

(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, LB 1098, § 3.

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) When the commission has approved an allocation of funds to a program, project, or activity, the Department of Natural Resources shall establish a subaccount in the Water Sustainability Fund and credit the entire amount of the allocation to the subaccount. Individual subaccounts shall be established for each program, project, or activity approved by the commission. The commission may approve a partial allocation to a program, project, or activity based upon available unallocated funds in the Water Sustainability Fund, but the amount of unfunded allocations shall not exceed eleven million dollars. Additional allocations to a program, project, or activity shall be credited to the same subaccount as the original allocation. Subaccounts shall not be subject to transfer out of the Water Sustainability Fund, except that the commission may authorize the transfer of excess or unused funds from a subaccount and into the unreserved balance of the fund.

(5) 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.

(6) 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.

(7) 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, LB 1098, § 4; Laws 2015, LB 661, § 21; Laws 2016, LB 957, § 1.
Effective Date: March 31, 2016.

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, LB 1098, § 5.

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, LB 1098, § 6.

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, LB 1098, § 7.

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, LB 1098, § 8.

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, LB 1098, § 9.

2-1513. Water Sustainability Fund; legislative analysis.

The Appropriations Committee of the Legislature shall, beginning with the FY2023-25 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.