1586 to 2-1595, such money as is (a) appropriated to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency. The money in the fund shall not be subject to any fiscal year or biennium limitation requiring reappropriation of the unexpended balance at the end of the fiscal year or biennium. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) To aid in the funding of projects and to prevent excessive fluctuations in appropriation requirements for the Nebraska Resources Development Fund, the department shall create a reserve fund to be used only for projects requiring total expenditures from the Nebraska Resources Development Fund in excess of five million dollars. Unless disapproved by the Governor, the department may credit to such reserve fund that portion of any appropriation to the Nebraska Resources Development Fund which exceeds five million dollars. The department may also credit to the reserve fund such other funds as it determines are available.

(3) Any money in the Nebraska Resources Development Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1974, LB 975, § 2; R.S.1943, (1977), § 2-3264; Laws 1984, LB 985, § 1; Laws 1986, LB 258, § 5; Laws 1995, LB 7, § 8; Laws 2000, LB 900, § 32; Laws 2009, First Spec. Sess., LB 3, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-1588. Fund; allocation; report; projects; costs.

(1) No money in the Nebraska Resources Development Fund may be reallocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board, or commission, or by any political subdivision of the state which has the authority to develop the state's water and related land resources after March 30, 2014. The commission may commit appropriated funds to projects approved as of March 30, 2014, not to exceed amounts specifically allocated to such projects prior to March 30, 2014. Prior to March 30, 2014, the fund may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be

allocated to assist natural resources districts in the preparation of management plans as provided in section 46-709. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1 of each year after 1993, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in a readily available construction cost index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include a complete financial statement. Each member of the Legislature shall receive an electronic copy of such report upon making a request to the director.

Source: Laws 1974, LB 975, § 3; Laws 1979, LB 322, § 3; Laws 1981, LB 545, § 2; R.S.Supp.,1982, § 2-3265; Laws 1984, LB 1106, § 17; Laws 1985, LB 102, § 2; Laws 1993, LB 155, § 1; Laws 1996, LB 108, § 2; Laws 1998, LB 656, § 5; Laws 2000, LB 900, § 33; Laws 2001, LB 129, § 1; Laws 2004, LB 962, § 2; Laws 2006, LB 1226, § 3; Laws 2009, LB179, § 1; Laws 2012, LB 782, § 3; Laws 2014, LB 906, § 9.
Effective date: March 30, 2014.

2-1589. Fund; allocations, grants, loans; conditions.

(1) The commission shall adopt and promulgate rules and regulations governing the administration of the Nebraska Resources Development Fund. The commission may make an allocation from the fund as a grant to an agency or political subdivision if the commission determines that such an allocation will not be reimbursed from revenue or receipts and when the program or project appears to be of general public benefit, thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant.

(2) The commission may make an allocation from the fund as a loan to an agency or political subdivision for any program or project or any part thereof consistent with the purposes of the fund which will directly generate revenue or receipts, which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds appropriate.

Source: Laws 1974, LB 975, § 4; R.S.1943, (1977), § 2-3266; Laws 2000, LB 900, § 34.

The adoption and implementation of a general benefit project by a natural resources district is an exercise of a power which is legislative in nature, and the requirements of due process that apply to judicial or quasi-judicial proceedings are not applicable. Fisher & Trouble Creek v. Lower Platte No. Nat. Resources Dist., 212 Neb. 196, 322 N.W.2d 403 (1982).

2-1590. Department; commission; fund; powers.

In order to develop Nebraska's land and water resources, the department, with the approval of the commission, may acquire interests in water and related land resources projects in the name of the state utilizing the Nebraska Resources Development Fund. Such use of the fund shall be made when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the department and the commission that such acquisition is appropriate under sections 2-1586 to 2-1595 and may be initiated upon a request filed in accordance with section 2-1593 or by the department itself without such a request. The department, with the approval of the commission, may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such resource projects may include, but not be limited to, the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals the department may contract with the federal government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Source: Laws 1974, LB 975, § 5; R.S.1943, (1977), § 2-3267; Laws 2000, LB 900, § 35.

2-1591. Repealed. Laws 1984, LB 1106, § 73.

2-1592. Grant or loan; application; deadline; procedure.

(1) Any organization qualified to apply for and receive funds from the Nebraska Resources Development Fund may file an application with the department for a grant or loan from such fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission. No applications may be made to receive funds by grant or loan from the Nebraska Resources Development Fund after March 30, 2014.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program or project;

(b) Set forth or be accompanied by a plan for development of the proposed program or project, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program or project costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands and has or may acquire all water rights necessary for the proposed project;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program or project; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program or project.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program or project and the proposed schedule for development and completion of such program or project, determine the eligibility of the program or project for funding, and make appropriate recommendations to the commission pursuant to sections 2-1586 to 2-1595. As a part of his or her investigation, the director shall consider whether the plan for development of the program or project is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Nebraska Resources Development Fund for state participation in any water and related land-water resources projects through acquisition of a state interest therein shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 1974, LB 975, § 7; R.S.1943, (1977), § 2-3269; Laws 1984, LB 1106, § 18; Laws 2000, LB 900, § 36; Laws 2014, LB 906, § 10.
Effective date: March 30, 2014.

2-1593. Program or project; funding; review; approve or reject; procedure.

Each program or project for which funding is requested, whether such request has as its origin an application or the action of the department itself, shall be reviewed as provided in sections 2-1586 to 2-1595 by the director prior to the approval of any allocation for such program or project by the commission. The director shall within a reasonable time, not to exceed six months, after receipt of such request report to the commission the results of his or her review and shall recommend approval or rejection of funding for the program or project. The director shall indicate what form of allocation he or she deems to be appropriate. In the case of an approved application recommended for a loan, the commission shall indicate the appropriate repayment period and the rate of interest. The commission shall act in accordance with such recommendations unless action to the contrary is approved by each commission member eligible to vote on the specific recommendation under consideration. No member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The director may be delegated additional responsibilities consistent with the purposes of sections 2-1586 to 2-1595. It shall be

the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs and projects under sections 2-1586 to 2-1595.

Source: Laws 1974, LB 975, § 8; R.S.1943, (1977), § 2-3270; Laws 1984, LB 1106, § 19; Laws 2000, LB 900, § 37.

2-1594. Program or project; costs or acquisition of interest; approval.

The director may recommend approval of and the commission may approve grants or loans for program or project costs or acquisition of interests in projects if after investigation and evaluation the director finds that:

(1) The plan does not conflict with any existing Nebraska state land plan;

(2) The proposed program or project is economically and financially feasible based upon standards adopted by the commission pursuant to sections 2-1586 to 2-1595;

(3) The plan for development of the proposed program or project is satisfactory;

(4) The plan of development minimizes any adverse impacts on the natural environment;

(5) The applicant is qualified, responsible, and legally capable of carrying out the program or project;

(6) In the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the project;

(7) The plan considers other plans and programs of the state in accordance with section 84-135 and resources development plans of the political subdivisions of the state; and

(8) The money required from the Nebraska Resources Development Fund is available.

The director and staff of the department shall carry out their powers and duties under sections 2-1586 to 2-1595 independently of and without prejudice to their powers and duties under other provisions of law.

Source: Laws 1974, LB 975, § 9; Laws 1981, LB 326, § 11; R.S.Supp.,1982, § 2-3271; Laws 1984, LB 1106, § 20; Laws 1985, LB 102, § 3; Laws 2000, LB 900, § 38; Laws 2001, LB 129, § 2.

2-1595. Application for a grant, loan, or acquisition; agreement; provisions; successor in interest; lien; filing; foreclosure.

(1) If after review of the recommendation by the director the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to

sections 2-1586 to 2-1595 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the department shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program or project to which funds shall be applied. The department shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of interest in any qualified project when such acquisition is initiated by the department itself pursuant to section 2-1590. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant, loan, or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

(2) If the allocation to be approved is a loan, the department and the applicant or applicants shall include in the agreement provisions for repayment to the Nebraska Resources Development Fund of money loaned together with any interest at reasonable rates as established by the commission. The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after construction of the project is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of and security for repayment of the loan as shall be considered necessary by the department.

(3) With the express approval of the commission, an applicant may convey its interest in a project to a successor. The department shall contract with the qualified successor in interest of the original obligor for repayment of the loan together with any interest thereon and for succession to its rights and obligations in any contract with the department.

(4) The state shall have a lien upon a project constructed, improved, or renovated with money from the fund for the amount of the loan together with any interest thereon. This lien shall attach to all project facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the project. The department shall file a statement of the lien, its amount, terms, and a description of the project with the county register of deeds of each county in which the project or any part thereof is located. The county register of deeds shall record the lien and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same project.

Source: Laws 1974, LB 975, § 10; R.S.1943, (1977), § 2-3272; Laws 1984, LB 679, § 2; Laws 1984, LB 1106, § 21; Laws 2000, LB 900, § 39.

(f) WATER PLANNING AND REVIEW PROCESS

2-1599. Statement of purpose.

In order to provide for the effective conservation and management of Nebraska's water resources, the Legislature hereby endorses the concept of a state water planning and review process. The purpose of this planning process shall be to coordinate and direct the planning efforts of the state agencies and university divisions with responsibilities and interest in the water resources field. This interagency planning process shall be designed to: (1) Provide the Legislature and the citizens of Nebraska with information and alternative methods of addressing important water policy issues and areawide or statewide water resources problems; (2) provide coordinated interagency reviews of proposed local, state, and federal water resources programs and projects; (3) develop and maintain the data, information, and analysis capabilities necessary to provide state agencies and other water interests with a support base for water planning and management activities; (4) provide the state with the capacity to plan and design water resources projects; and (5) conduct any other planning activities necessary to protect and promote the interests of the state and its citizens in the water resources of Nebraska.

Source: Laws 1981, LB 326, § 1; R.S.Supp.,1982, § 2-3282.

2-15,100. Water planning and review; how conducted; assistance.

The state water planning and review process shall be conducted under the guidance and general supervision of the director. The director shall be assisted in the state water planning and review process by the Game and Parks Commission, the Department of Agriculture, the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Environmental Quality, the Water Center of the University of Nebraska, and the Conservation and Survey Division of the University of Nebraska. In addition, the director may obtain assistance from any private individual, organization, political subdivision, or agency of the state or federal government.

Source: Laws 1981, LB 326, § 2; R.S.Supp.,1982, § 2-3283; Laws 1984, LB 1106, § 38; Laws 1993, LB 3, § 2; Laws 1996, LB 1044, § 37; Laws 2000, LB 900, § 43; Laws 2007, LB296, § 16.

2-15,101. Appropriations; procedure.

Appropriations may be made to the department for all or part of the costs incurred by agencies other than the department in conducting the state water planning and review process. The state budget administrator shall create a separate budget program within each agency that is to receive a portion of such appropriations. To properly account for such funds, recipients shall

submit to the department, in the form prescribed by the department, documentation of all costs incurred in rendering services determined by the department to be eligible for reimbursement.

Source: Laws 1981, LB 326, § 3; R.S.Supp.,1982, § 2-3284; Laws 2000, LB 900, § 44.

2-15,102. Repealed. Laws 1985, LB 102, § 22.

2-15,103. Commission; duties.

The commission shall provide the director and the Legislature upon request with the opinion of the general public and various water interests in the state. It is the intent of the Legislature that the commission consider the different opinions of the individual members but, as a body, it shall provide the director with input and comments on state water planning and review process activities as they relate to the overall use of Nebraska's water resources. The functions of the commission shall include providing upon request advice and assistance in the planning process by: (1) Identifying legislative and administrative policy issues; (2) developing and reviewing alternative solutions for legislative and administrative policy problems, including impact assessment; (3) recommending the types of problems needing analysis and where such problems are located or likely to be located; (4) disseminating information and materials generated by the planning process to the public; (5) determining the conditions under which and the methods by which additional public input is to be obtained; and (6) reviewing and commenting on reports produced through the planning process.

Source: Laws 1981, LB 326, § 5; R.S.Supp.,1982, § 2-3286; Laws 1984, LB 1106, § 39; Laws 2000, LB 900, § 45.

2-15,104. Repealed. Laws 2000, LB 900, § 256.

2-15,105. Public hearings; materials; made available to public.

It is the intent of the Legislature that the public have maximum input into the formulation of state water policy. The director shall conduct one or more public hearings prior to the completion of any recommendations to the Legislature on methods of addressing water policy issues. All materials produced as part of the state water planning and review process shall be available to interested persons and groups upon request. The department or other agency providing such material may make a charge therefor which does not exceed the actual cost of providing the same.

Source: Laws 1981, LB 326, § 7; R.S.Supp.,1982, § 2-3288; Laws 1984, LB 1106, § 41; Laws 2000, LB 900, § 46.

2-15,106. Annual report; contents.

On or before September 15 for each odd-numbered year and on or before the date provided in section 81-132 for each even-numbered year, the director shall submit an annual report and plan of work for the state water planning and review process to the Legislature and Governor. The

report shall include a listing of expenditures for the past fiscal year, a summary and analysis of work completed in the past fiscal year, funding requirements for the next fiscal year, and a projection and analysis of work to be completed and estimated funding requirements for such work for the next succeeding four years. The explanation of future funding requirements shall include an explanation of the proposed use of such funds and the anticipated results of the expenditure of such funds. The report shall, to the extent possible, identify such information as it affects each agency or other recipient of program funds. The explanation of future funding requirements shall be in a form suitable for providing an explanation of that portion of the budget request pertaining to the state water planning and review process.

Source: Laws 1981, LB 326, § 8; R.S.Supp.,1982, § 2-3289; Laws 1984, LB 1106, § 42; Laws 2000, LB 900, § 47; Laws 2002, Second Spec. Sess., LB 12, § 1.

(g) NATURAL RESOURCES WATER QUALITY FUND

2-15,122. Natural Resources Water Quality Fund; created; use; investment.

There is hereby created the Natural Resources Water Quality Fund. The State Treasurer shall credit to the fund for the uses and purposes of section 2-15,123 such money as is specifically appropriated, such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the department from any source, federal, state, public, or private, to be used by the department for the purpose of funding programs listed in subsection (2) of section 2-15,123, and such money credited under sections 2-2634, 2-2638, and 2-2641. The department shall allocate money from the fund pursuant to section 2-15,123. The fund shall be exempt from provisions relating to lapsing of appropriations, and the unexpended and unencumbered balance existing in the fund on June 30 each year shall be reappropriated, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Natural Resources Water Quality Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 961, § 5; Laws 1995, LB 7, § 9; Laws 2000, LB 900, § 48; Laws 2001, LB 329, § 1; Laws 2006, LB 874, § 1; Laws 2009, First Spec. Sess., LB3, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

2-15,123. Natural Resources Water Quality Fund; allocation; programs; rules and regulations.

(1) The Natural Resources Water Quality Fund shall be allocated by contractual agreement with natural resources districts for the purpose of funding programs listed in subsection (2) of this section. A natural resources district receiving an allocation shall provide a one hundred fifty percent match of district funds. The initial allocations each fiscal year shall be made by the

department, based on needs of individual natural resources districts relative to needs of other districts, to districts which have qualifying programs. The director shall have sole discretion to decide whether a district's program qualifies for funding pursuant to this section. The unused allocations may be reallocated to another district if the director determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. The commission shall adopt and promulgate rules and regulations to administer the Natural Resources Water Quality Fund.

(2) The fund shall be allocated to natural resources districts for programs related to water quality, including, but not limited to:

(a) Natural resources districts' water quality programs;

(b) Natural resources districts' illegal water wells decommissioning programs;

(c) Inspections by natural resources districts conducted pursuant to the Nebraska Chemigation Act;

(d) Source water protection programs undertaken by natural resources districts;

(e) Purchases of special equipment required by natural resources districts in management areas and control areas formed pursuant to the Nebraska Ground Water Management and Protection Act; and

(f) Application of soil and water conservation practices.

Source: Laws 1994, LB 961, § 6; Laws 2000, LB 900, § 49; Laws 2001, LB 329, § 2.

Cross References

Nebraska Chemigation Act, see section 46-1101.
Nebraska Ground Water Management and Protection Act, see section 46-701.

CHAPTER 2

ARTICLE 32

NATURAL RESOURCES DISTRICTS

2-3202. Terms, defined.

For purposes of Chapter 2, article 32, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) Natural resources district or district means a natural resources district operating pursuant to Chapter 2, article 32;

(3) Board means the board of directors of a district;

(4) Director means a member of the board;

(5) Other special-purpose districts means rural water districts, drainage districts, reclamation districts, and irrigation districts;

(6) Manager means the chief executive hired by a majority vote of the board to be the supervising officer of the district; and

(7) Department means the Department of Natural Resources.

Source: Laws 1969, c. 9, § 2, p. 101; Laws 1972, LB 543, § 2; Laws 1973, LB 335, § 2; Laws 1984, LB 861, § 1; Laws 1988, LB 1045, § 1; Laws 1994, LB 480, § 1; Laws 1998, LB 896, § 2; Laws 2000, LB 900, § 51; Laws 2006, LB 1113, § 13; Laws 2007, LB701, § 5.

Cross References

Department of Natural Resources, see Chapter 61, article 2.
Nebraska Natural Resources Commission, see section 2-1504.

2-3203. Natural resources districts; establishment.

In furtherance of the policy set forth in section 2-3201, the entire area of the State of Nebraska shall be divided into natural resources districts. The Nebraska Natural Resources Commission is hereby authorized and directed to determine and establish the exact number, and the boundaries of such districts. Boundaries of natural resources districts shall be established on or before October 1, 1971. When establishing such boundaries the commission shall employ the following guidelines and criteria:

(1) The primary objective shall be to establish boundaries which provide effective coordination, planning, development and general management of areas which have related resources problems. Such areas shall be determined according to the hydrologic patterns. The recognized river basins of the state shall be utilized in determining and establishing the boundaries for districts and where necessary for more efficient development and general management two or more districts shall be created within a basin;

(2) Boundaries of districts shall follow approximate hydrologic patterns except where doing so would divide a section, a city or village, or produce similar incongruities which might hinder the effective operation of the districts;

(3) Existing boundaries of political subdivisions or voting precincts may be followed wherever feasible. Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement; and

(4) The number of districts shall be not less than sixteen nor more than twenty-eight.

Source: Laws 1969, c. 9, § 3, p. 101; Laws 1971, LB 538, § 1.

2-3203.01. Repealed. Laws 1982, LB 592, § 2.
2-3203.02. Repealed. Laws 2000, LB 900, § 256.
2-3204. Repealed. Laws 1999, LB 436, § 12.
2-3205. Repealed. Laws 1987, LB 1, § 16.

2-3206. Districts; assumption of assets and liabilities; apportionment; taxes; special fund.

(1) Each district established pursuant to section 2-3203 shall assume, on July 1, 1972, all assets, liabilities, and obligations of any soil and water conservation district, watershed conservancy district, watershed district, advisory watershed improvement board, and watershed planning board, whose territory is included within the boundaries of such natural resources district. When the jurisdiction of any soil and water conservation district, watershed conservancy district, watershed district, advisory watershed improvement board, or watershed planning board, is included within two or more natural resources districts, the commission shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate land area included in each district. Physical assets attached to the land shall be assumed by the district in which they are located. The value of attached physical assets shall be considered in the apportionment of the assets, liabilities and obligations, and any such assets may be encumbered or otherwise liquidated by the assuming district to effect the proper apportionment. When any other special-purpose district is merged with a natural resources district as contemplated by section 2-3201 and in the manner provided in sections 2-3207 to 2-3212, the assets, liabilities, and obligations of such special-purpose district shall similarly be assumed by the natural resources district.

(2) All taxes levied in 1971 by the counties of this state pursuant to sections 2-1560 and 31-827 for watershed districts and watershed conservancy districts shall be treated as assets of

such watershed districts and watershed conservancy districts and when funds are not available or paid to such districts on account of such levies until after July 1, 1972, such funds shall be paid to the order of the natural resources district or districts within the boundaries of which such watershed district or watershed conservancy district lies, and in the proportionate amounts as other assets are to be divided. Tax funds in possession of or payable to each watershed district and watershed conservancy district at the time of merger shall be put in a special fund of the natural resources district or districts receiving the assets of such watershed district or watershed conservancy district and such funds shall be expended within the boundaries of such watershed district or watershed conservancy district and for projects begun or planned by such districts.

Source: Laws 1969, c. 9, § 6, p. 104; Laws 1971, LB 544, § 3; Laws 1972, LB 543, § 4.

2-3207. Districts; change of boundaries, division, or merger.

With the approval of the affected natural resources districts, the commission may change the boundaries of natural resources districts, merge two or more such districts into a single district, divide one district into two or more new districts, or divide and merge one district into two or more other existing districts. The commission may also provide for the merger with such districts of other special-purpose districts as enumerated in section 2-3201. In exercising such powers, the commission shall be bound by the criteria and procedures provided by sections 2-3201 to 2-3212.

Source: Laws 1969, c. 9, § 7, p. 105; Laws 1972, LB 543, § 5; Laws 1988, LB 1045, § 2.

2-3208. Districts; proposed changes; procedure.

A hearing by the commission on proposed changes as provided by section 2-3207 may be initiated by any of the following methods:

(1) By the commission on its own motion;

(2) By written request of a majority of the directors of any or each natural resources district the boundaries of which are proposed to be changed or which is proposed to be merged or divided;

(3) By petition, signed by twenty-five percent of the legal voters residing within an area proposed to be transferred from one district to an adjoining district by a change in boundaries; or

(4) By formal written request of a majority of the directors or supervisors of any other special-purpose district wishing to merge with a natural resources district.

Such proposals shall be filed with the department and shall set forth any proposed new boundaries and such other information as the commission requires.

Source: Laws 1969, c. 9, § 8, p. 106; Laws 1988, LB 1045, § 3; Laws 2000, LB 900, § 52.

2-3209. Repealed. Laws 1988, LB 1045, § 12.

2-3210. Districts; change of boundaries, division, or merger; notice.

Within sixty days after such proposal for a change of boundaries, division, or merger is made and filed with the department, the department shall begin publication of the notices for a public hearing by the commission on the question. Notice requirements shall be satisfied by publishing such notice at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected. A public hearing shall then be held as set forth in the notice and in accord with law and the rules and regulations of the commission.

Source: Laws 1969, c. 9, § 10, p. 106; Laws 1988, LB 1045, § 4; Laws 2000, LB 900, § 53.

2-3211. Districts; change of boundaries, division, or merger; hearing; order; notice.

After the hearing, as provided in section 2-3210, the commission shall determine, upon the basis of the proposed change, upon the facts and evidence presented at such hearing, upon consideration of the standards provided in section 2-3203 relative to the organization of districts, and upon such other relevant facts and information as may be available, whether such changes in boundaries, division, or merger would promote the public interest and would be administratively and financially practicable and feasible. The commission shall make and record such determination and shall make such other determinations as are required by sections 2-3211.01 and 2-3211.02. The department shall notify the boards of the affected districts of such determinations in writing. No change in boundaries, division, or merger as provided for by sections 2-3207 to 2-3212 shall take place unless the boards of the affected districts favor such change, division, or merger.

Source: Laws 1969, c. 9, § 11, p. 107; Laws 1988, LB 1045, § 5; Laws 2000, LB 900, § 54.

2-3211.01. Districts; change of boundaries, division, or merger; assets, liabilities, obligations, and tax receipts; treatment.

(1) Each new natural resources district established by merging two or more natural resources districts in their entirety shall assume all assets, liabilities, and obligations of such merged districts on the effective date of the merger.

(2) Whenever a change of boundaries, division of one district into two or more new districts, or division and merger of one district into two or more existing districts takes place, the commission shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on all relevant factors, including, but not limited to, the proportionate land areas involved in the change, division, or merger and the extent to which particular assets, liabilities, or obligations are related to specific land areas. Interests in real estate and improvements to real estate shall be assumed by the district in which they are located on the

effective date of the change, division, or merger. The value of such interests in real estate and improvements shall be considered in the apportionment, and any such assets may be encumbered or otherwise liquidated by the assuming district to effect the proper apportionment.

(3) All taxes levied pursuant to section 2-3225 and all assessments levied pursuant to sections 2-3254 to 2-3254.06 prior to the change of boundaries, division, or merger shall be apportioned by the commission on the basis of the relationship between the intended uses of such taxes or assessments and the land areas involved in the change, division, or merger. Taxes or assessments levied pursuant to sections 2-3254 to 2-3254.06 which are in the possession of or payable to a district at the time of the change, division, or merger and taxes or assessments in the possession of or payable to any other special-purpose district merged into a natural resources district shall be put into a special fund by the district receiving such assets and shall be expended as nearly as practicable for the purposes for which they were levied or assessed.

Source: Laws 1988, LB 1045, § 6; Laws 1996, LB 108, § 3; Laws 1996, LB 1114, § 16.

2-3211.02. Districts; change of boundaries, division, or merger; naming or renaming.

If a change of boundaries, division, or merger requires the naming of a newly created natural resources district or the renaming of one or more existing districts, names shall be given by the commission at the time the change, division, or merger is approved. The board of directors of a district may recommend that a specific name be approved.

Source: Laws 1988, LB 1045, § 7.

2-3211.03. Districts; change of boundaries, division, or merger; commission; duties.

In making the determinations required by sections 2-3211 to 2-3211.02, the commission shall, whenever consistent with applicable law and the state's interests, give effect to the desires of the affected natural resources districts including the terms of any written agreements between or among such districts.

Source: Laws 1988, LB 1045, § 8.

2-3212. Districts; change of boundaries, division, or merger; application; contents; filing; when effective; Secretary of State; duties.

If the boards of the affected districts favor a change of boundaries, division, or merger as provided by sections 2-3211 to 2-3211.02, the various affected district boards shall each present to the Secretary of State an application, signed by them, for a certificate evidencing the change, division, or merger. The application shall be filed with the Secretary of State accompanied with a statement by the department certifying that the change, division, or merger is in accordance with the procedures prescribed in sections 2-3207 to 2-3212 and setting forth any new boundary line or other information as in the judgment of the department and Secretary of State is adequate to describe such change, division, or merger. When the application and statement have been filed with the Secretary of State, the change, division, or merger shall be deemed effective and the

Secretary of State shall issue to the directors of each of the districts a certificate evidencing the change, division, or merger.

Source: Laws 1969, c. 9, § 12, p. 107; Laws 1988, LB 1045, § 9; Laws 2000, LB 900, § 55.

2-3212.01. Merger and transfer of existing districts or boards; effect.

Mergers and transfers of existing districts or boards into natural resources districts pursuant to sections 2-3207 to 2-3212 shall not be construed as being discontinuances or dissolutions of those districts or boards as may be provided for by statute outside such sections.

Source: Laws 1969, c. 9, § 59, p. 134; R.S.1943, (1987), § 2-3259; Laws 1994, LB 480, § 3; Laws 1998, LB 896, § 3; Laws 1999, LB 436, § 1.

CHAPTER 2

ARTICLE 32

NATURAL RESOURCES DISTRICT MASTER
AND LONG-RANGE IMPLEMENTATION PLANS

2-3276. Districts; master plan; prepare and adopt; contents; review; filed.

By August 1, 1979, each natural resources district shall prepare and adopt a master plan to include but not be limited to a statement of goals and objectives for each of the purposes stated in section 2-3229. The master plan shall be reviewed and updated as often as deemed necessary by the district, but in no event less often than once each ten years. A copy of the master plan as adopted and all revisions and updates thereto shall be filed with the department.

Source: Laws 1978, LB 783, § 2; Laws 2000, LB 900, § 60.

2-3277. Districts; long-range implementation plan; prepare and adopt; contents; review; filing; department; develop guidelines.

Each district shall also prepare and adopt a long-range implementation plan which shall summarize planned district activities and include projections of financial, personnel, and land rights needs of the district for at least the next five years and the specific needs assessment upon which the current budget is based. Such long-range implementation plan shall be reviewed and updated annually. A copy of the long-range implementation plan and all revisions and updates thereto as adopted shall be filed with the department, the Governor's Policy Research Office, and the Game and Parks Commission on or before October 1 of each year. The department shall develop and make available to the districts suggested guidelines regarding the format and general content of such long-range implementation plans.

Source: Laws 1978, LB 783, § 3; Laws 1979, LB 412, § 3; Laws 2000, LB 900, § 61.

2-3278. Districts; individual project plans; file; coordinate plans.

Each district shall also prepare and adopt any individual project plans as it deems necessary to carry out projects approved by the district. Project plans as developed involving state regulations or financing shall be filed with the appropriate agency. A project plan for any project shall also be filed with any of the agencies named in section 2-3277, if a timely request in writing is made by such agency. Each district shall consult with and coordinate its plans with those of other local implementation agencies.

Source: Laws 1978, LB 783, § 4.

2-3279. Districts; plans; period for review and comment; alteration of plans.

All plans submitted by a district under sections 2-3276 to 2-3278, except those filed in compliance with state requirements or for the purpose of state financial assistance, shall be accorded a thirty-day period for review and comment. Failure to reply within thirty days shall be conclusive that the plans have been endorsed by the reviewing agency. All comments on plans shall be reviewed by the district and alterations of the plans may be made as the district deems appropriate. If any state agency comments indicate a lack of conformance with the goals, criteria, and policies of any outdoor recreation plan, any fish and wildlife plan, or indicate a conflict with state policies or plans approved by the Legislature, such plans shall be altered as deemed necessary by the district prior to proceeding with implementation.

Source: Laws 1978, LB 783, § 5; Laws 1981, LB 326, § 12.

2-3280. State funds; allocated or disbursed; when.

No state funds shall be allocated or disbursed to a district unless that district has submitted its master plan in accordance with sections 2-3229 and 2-3276 to 2-3280 and until the disbursing agency has determined that such funds are for plans, facilities, works, and programs which are in conformance with the plans of the agency.

Source: Laws 1978, LB 783, § 6.

CHAPTER 2

ARTICLE 46

EROSION AND SEDIMENT CONTROL ACT

2-4601. Act, how cited.

Sections 2-4601 to 2-4613 shall be known and may be cited as the Erosion and Sediment Control Act.

Source: Laws 1986, LB 474, § 1.

2-4602. Legislative findings.

The Legislature recognizes that erosion and sedimentation are serious problems throughout the state. Changes in farm and ranch enterprises, operations, and ownership, demands made upon farm and ranch enterprises which do not encourage sound resource utilization, rapid shifts in land use from agricultural and rural to nonagricultural and urban uses, construction of streets, highways, pipelines, recreation areas, schools and universities, public utilities and facilities, conversion of grasslands to croplands, and other land-disturbing activities have caused excessive wind erosion and water runoff and accelerated the process of soil erosion and sediment deposition. This has resulted in the pollution of the waters of the state and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resources. It is declared to be the policy of the state to strengthen and extend the present erosion and sediment control activities and programs of the state for both rural and urban lands, to improve water quality, and to establish and implement, through the Director of Natural Resources and the Nebraska Natural Resources Commission, a statewide, comprehensive, and coordinated erosion and sediment control program to reduce damage from wind erosion and storm water runoff, to retard nonpoint pollution from sediment and related pollutants, and to conserve and protect land, air, and other resources of the state. This program shall be carried out by the natural resources districts in cooperation with the counties, municipalities, and other local governments and political subdivisions of the state and other public and private entities.

Source: Laws 1986, LB 474, § 2.

2-4603. Terms, defined.

For purposes of the Erosion and Sediment Control Act, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Natural Resources Commission;

(2) Conservation agreement shall mean an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for

implementation and may be conditioned on the district or other public entity furnishing technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;

(3) Director shall mean the Director of Natural Resources;

(4) District shall mean a natural resources district;

(5) Erosion or sediment control practice shall mean:

(a) The construction or installation and maintenance of permanent structures or devices necessary to carry, to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss limit and which does not carry or constitute sewage or industrial or other waste;

(b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss limit or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or

(c) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss limit;

(6) Farm unit conservation plan shall mean a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss limit. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(7) Nonagricultural land-disturbing activity shall mean a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land, which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but shall not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fenceposts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property; and

(d) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size;

(8) Person shall mean any individual, partnership, limited liability company, firm, association, joint venture, public or private corporation, trust, estate, commission, board, institution, utility, cooperative, municipality or other political subdivision of this state, interstate body, or other legal entity;

(9) Soil and water conservation practice shall mean a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss limit from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice shall include, but not be limited to:

(a) Permanent soil and water conservation practice, including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice, including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(10) Soil-loss limit shall mean the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22.

2-4604. State program; director; duties; program contents; approval; revisions.

(1) The director shall, in cooperation with the commission, the Department of Environmental Quality, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

(a) The soil-loss limits for the various types of soils in the state;

(b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss limit;

(c) Guidelines for establishing priorities for implementation of the program at the state and local levels;

(d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and

(e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program shall be subject to the approval of the commission. It shall be presented to the Governor and the Legislature no later than January 1, 1987. Before approving the final program, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

(3) The state erosion and sediment control program may be revised by the director and the commission at any time, except that such revisions shall be made according to the procedures required for approval of the original program.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5.

2-4605. District program; contents; review.

(1) Each district shall, with the approval of the director and on or before July 1, 1987, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss limits for the various types of soils in the district. The soil-loss limits shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss limit that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Source: Laws 1986, LB 474, § 5; Laws 1988, LB 594, § 2.

2-4606. Municipal or county rules and regulations; authorized; conformance with state program; enforcement; failure to conform, effect.

Any municipality or county may adopt and promulgate rules and regulations governing erosion and sediment control within their respective jurisdictions. Any such municipal or county rules and regulations shall be in substantial conformance with the state erosion and sediment control program. If a municipality or county adopts and promulgates rules and regulations, it shall enforce such rules and regulations within the regulatory jurisdiction of such municipality or county. Whenever the rules and regulations of any municipality or county are deemed by the director not to be in substantial conformance with the state erosion and sediment control program, the municipality or county may either amend such rules and regulations to conform, adopt rules and regulations which are in conformance, or defer responsibility to adopt, administer, and enforce such rules and regulations to the appropriate district.

Source: Laws 1986, LB 474, § 6.

2-4607. District; adoption or revision of rules and regulations; procedure; availability.

Before adopting or revising its rules and regulations, each district shall, after publishing notice once each week for three consecutive weeks in a newspaper or newspapers having general circulation within the district, conduct a public hearing on the proposed rules and regulations or changes. The rules and regulations of the district shall be made available for public inspection at the principal office of the district.

Source: Laws 1986, LB 474, § 7.

2-4608. Excessive soil erosion; complaint; inspection; remedial action; failure to comply.

(1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss limit. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excessive erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the

inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that excess soil erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator describing the land and stating as nearly as possible the extent to which the soil erosion exceeds the applicable soil-loss limit. When the complained-of erosion is the result of agricultural, horticultural, or silvicultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss limit. When the complained-of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if appropriate, the operator to either bring such land into conformance with the soil-loss limit or to prevent sediment resulting from excessive erosion from leaving such land.

(3) The district may specify, as applicable, alternative soil and water conservation practices or erosion or sediment control practices which the owner and, if appropriate, the operator may use to comply with the administrative order. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state a reasonable time after service or mailing of the order when the work necessary to establish or maintain erosion or sediment control practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, when the work shall be satisfactorily completed;

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 2-4610; and

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(4) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Source: Laws 1986, LB 474, § 8; Laws 1988, LB 594, § 3; Laws 1994, LB 480, § 23.

A landowner, who was required to implement conservation measures on his land, did not have standing to sue a city in an inverse condemnation action where the city filed a complaint under this section but the natural resources district was responsible for prosecuting the complaint. Strom v. City of Oakland, 255 Neb. 210, 583 N.W.2d 311 (1998).

2-4609. Filing of complaint; effect.

The filing of a complaint shall not preclude the complainant from pursuing any other remedy available to the complainant under the Erosion and Sediment Control Act, other law, or equity.

Source: Laws 1986, LB 474, § 9.

2-4610. Conformance with farm unit conservation plan or soil-loss limit; effect; lack of cost-sharing assistance; effect; cost-sharing assistance; availability.

(1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss limit shall, for purposes of such land, be deemed to be in compliance with the requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) If there is not available to any owner or operator at least ninety percent cost-sharing assistance for the installation of permanent soil and water conservation practices which are required in an approved farm unit conservation plan or are required to conform agricultural, horticultural, and silvicultural practices to the applicable soil-loss limit, any such owner or operator shall not be required to install such practices pursuant to the Erosion and Sediment Control Act until such cost-sharing assistance is made available, except that such owner or operator may agree to a cost-share rate of less than ninety percent. To be enforceable, any agreement providing for cost-sharing assistance at a rate of less than ninety percent shall include notice that the owner or operator may choose not to sign such agreement and that such choice will preserve the right to not less than ninety percent cost-sharing assistance before any permanent soil and water conservation practices can be required by the district. The owner or operator may be required to utilize temporary soil and water conservation practices in the interim to minimize soil erosion and sediment damage.

(3) To prevent excessive erosion and sediment from leaving the land due to any nonagricultural land-disturbing activity, cost-sharing assistance may be available from any district. Such assistance may be used for any erosion or sediment control practice.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24.

2-4611. Administrative order; appeal.

Any owner or operator served with an administrative order of a district may, within thirty days after service of the administrative order, appeal to the district court in the county in which a majority of the land is located. The appeal shall be de novo and shall be conducted in accordance with section 2-4613.

Source: Laws 1986, LB 474, § 11.

2-4612. Order for immediate compliance; when authorized.

The district shall petition the district court for a court order requiring immediate compliance with the administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order or the practices are not being operated, utilized, or maintained as required;

(3) The work is not of a type or quality specified by the district and, when completed, it will not or does not reduce soil erosion from such land below the soil-loss limit or, to the extent excessive erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excessive erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Source: Laws 1986, LB 474, § 12; Laws 1988, LB 594, § 5.

2-4613. District court action; procedures; order; appeal; failure to comply with order; effect.

In the district court action, the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss limit and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either

personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Court of Appeals. Any person who fails to comply with the court order issued within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Source: Laws 1986, LB 474, § 13; Laws 1991, LB 732, § 10.

CHAPTER 2

ARTICLE 53

CARBON SEQUESTRATION

2-5301. Legislative intent.

Increasing levels of carbon dioxide and other greenhouse gases in the atmosphere has led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. Such measures may potentially include the establishment of systems of trading in credits for adoption of practices, technologies, or other measures which decrease net emissions of carbon dioxide and other greenhouse gases.

Improved agricultural production methods, soil conservation practices, and other methods of stewardship of soil resources have great potential to increase carbon sequestration on agricultural lands and help offset carbon dioxide emissions from other sectors of the economy. It is in the interest of agricultural producers and the public in general that the Director of Natural Resources document and quantify carbon sequestration and greenhouse emissions reductions associated with agricultural practices, management systems, and land uses occurring on cropland and rangeland in Nebraska. It is the intent of the Legislature that efforts to quantify and verify carbon sequestration on agricultural land will enhance the ability of the state's agricultural landowners to participate in any system of carbon or greenhouse emissions marketing or trading.

Source: Laws 2000, LB 957, § 1.

2-5302. Carbon Sequestration Advisory Committee; expenses.

(1) The Carbon Sequestration Advisory Committee is created. The committee shall consist of the following members appointed by the Governor:

(a) The Director of Agriculture or his or her designee;

(b) The Director of Natural Resources or his or her designee;

(c) The Director of Environmental Quality or his or her designee;

(d) One member representing the Natural Resources Conservation Service of the United States Department of Agriculture;

(e) One member representing the University of Nebraska Institute of Agriculture and Natural Resources;

(f) One member representing the Nebraska Energy Office;

(g) One member representing an entity which generates electrical energy;

(h) Two members who are producers of field crops at least one of whom actively employs a minimum tillage management system in his or her farming operation;

(i) Two members who are producers of livestock at least one of whom is actively involved in range management;

(j) One member with expertise in greenhouse emissions marketing or trading;

(k) One member representing natural resources districts; and

(l) One member representing the ethanol industry.

(2) Members of the committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The Director of Natural Resources shall assist the committee with administrative and operational support. The Nebraska Natural Resources Commission may advise the committee in the performance of its duties under sections 2-5301 to 2-5306.

Source: Laws 2000, LB 957, § 2.

2-5303. Carbon Sequestration Advisory Committee; duties.

The Carbon Sequestration Advisory Committee shall:

(1) Advise and assist the Director of Natural Resources in preparing the reports pursuant to sections 2-5304 and 2-5305 and in conducting the assessment pursuant to section 2-5305;

(2) Recommend policies or programs to enhance the ability of Nebraska agricultural landowners to participate in systems of carbon trading. Such recommendations shall include potential policies or programs designed to optimize economic benefits to agricultural producers participating in carbon trading transactions. Such policies or programs may include, but are not limited to, identifying existing or the potential of creating nonprofit organizations or other public or private entities capable of serving as assemblers of carbon credits or as intermediaries on behalf of producers in carbon trading systems;

(3) Encourage the production of educational and advisory materials regarding carbon sequestration on agricultural lands and participation in systems of carbon or greenhouse emissions trading; and

(4) Identify and recommend areas of research needed to better understand and quantify the processes of carbon sequestration on agricultural lands.

Source: Laws 2000, LB 957, § 3.

2-5304. Report; contents.

On or before December 1, 2001, the Director of Natural Resources, in consultation with the Carbon Sequestration Advisory Committee, shall prepare a report to the Legislature. The report shall include, but not be limited to:

(1) The potential for, and potential forms of, greenhouse emissions regulation;

(2) The potential for development of a system or systems of carbon emissions trading or markets for carbon sequestered on agricultural land;

(3) Agricultural practices, management systems, or land uses which increase stored soil carbon and minimize carbon dioxide or other greenhouse emissions associated with agricultural production;

(4) Methods for measuring and modeling net carbon sequestration and greenhouse emissions reduction associated with various agricultural practices, management systems, or land uses occurring on agricultural land;

(5) Areas of scientific uncertainty with respect to quantifying and understanding greenhouse emission reductions or soil carbon sequestration associated with agricultural activities; and

(6) Any recommendations of the Carbon Sequestration Advisory Committee developed pursuant to section 2-5303.

Source: Laws 2000, LB 957, § 4.

2-5305. Director of Natural Resources; powers and duties.

(1) The Director of Natural Resources shall, in consultation with the Carbon Sequestration Advisory Committee, assess agricultural lands in the State of Nebraska for past carbon sequestration and future carbon sequestration potential. The assessment shall seek to quantify carbon sequestration associated with various agricultural practices, management systems, and land uses occurring on agricultural lands in this state. On or before January 1, 2002, the director shall publish a report of the findings. The director may, from time to time, update such findings as advancements in understanding of the processes of carbon sequestration and new data become available.

(2) The assessment shall be conducted in a manner that shall provide a means for owners of agricultural land to estimate past and future net carbon sequestration resulting from agricultural practices, conservation measures, management systems, and land uses occurring on their property. The Director of Natural Resources may contract and cooperate with the Natural Resources Conservation Service of the United States Department of Agriculture to conduct assessment activities provided for in this section.

(3) The director may apply for and accept grants, gifts, or other sources of public and private funds to carry out the purposes of sections 2-5301 to 2-5306.

Source: Laws 2000, LB 957, § 5.

2-5306. Carbon Sequestration Assessment Cash Fund; created; use; investment.

The Carbon Sequestration Assessment Cash Fund is created. The fund shall be used to carry out sections 2-5301 to 2-5306. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts, grants, or other contributions from public or private sources obtained for the purposes of sections 2-5301 to 2-5306. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 957, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 46

ARTICLE 14

WATER WELL DECOMMISSIONING

46-1401. Legislative findings and intent.

The Legislature finds that accelerating the decommissioning of illegal water wells will be an asset to the State of Nebraska and good for the general welfare of the citizens of the state. The Legislature further finds that completing such decommissioning can be most appropriately accomplished by accelerating state financial input into the efforts currently being conducted. It is therefor the intent of the Legislature to embark upon an accelerated program for the decommissioning of Nebraska's illegal water wells and to recommend that the State of Nebraska and the Legislature annually appropriate ninety-nine thousand dollars from the General Fund to carry out this accelerated program during the years required for its completion.

Source: Laws 1994, LB 981, § 2; Laws 2000, LB 900, § 237.

46-1402. Definitions, where found.

For purposes of sections 46-1401 and 46-1403 to 46-1405, the definitions found in sections 46-1206.01, 46-1207.01, 46-1209, 46-1212, and 46-1213 shall be used.

Source: Laws 1994, LB 981, § 5.

46-1403. Water Well Decommissioning Fund; created; use; investment.

There is hereby created the Water Well Decommissioning Fund. The State Treasurer shall credit to the fund for the uses and purposes of sections 46-1401 to 46-1405 such money as is specifically appropriated and such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the Department of Natural Resources from any source, federal, state, public, or private, to be used by the department for the purpose of accelerating the decommissioning of illegal water wells. The department shall allocate money from the fund for purposes of sections 46-1401 to 46-1405. The fund shall be exempt from provisions relating to lapsing of appropriations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Water Well Decommissioning Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 981, § 3; Laws 1995, LB 7, § 44; Laws 2000, LB 900, § 238; Laws 2009, First Spec. Sess., LB3, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-1404. Water Well Decommissioning Fund; allocation; rules and regulations.

The Water Well Decommissioning Fund shall be allocated by contractual agreement with natural resources districts for the purpose of accelerating the decommissioning of illegal water wells throughout the state. The allocations each fiscal year shall be made by the Department of Natural Resources to natural resources districts in a proportion based on the number of illegal water wells decommissioned in each district in the previous fiscal year which were part of the district's cost-share program to the total number of illegal water wells decommissioned in the state in the previous fiscal year which were part of a district cost-share program. Subsequent allocations for any district which has had a cost-share program for three or more consecutive years shall be based upon the previous three-year average. The allocations may be adjusted on or after March 1 of any year if the Director of Natural Resources determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. Actual disbursement to each district shall be on a reimbursement basis and shall not exceed the amount expended by the district consistent with sections 46-1401 to 46-1405. The Nebraska Natural Resources Commission shall adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1994, LB 981, § 4; Laws 2000, LB 900, § 239; Laws 2006, LB 508, § 9.

46-1405. Natural resources district; cost-sharing program; qualification for funding.

Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 46-1404 if the program:

(1) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;

(2) Applies to all water wells in the district;

(3) Is available for at least thirty water wells per year; and

(4) Provides at least sixty percent of the costs of decommissioning, up to a maximum of five hundred dollars for all water wells other than hand-dug water wells which shall be eligible for up to a maximum of seven hundred dollars.

A natural resources district may establish maximum cost-share assistance amounts that will be provided to landowners for decommissioning water wells based on well depths and diameters to insure that landowners will be compensated for at least sixty percent of the cost of water well decommissioning.

Source: Laws 1994, LB 981, § 1; Laws 1995, LB 871, § 7; Laws 1996, LB 1241, § 9; Laws 2006, LB 508, § 10.

CHAPTER 46

ARTICLE 7

INTERRELATED WATER REVIEW BOARD

46-719. Interrelated Water Review Board; created; members; powers and duties.

(1)(a) The Interrelated Water Review Board is created for the purposes stated in subsections (2) through (5) of this section. The board shall consist of five members. The board, when appointed and convened, shall continue in existence only until it has resolved a dispute referred to it pursuant to such subsections. The Governor shall appoint and convene the board within forty-five days of being notified of the need to resolve a dispute. The board shall be chaired by the Governor or his or her designee, which designee shall be knowledgeable concerning surface water and ground water issues. The Governor shall appoint one additional member of his or her choosing and shall appoint the other three members of the board from a list of no fewer than six nominees provided by the Nebraska Natural Resources Commission within twenty days after request by the Governor for a list of nominees.

(b) Not more than two members of the board shall reside in the geographic area involved in the dispute. A person is not eligible for membership on the board if the decisions to be made by the board would or could cause financial benefit or detriment to the person, a member of his or her immediate family, or a business with which the person is associated, unless such benefit or detriment is indistinguishable from the effects of such action on the public generally or a broad segment of the public. The board shall be subject to the Open Meetings Act.

(c) For purposes of subsections (2) and (3) of this section, action may be taken by a vote of three of the board's five members. For purposes of subsections (4) and (5) of this section, action may be taken only by a vote of at least four of the board's five members.

(2)(a) If the Department of Natural Resources and the affected natural resources districts cannot resolve disputes over the content of a basin-wide plan or an integrated management plan by utilizing the process described in sections 46-715 to 46-718, the Governor shall be notified and the dispute submitted to the Interrelated Water Review Board. When the board has been appointed and convened to resolve disputes over a basin-wide plan, the department and each affected district shall present their proposed basin-wide plans to the board. When the board has been convened to resolve disputes over an integrated management plan, the department and each affected natural resources district shall present their (i) proposed goals and objectives for the integrated management plan, (ii) proposed geographic area to be subject to controls, and (iii) proposed surface water and ground water controls and any proposed incentive program for adoption and implementation in the river basin, subbasin, or reach involved. The department and each affected natural resources district shall also be given adequate opportunity to comment on the proposals made by the other parties to the dispute.

(b) When the Interrelated Water Review Board concludes that the issues in dispute have been fully presented and commented upon by the parties to the dispute, which conclusion shall be

made not more than forty-five days after the board is convened, the board shall select the proposals or portions of proposals that the board will consider for adoption and shall schedule one or more public hearings to take testimony on the selected proposals. The hearings shall be held within forty-five days after the board's selection of proposals to consider for adoption and shall be within or in reasonable proximity to the area that would be affected by implementation of any of the proposals to be considered at the hearings. Notice of the hearings shall be published as provided in section 46-743. The cost of publishing the notice shall be shared by the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(c) Within forty-five days after the final hearing pursuant to subdivision (b) of this subsection, the Interrelated Water Review Board shall by order, as applicable, adopt a basin-wide plan or an integrated management plan for the affected river basin, subbasin, or reach and, in the case of an integrated management plan, shall designate a ground water management area for integrated management or an integrated management subarea for such river basin, subbasin, or reach. An integrated management plan shall be consistent with subsection (2) of section 46-715, and the surface water and ground water controls and any applicable incentive programs adopted as part of that plan shall be consistent with subsection (4) of section 46-715. The controls adopted by the board shall not be substantially different from those described in the notice of hearing. The area designated as a ground water management area or an integrated management subarea shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan.

(d) The order adopted under this subsection shall be published in the manner prescribed in section 46-744.

(e) Surface water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the department. Ground water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the affected natural resources districts.

(3) Whether an integrated management plan is adopted pursuant to section 46-718 or by the Interrelated Water Review Board pursuant to subsection (2) of this section, the department or a natural resources district responsible in part for implementation and enforcement of an integrated management plan may propose modification of the goals or objectives of that plan, of the area subject to the plan, or of the surface water controls, ground water controls, or incentive programs adopted to implement the plan. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on and to adopt and implement proposed modifications. If agreement on such modifications cannot be achieved utilizing those procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in subsection (2) of this section.

(4) The department and the affected natural resources districts may also raise objections concerning the implementation or enforcement of previously adopted surface water or ground

water controls. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing such procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section. After permitting each party to fully express its reasons for its position on the disputed issues, the board may either take no action or conclude (a) that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place or (b) that one or more parties either has not made a good faith effort to implement or enforce the portion of the plan or controls for which it is responsible or is unable to fully implement and enforce such portion and that such party's jurisdiction with respect to implementation and enforcement of the plan and controls shall be terminated and reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the Interrelated Water Review Board to terminate and reassign jurisdiction of any portion of the plan or controls shall take effect immediately upon that decision. Notice of such reassignment shall be published at least once in one or more newspapers as necessary to provide general circulation in the area affected by such reassignment.

(5) The board may be reconvened in accordance with subsection (1) of this section at a later date upon request to the Governor by the party for which jurisdiction for implementation and enforcement was terminated if such party desires to have its jurisdiction reinstated, but no such request shall be honored until at least one year after the termination and not more than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by such party that it is willing and able to fully implement and enforce the plan and any applicable controls. Notice that a party's jurisdiction has been reinstated shall be provided in the same manner that notice of the earlier termination was given.

Source: Laws 2004, LB 962, § 59; Laws 2006, LB 1226, § 26; Laws 2009, LB54, § 4.

Cross Reference

Open Meetings Act, see section 84-1407.

CHAPTER 61

ARTICLE 2

DEPARTMENT RULES AND REGULATIONS

61-204. Department of Natural Resources; rules and regulations.

(1) The Director of Natural Resources may adopt and promulgate rules and regulations for the Department of Natural Resources except to the extent such power is statutorily granted to the Nebraska Natural Resources Commission. The director shall administer rules and regulations adopted and promulgated by the commission.

(2) The rules, regulations, and orders of the Director of Water Resources, the Department of Water Resources, and the Nebraska Natural Resources Commission shall remain in effect unless changed or eliminated by the Director of Natural Resources or the Department of Natural Resources or by the commission to the extent such power is statutorily granted to the commission.

Source: Laws 1957, c. 365, § 22, p. 1241; R.S.1943, (1998), § 46-704; Laws 2000, LB 900, § 4.