

NEBRASKA ADMINISTRATIVE CODE
NEBRASKA NATURAL RESOURCES COMMISSION

TITLE 262 – ADMINISTRATION OF NEBRASKA SOIL AND WATER CONSERVATION FUND

CHAPTER 1 – GENERAL PROVISIONS

001. PURPOSE OF RULES. These rules are adopted for the purpose of carrying out the purposes and requirements of the Nebraska Soil and Water Conservation Act (“Act”), Neb. Rev. Stat. §§ 2-1575 to 2-1585.

002. GENERAL AVAILABILITY OF FUNDS. Financial assistance from the Nebraska Soil and Water Conservation Fund shall be available only to Landowners of land located in Districts that have agreed to assist the Department in the administration of the Fund and have executed a Memorandum of Understanding with the Department setting forth the terms of such assistance.

003. DEFINITIONS. As used in these rules, unless the context otherwise requires:

003.01. “Apportion” means to set aside funds for use in accordance with the Act and these rules, but does not mean any physical distribution or other transfer of such funds;

003.02. “Average Unit Cost” means the unit of measure cost determined to be the average cost charged in that county for the work performed and materials required in installing such unit;

003.03. “Board” means the Board of Directors of the District where the land upon which the Projects or Practices are proposed or installed is located;

003.04. “Commission,” “Department,” “Director,” and “District” all have the same meaning as in Title 259;

003.05. “Eligible Project or Practice” means a Project or Practice designated as eligible for State Cost-Share Funds by the Commission in accordance with Chapter 3, Section 001;

003.06. “Fiscal Year” means July 1 of any calendar year through June 30 of the next calendar year;

003.07. “Fund” means the Nebraska Soil and Water Conservation Fund created by Neb. Rev. Stat. § 2-1577;

003.08. “Landowner” means the record owner or owners of real property or upon adequate documentation of the sale of real property by land contract, the purchaser or purchasers of said real property;

003.09. “NRCS” means the United States Department of Agriculture, Natural Resources Conservation Service;

003.10. “Participating District” means a District that is a party to a then current Memorandum of Understanding entered into under Chapter 1, Section 002;

003.11. “Project(s) or Practice(s)” means the soil or water conservation or water quality protection work of improvement or activity for which cost-sharing assistance is requested or approved;

003.12. “State Cost-Share Funds” means funds available from the Fund.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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CHAPTER 2 – APPORTIONMENT OF FUNDS

001. APPORTIONMENT OF FUNDS.

001.01. Each Fiscal Year each Participating District will receive a new apportionment of funds for each of the following time periods:

001.01(A). July 1 to February 28; and

001.01(B). March 1 to June 30.

001.02. The amount that will be apportioned to each Participating District for each such period will be the combined total of:

001.02(A). A portion of the funds obligated but unexpended in such District as of the last day of the preceding apportionment period, such portion to be determined as follows:

001.02(A)(1) for each apportionment period beginning on March 1, each District will be apportioned the full amount of funds obligated but unexpended in such District as of the last day of the preceding apportionment period;

001.02(A)(2) for each apportionment period beginning on July 1, each District will be apportioned the full amount of funds obligated but unexpended by such District as of the last day of the preceding apportionment period if the total amount of all funds obligated but unexpended by all Participating Districts for that preceding apportionment period is \$1,000,000 or less. If such total is more than \$1,000,000, the amount to be apportioned to all Districts will be reduced to \$1,000,000 and each District will be apportioned a percentage of its obligated but unexpended funds, such percentage to be determined by dividing \$1,000,000 by such total;

and

001.02(B). A portion of the sum of all unobligated funds as of the last day of the preceding apportionment period, any previously obligated but unexpended funds made available as a result of the reduction pursuant to Subsection 001.02(A)(2), and any funds newly appropriated to the Fund. In determining the amount of this part of each District's apportionment, the Commission may divide no more than \$1,400,000 equally among all Participating Districts and will, subject to Subsections 001.03 or 001.04, distribute the remainder, if any, among Participating Districts on the basis of one or more of the following criteria:

001.02(B)(1) the conservation or water quality protection needs in that District as expressed in monetary terms;

001.02(B)(2) the extent of the District's previous use of the Fund;

001.02(B)(3) the District's own commitment to conservation or water quality protection as expressed by the expenditure of its general revenues for basic soil and water conservation or water quality protection practices in the preceding Fiscal Year; and

001.02(B)(4) the need, as determined by the Commission, to provide assistance for one or more specific Projects or Practices or for one or more specific geographic areas.

The Commission may also in any apportionment period establish a minimum or maximum amount to be apportioned to any one District if it determines that such a minimum or maximum is necessary to maintain the viability of the Fund program in all Participating Districts.

001.03. Funds reserved by the Department pursuant to Neb. Rev. Stat. § 2-1579(2) shall not be obligated by the District, but shall be obligated, if available, by the Director to a Landowner when a copy of the District's administrative order and a copy of an application are received by the Director. The application must be approved by the District before submission to the Director. Such funds shall remain obligated until used or until the District advises the Director that all or part of the funds are no longer needed. If more than two percent of the funds credited to the Fund are at any time reserved by the Department for such purposes, the Department may at any later time release all or part of such excess for inclusion in any future apportionment to the Districts if it concludes that such funds are no longer needed for the purposes of this Subsection.

001.04. The Commission may withhold from any apportionment pursuant to Subsection 001.02(B) not more than 20 percent of the total unobligated funds available. Such funds may be later apportioned to Districts that have obligated all previously apportioned funds and can demonstrate a need for additional funds or may be apportioned to Districts for use in critical erosion or water quality areas. No one District shall receive more than 15 percent of any such withheld funds unless there are adequate funds available for all Districts requesting and demonstrating a need for such additional funds on or before May 1.

001.05. No District may obligate any funds after the last day of any appointment period until notified by the Department of a new apportionment. The report submitted pursuant to Chapter 6, Section 008 will be the basis for determining the amount of funds obligated and unobligated by each Participating District as of February 28 and June 30 of each Fiscal Year. Any District failing to submit a report due on or before the fifth working day of any July or March may be denied any apportionment of funds for the next apportionment period.

002. SUPPLEMENTAL APPORTIONMENTS. The Commission may, by utilizing funds repaid to the Fund or otherwise made available for expenditure pursuant to the Act, establish supplemental apportionments of funds to Participating Districts. To the extent consistent with legislative direction, any such supplemental apportionment may be combined with any apportionment made pursuant to Chapter 2, Section 001, Subsection 001.02 or 001.04.

003. TERMINATION OF THE MEMORANDUM OF UNDERSTANDING. In the event that the Memorandum of Understanding required by Chapter 1, Section 002 is terminated by a District or by the Department, the District shall release all funds unobligated as of the effective date of such termination and shall further release as they become available obligated funds for which no claim for payment is made in a timely manner. Any funds so released will be used by the Commission to supplement in accordance with Chapter 2, Section 002 the funds apportioned to Participating Districts.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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CHAPTER 3 – APPLICATION AND ELIGIBILITY FOR FUNDS

001. ESTABLISHING PROJECT ELIGIBILITY. Landowners will be eligible for State Cost-Share Funds only for the types of Projects and Practices designated as eligible for such purposes by the Commission and Participating District in accordance with Neb. Rev. Stat. § 2-1579(3).

002. APPLICATION FOR ASSISTANCE. To be eligible for cost-share assistance, a Landowner must make application on forms provided by the Department.

003. CERTIFICATION OF PRACTICES. Before the Board approves the application, a technician qualified to assess the practicability and need for the Projects or Practices for which assistance is requested shall certify that they are feasible and that the estimated quantities are practical and reasonable. If such technician is other than an individual employed for such purposes by the District or by the NRCS, the qualifications of such technician will be established to the Board's satisfaction prior to approval of the application.

004. AVAILABILITY OF FEDERAL FUNDS. Except for funds to be obligated by the Commission in accordance with Chapter 2, Section 001, Subsection 001.03, applications cannot be approved by the Board unless it determines that federal funds were not available for the proposed Project or Practice at the time the application was submitted by the Landowner. Federal funds will be deemed to be unavailable in the county where the land is located if all such funds then available for obligation in such county through federal cost-sharing programs have been obligated or if the particular Project or Practice proposed is not eligible for federal cost-sharing funds in that county, but is eligible for State Cost-Sharing funds. Federal cost-sharing funds will also be deemed to be unavailable to the extent that the maximum allowable dollar amount available from a federal cost-sharing program to individual Landowners in a given year has limited or will limit the Landowner's federal cost-share payment to an amount less than that to which such Landowner would have been entitled in the absence of such a dollar limitation. In the event of the utilization of both state and federal cost-share funds on the same Project or Practice, the State Cost-Share Funds provided to the Landowner may not exceed the amount which ineligible contributors are authorized to provide by federal regulations and operating procedures.

005. FEDERAL MULTI-YEAR AGREEMENTS. Notwithstanding any provision of Chapter 3, Section 004, federal cost-sharing funds will be deemed to be unavailable for a Project or Practice which is included in a federal multi-year cost-sharing agreement or contract when federal maximum dollar amounts for that type of Project or Practice or that contract have been or are to be paid from federal cost-sharing funds.

006. COMPLIANCE WITH APPLICABLE LAWS. In the installation or application of any Eligible Project or Practice the Landowner is solely responsible for assuring compliance with any applicable federal, state, or local laws; ordinances; and rules or regulations. The Landowner is also solely responsible for obtaining all permits, licenses, or other instruments of permission required prior to the installation of the proposed Project or Practice. Practices may be adopted to provide assistance with costs of construction or costs to modify a project so that small dams are exempt from the requirements of obtaining a permit, license, or other permission required by federal, state or local laws; ordinances; and rules or regulations. Additionally, practices may be adopted to provide assistance with costs to physically modify a project so that it becomes in compliance with applicable state law, or is decommissioned, removed, abandoned, or breached.

007. GROUP PROJECT OR PRACTICES. In the event that the most appropriate solution to the needs addressed by the Act requires the Eligible Projects or Practices to be located on or across the property lines of different Landowners, and when such Landowners desire to jointly install, operate, and maintain such needed Projects or Practices, State Cost-Share Funds may be used to share costs when the following provisions have been satisfied. In addition, when two or more Landowners intend to participate financially in the installation of a Project or Practice located wholly on the property of one Landowner, the procedures outlined in this Section may be used, but are not required.

007.01 a group planning agreement prepared by or on behalf of Landowners must be signed and submitted by the Landowners involved and approved by the Board;

007.02 if the proposed Projects or Practices are approved by the Board, the Landowners shall arrange for carrying out the Projects or Practices by securing and recording any necessary easements and by agreeing to a division of the costs and cost-share payments;

007.03 one member of the group will be designated as the group representative to file the application, which will be accompanied by a written statement describing the arrangements agreed to under Subsection 007.02 above;

007.04 the group representative will make arrangements to have the Project or Practice installed, make payments, and obtain receipts from vendors;

007.05 the group representative will submit the claim for payment;

007.06 payment will be made to the group representative;

007.07 the division of cost-share assistance provided will be made by the group representative in the manner indicated in the agreement previously reached among the members of the group;

007.08 a cost-share assistance agreement must be signed by each member of the group on whose land a portion of the Project or Practice has been installed; and

008. TERMINATION DATE. All applications will specify a termination date that shall be no more than nine months from the date the Landowner's application is approved by the Board. Claims for payment received after such termination date will not be honored unless an extension, not to

exceed an additional three months' time period, is approved by the Board by amendment to the original application.

009. APPLICATION AMENDMENTS.

009.01. Application amendments will be appropriate for any of the following reasons:

009.01(A) to increase or decrease consistent with the responsible technician's certification pursuant to Chapter 3, Section 003 the quantities of eligible Projects or Practices needed and/or the amount of State Cost-Share funds estimated on the original application;

009.01(B) to extend the termination date indicated on the original application consistent with Chapter 3, Section 008; and

009.01(C) to cancel the agreement by mutual consent.

009.02. A copy of any amendment will be furnished to each party receiving a copy of the original agreement and the Board will approve each amendment before it may become effective.

010 NEED FOR ADDITIONAL REVIEW. The Commission may identify Projects or Practices for which review by an entity in addition to the District are required before the Board may approve applications, or any amendments thereto, pursuant to Chapter 6, Section 002, or may approve claims for payment pursuant to Chapter 6, Section 005. In the event the Commission takes such action, the Department, within five working days thereafter, will notify the affected Districts and as soon as possible, will direct the affected Districts concerning the process for future acceptance and approval of applications, amendments, and claims for payment which include such Projects or Practices.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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CHAPTER 4 – DESIGN, LAYOUT, AND CONSTRUCTION OF PROPOSED PROJECTS AND PRACTICES AND OPERATION AND MAINTENANCE

001. TECHNICAL SPECIFICATIONS. Unless the Commission provides otherwise for specific Projects and Practices, specifications set forth in the NRCS Field Office Technical Guide are to be used as the basis for determining need and practicability, preparing plans and specifications, designing and laying out, and certifying the proper installation or application of such Projects and Practices. Specifications for additional Projects and Practices not set forth in the NRCS Field Office Technical Guide and modifications to those included in such Technical Guide may be considered and authorized by the Commission at the request of the District. Project and Practice description and specification information will be on file in the District office and at all such places as application forms are made available.

001.01. Districts proposing to utilize State Cost-Share Funds for the purpose of controlling erosion and sediment loss from construction and development of lands being converted to urban use will submit to the Department a list of practices approved by the Board for such purpose. The Department will consider and authorize from such list those practices which in its judgment most effectively accomplish the goal of controlling erosion and sediment loss from construction and development of lands being converted to urban use.

002. INSPECTIONS AND CERTIFICATIONS. Following installation or application of the proposed Project or Practice, a responsible technician will certify to the District that the Project or Practice was properly installed or applied. If the District does not receive a technician's certification, it shall not approve any claim to the Department for payment regarding such Project or Practice. If the technician responsible for complying with any portion of this Section is different from the technician who originally certified the feasibility of the Project or Practice in accordance with Chapter 3, Section 003, and if they are not employed for such purposes by the District or by NRCS, the technician's qualifications must be established to the Board's satisfaction prior to processing any claim for payment.

003. OPERATION AND MAINTENANCE BY LANDOWNER. Except as provided in Chapter 3, Section 004, the Landowner will be responsible for the operation and maintenance of all Projects and Practices constructed with assistance from the Fund and the Landowner will be expected to maintain the same in good operating condition to assure their continued effectiveness for the purpose or purposes for which they were installed.

004. OPERATION AND MAINTENANCE BY DISTRICT. If on any particular proposed Project or Practice, the District determines that Landowner assumption of all operation and maintenance responsibilities would constitute an undue burden upon such Landowner or would not assure operation or maintenance adequate to protect such Project or Practice from failure, the District may agree to be or require that it be responsible for all or a part of such operation and maintenance and may prior to and as a condition for approval of an application, require the Landowner to provide the District with the right of access necessary to perform such operation or maintenance.

005. COST-SHARE ASSISTANCE AGREEMENT. As a condition for receiving any State Cost-Share Funds for Eligible Projects or Practices, the Landowner will prior to submission of a claim for reimbursement, enter into an agreement providing that if a conservation practice is terminated or a Project or Practice is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the District, for a period of ten years after the date of receiving payment, the Landowner shall refund to the Fund the full amount of the State Cost-Share Funds previously received for the Project or Practices or portion thereof which has been thus terminated, removed, altered, or modified.

005.01. To be eligible for State Cost-Share Funds for practices authorized under Subsection 001.01 of this Chapter, the Landowner must enter into an agreement providing that authorized practices will be installed and adequately maintained or replaced at the Landowner's expense until 95 percent of the site is permanently stabilized, as certified by a technician identified under Section 002 of this Chapter.

006. REQUESTS FOR TERMINATION, REMOVAL, ALTERATIONS, MODIFICATIONS. A Landowner may request the District's approval of the termination, removal, alteration, or modification of the Project or Practice at any time during the 10-year period following receipt of payment. In determining whether to approve or disapprove such action, the District will consider:

006.01 the value of the Project or Practice in conserving soil and water resources or protecting water quality;

006.02 the extent to which such Project or Practice hinders the highest and best use of the land upon which such Project or Practice is located;

006.03 whether alternative forms of soil and water conservation or water quality protection measures have been or are to be constructed or implemented; and

006.04 the time remaining in the designed life of the Project or Practice.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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CHAPTER 5 – COST-SHARE RATES AND REIMBURSEMENT PROCEDURES

001. COST-SHARE RATES. The District may establish any cost-share rates for Eligible Projects and Practices up to 75 percent of Average Unit Cost. However, except as provided in Chapter 2, Section 001, Subsection 001.03, no payment shall exceed 75 percent of the actual cost of the Project or Practice installed or applied. Participating Districts shall notify the Department by February 1 of each year of the cost-share rates to be utilized for reimbursement purposes during the next ensuing year. In the event that Average Unit Costs are not established in accordance with Chapter 5, Section 002, or that Average Unit Costs which are available are determined by the Commission to be unreliable because of the site-specific nature of the costs of a certain type of Project or Practice, the cost-share rate in effect will be applied to actual cost, and average cost will not be utilized and need not be calculated on individual applications.

001.01. At the time a District submits to the Department a list of practices as provided for under Chapter 4, Subsection 001.01, the District will identify the estimated unit cost of each proposed practice, including installation, in such District and the District's proposed cost share amount for each unit to be installed.

002. AVERAGE COSTS. Unless a District establishes and informs the Department of lower Average Unit Costs, the Average Unit Costs for a county shall be identical to any established and utilized by NRCS for the same type of Projects and Practices in that county. If Average Unit Costs are not established by NRCS, the Commission itself may establish Average Unit Costs for such Project or Practice in that county. Except for applications filed with the Commission in accordance with Chapter 2, Subsection 001.03, all applications will be based upon the then current Average Unit Costs. Once an application has been completed by a Landowner, the same Average Unit Costs in effect at the time the application was completed will be utilized for determining the cost-share payment to which each Landowner is entitled unless the District and the Landowner agree to use updated Average Unit Costs.

003. ELIGIBLE COSTS. Except for costs incurred in employing the services of a technician as required by these rules or as otherwise may be limited by the Department, all necessary costs incurred by the Landowner in installing or applying an approved Project or Practice will be eligible for cost-sharing. Such costs include machine hire or the costs of the use of the Landowner's own equipment, needed materials delivered to the site, and labor required to construct the project.

004. DOCUMENTING COSTS. All authorized items of costs that the Landowner desires State Cost-Share Funds will be itemized on a statement submitted to the District by the Landowner in such form as required by the Department. Costs incurred by the Landowner in furnishing their own labor, material, or equipment for use on a Project or Practice should be listed in a certified statement itemizing such items and showing unit cost for each item and the total amount for which payment is claimed.

005. CLAIM FOR PAYMENT. The Landowner will after the Project or Practice has been completed and certified by the responsible technician complete a claim for payment. A copy of the document(s) required by Chapter 5, Section 004, will be attached to such claim for payment prior to submission to the District. A claim for payment will not be accepted unless the Landowner has signed the portion of the claim form required by Chapter 4, Section 005.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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CHAPTER 6 – DISTRICT ADMINISTRATION OF THE FUND

001. APPLICATION. Chapter 6, Sections 001 through 009 apply only to Districts that have entered into a Memorandum of Understanding with the Department agreeing to assist the Department in Administration of the Fund.

002. BOARD ACTION ON APPLICATION. The Board will review each application and any and all amendments thereto and will approve or disapprove each application or amendment. Such action will be recorded in the official minutes of the meeting and the Landowners shall be notified of such action within 10 days thereafter. For any Project or Practice subject to additional review in accordance with Chapter 3, Section 010, the Board will not approve an application or an amendment thereto except in compliance with direction given by the Department.

003. APPROVING APPLICATIONS. Except for applications pursuant to Chapter 2, Section 001, Subsection 001.03, applications may be approved by the Board only when there is a sufficient unobligated Fund balance to provide the estimated cost-share amount based upon the average cost information indicated on the application. The Board may if it desires give preference to the construction of Projects or Practices that will in its judgment provide the greatest public benefit in that District. Examples of such Projects and Practices include those that reduce runoff and sediment damage to lakes, streams, reservoirs, roads, highways, or other public improvements; and those that reduce demands on or contamination of the groundwater reservoir and/or provide enhanced recharge to an aquifer with a declining water table.

004. RECORD KEEPING. The District must maintain a record of funds obligated as applications are approved based upon estimated costs. A cost-share ledger will be kept current showing the balance of unobligated funds and such other information as the Department determines is necessary to provide for proper documentation of all expenditures from the Fund.

005. DISTRICT REVIEW OF CLAIM FOR PAYMENT. Upon completion of an approved Project or Practice, the District will review the claim for payment prepared by the Landowner in accordance with Chapter 5, Section 005, and will if it finds that the Project or Practice was properly installed, that all other conditions have been satisfied, and that the claim has been properly completed and is accompanied by all required supporting documentation, approve the claim and certify the same to the Department with all supporting documentation attached. For any Project or Practice subject to additional review in accordance with Chapter 3, Section 010, the Board will not approve a claim for payment except in compliance with direction given by the Department. If the District determines that the claim is improperly prepared or that other deficiencies exist, it will so notify the Landowner and will provide the Landowner with a reasonable opportunity to correct such deficiencies and to resubmit the claim for payment.

006. DISTRICT ASSISTANCE TO LANDOWNER. The District will provide such assistance as it deems appropriate to the Landowner in the completion of necessary forms and in all matters relating to completion of Eligible Projects and Practices.

007. FILING SYSTEM. To provide for efficient processing of requests for State Cost-Share Funds and for maintenance of necessary documentation of matters relating to the administration of the Fund, the District will develop and maintain a filing system that includes copies of all forms completed by the Landowner and all other information deemed relevant to the installation and application of the Eligible Projects and Practices and to the cost-sharing assistance provided. Such files will be available for inspection by Department personnel and by representatives of the State Auditor's Office during normal business hours of the District.

008. REPORTS. The District shall no later than the fifth working day of March, July, and November of each year submit a report to the Department indicating the status of State Cost-Share Funds as shown on each cost-share ledger required by Chapter 6, Section 004 at the close of the last day of the preceding month.

009. DELEGATION OF RESPONSIBILITIES BY BOARD. The Board may delegate to the District manager or to a member or sub-committee of the Board all or any of the authorities and responsibilities assigned to it by these rules except the establishment of preferred Projects and Practices in accordance with Chapter 6, Section 003 and the limitation of the types of Projects and Practices eligible for assistance in accordance with Chapter 3, Section 001. The Department will be notified in writing of any such delegation.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585

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CHAPTER 7 – DEPARTMENT ADMINISTRATION OF THE FUND

001. VIOLATIONS OF COST-SHARING ASSISTANCE AGREEMENT. In the event that the Department is notified of an alleged violation of the cost-sharing assistance agreement, a representative of the Department and/or District will investigate the alleged violation and will report the results of such investigation to the Department. If following the investigation it appears as though a violation has in fact occurred, the Department will notify the Landowner and make demand for repayment of the appropriate amount to the Fund within 30 days thereafter. The Landowner may within the time specified for such repayment, contest the occurrence of a violation and may request that the Department conduct a formal hearing to reconsider such demand for payment. Such hearing shall be conducted in accordance with Title 454 of the Department Rules. If following the hearing, the Department determines that the violation did occur, it will notify the Landowner in accordance with the provisions of Title 454 and will renew the demand for repayment. If repayment is not provided or all deficiencies corrected at the Landowner's expense within the time specified, appropriate legal action may be taken by the Department to recover such amount.

002. REPORT TO DISTRICTS. The Department will prepare on a quarterly basis a report to each Participating District indicating the payments that have been made from the Fund during the preceding quarter and any other information determined by the Department to be of value to the Districts regarding administration of the Fund.

Enabling Legislation: Neb. Rev. Stat. §§ 2-1575 to 2-1585