

COMPILATION OF STATUTES
REGARDING THE

DEPARTMENT OF NATURAL RESOURCES

GENERAL AUTHORITIES

- Includes:
- I. Chapter 61, Article 2: General Administration
 - II. Chapter 61, Article 3: Perkins County Canal Project Fund
 - III. Chapter 61, Article 4: Jobs and Economic Development Initiative Act
(also referred to as the JEDI Act)
 - IV. Chapter 61, Article 5: Public Water and Natural Resources Project
Contracting Act
 - V. Chapter 2, Article 4: Resilient Soils and Water Quality Act
 - VI. Chapter 2, Article 4: Nitrogen Reduction Incentive Act
 - VII. Chapter 2, Article 46: Erosion and Sediment Control Act
 - VIII. Chapter 46, Article 14: Decommissioning Fund
 - IX. *Neb. Rev. Stat.* §§ 2-1568 – 2-1569: Data Bank
 - X. *Neb. Rev. Stat.* §§ 2-1599 – 2-15,106: Water Planning and Review Process
 - XI. *Neb. Rev. Stat.* § 2-2626: Pesticide Act
 - XII. *Neb. Rev. Stat.* § 2-3254: Improvement Project Areas
 - XIII. *Neb. Rev. Stat.* § 2-32,102: Interstate Agreements
 - XIV. *Neb. Rev. Stat.* § 2-4215: Conservation Corporation
 - XV. *Neb. Rev. Stat.* § 2-4901: Climate Assessment Response Committee
 - XVI. *Neb. Rev. Stat.* § 25-1062.01: Courts Civil Procedure
 - XVII. *Neb. Rev. Stat.* § 33-105: Fees
 - XVIII. *Neb. Rev. Stat.* § 37-707: State Game Refuges
 - XIX. *Neb. Rev. Stat.* § 37-807: Nongame and Endangered Species Act
 - XX. *Neb. Rev. Stat.* § 46-1,164 - 46-1,165: Surface Water Infrastructure
Facilities Fund
 - XXI. *Neb. Rev. Stat.* §§ 46-2,140 – 46-2,141: Republican River Basin
Sustainability Task Force
 - XXII. *Neb. Rev. Stat.* § 46-1217: Water Well Contractors Licensing Board
 - XXIII. *Neb. Rev. Stat.* § 81-101: Governor and Administrative Departments
 - XXIV. *Neb. Rev. Stat.* § 81-102: Department Heads
 - XXV. *Neb. Rev. Stat.* § 86-570: Geographic Information Systems Council
 - XXVI. *Neb. Rev. Stat.* § 28-106: Classification of Penalties

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Disclaimer: This booklet was compiled for the convenience of Department staff and is not intended to replace Nebraska's Reissue Revised Statutes. It is always recommended that one research the actual statutes when making a determination. This book does not always contain all statutes regarding a specific topic and it may become out-of-date when statutes are amended, adopted, or repealed.

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GENERAL ADMINISTRATION

61-201. Director of Natural Resources; qualifications.

The Director of Natural Resources shall be qualified by training and business experience to manage and supervise the Department of Natural Resources. The director shall be a professional engineer as provided in the Engineers and Architects Regulation Act and have had at least five years' experience in a position of responsibility in irrigation work.

Source: Laws 1957, c. 365, § 19, p. 1241; Laws 1959, c. 219, § 2, p. 767; Laws 1969, c. 386, § 1, p. 1355; Laws 1997, LB 622, § 75; R.S.1943, (1998), § 46-701; Laws 2000, LB 900, § 1.

Cross Reference

Engineers and Architects Regulation Act, see section 81-3401.

61-202. Director of Natural Resources; employment of personnel.

The Director of Natural Resources may employ such personnel, including legal and technical advisors, as necessary to carry out the duties required of the director.

Source: Laws 1957, c. 365, § 20, p. 1241; R.S.1943, (1998), § 46-702; Laws 2000, LB 900, § 2.

61-203. Director of Natural Resources; seal; certified copies of records; admissibility as evidence.

The Director of Natural Resources shall adopt a seal. Copies of all records or other instruments in the Department of Natural Resources when certified by the department as true copies and bearing the seal thereof shall be received in any court as prima facie evidence of the original record or instruments.

Source: Laws 1957, c. 365, § 21, p. 1241; R.S.1943, (1998), § 46-703; Laws 2000, LB 900, § 3.

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.

61-205. Department of Natural Resources; general grant of authority.

The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Department of Water Resources prior to July 1, 2000. The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Nebraska Natural Resources Commission prior to July 1, 2000, except as otherwise specifically provided.

The Director of Natural Resources and his or her duly authorized assistants shall have access at all reasonable times to all dams, reservoirs, hydroelectric plants, water measuring devices, and headgates, and other devices for diverting water, for the purpose of performing the duties assigned to the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 1, p. 834; C.S.1922, § 8420; C.S.1929, § 81-6301; R.S.1943, § 46-208; Laws 1973, LB 186, § 1; R.S.1943, (1998), § 46-208; Laws 2000, LB 900, § 5; Laws 2006, LB 1226, § 29.

Department is the successor of prior boards dealing with irrigation. *State v. Nielsen*, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation exercised powers and functions of former Board of Irrigation. *In re Claim Affidavit of Parsons*, 148 Neb. 239, 27 N.W.2d 190 (1947).

61-206. Department of Natural Resources; jurisdiction; rules and regulations; hearings; orders; powers and duties.

(1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. The department may adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request information relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It may have hearings on complaints, petitions, or applications in connection with any of such matters. Such hearings shall be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing

shall be held at the request of any party to the proceeding if the request is made within thirty days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages, cities, counties, and natural resources districts in securing, planning, and developing information on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 14, p. 839; C.S.1922, § 8433; C.S.1929, § 81-6314; R.S.1943, § 46-209; Laws 1957, c. 197, § 1, p. 695; Laws 1959, c. 219, § 1, p. 766; Laws 1981, LB 109, § 1; Laws 1984, LB 897, § 2; Laws 1984, LB 1106, § 36; Laws 1991, LB 772, § 4; Laws 1995, LB 350, § 1; R.S.1943, (1998), § 46-209; Laws 2000, LB 900, § 6; Laws 2004, LB 962, § 102; Laws 2008, LB727, § 1; Laws 2019, LB319, § 3.

It is proper to join the Department of Natural Resources as a party to a hearing challenging the validity of the department's administration of water. In re 2007 Appropriations of Niobrara River Waters, 283 Neb. 629, 820 N.W.2d 44 (2012).

When relevant to a hearing before the Department of Natural Resources, the issue of abandonment or forfeiture should be heard and decided, regardless of the manner in which the proceeding was initiated. In re 2007 Appropriations of Niobrara River Waters, 283 Neb. 629, 820 N.W.2d 44 (2012).

The Department of Natural Resources does not lose jurisdiction to determine the validity of a power district's appropriation right even if an owner of a superior preference right who is challenging the validity of the power district's right has also initiated condemnation proceedings as outlined in section 70-672. In re 2007 Appropriations of Niobrara River Waters, 278 Neb. 137, 768 N.W.2d 420 (2009).

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

Even in the absence of statutory authority, an administrative agency has the power to reconsider its own decisions. However, except where the motion to reconsider is one based on newly discovered evidence, the agency's power

to reconsider its own order exists only until the aggrieved party files an appeal or the statutory time has expired. A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. Where there has been no initial hearing, a motion for a hearing pursuant to this section cannot be considered one for rehearing. City of Lincoln v. Twin Platte NRD, 250 Neb. 452, 551 N.W.2d 6 (1996).

Department of Water Resources has exclusive original jurisdiction to hear and adjudicate all matters pertaining to water rights. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

Department of Water Resources has exclusive original jurisdiction over application for allowance of water rights. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Department has jurisdiction over cancellation of water rights. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Department cannot by rule extend time allowed to apply water to a beneficial use. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

Under former law, appeal from decision refusing to cancel water rights on ground of nonuser may be properly taken to district court instead of directly to Supreme Court. State v. Oliver Bros., 119 Neb. 302, 228 N.W. 864 (1930).

61-207. Department of Natural Resources; decisions; appeal; time; procedure.

If any county, party, or parties interested in irrigation or water power work affected thereby are dissatisfied with the decision or with any order adopted, such dissatisfied county, party, or parties may appeal to the Court of Appeals to reverse, vacate, or modify the order complained of. The procedure to obtain such reversal, modification, or vacation of any such decision or order upon which a hearing has been had before the Department of Natural Resources shall be governed by the same provisions in force with reference to appeals and error proceedings from the district court. The evidence presented before the department as reported by its official stenographer and reduced to writing, together with a transcript of the record and pleadings upon which the decision is based, duly certified in such case under the seal of the department, shall constitute the complete record and the evidence upon which the case shall be presented to the appellate court. The time for

perfecting such appeal shall be limited to thirty days after the rendition of such decision or order, and the appellate court shall advance such appeal to the head of its docket.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 15, p. 840; C.S.1922, § 8434; C.S.1929, § 81-6315; R.S.1943, § 46-210; Laws 1961, c. 227, § 1, p. 671; Laws 1973, LB 186, § 2; Laws 1984, LB 897, § 3; Laws 1987, LB 33, § 9; Laws 1991, LB 732, § 105; Laws 1992, LB 360, § 12; R.S.1943, (1998), § 46-210; Laws 2000, LB 900, § 7.

Cross Reference

Actions appealed to Supreme Court, advanced for argument, see section 25-1920.

A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. *City of Lincoln v. Twin Platte NRD*, 250 Neb. 452, 551 N.W.2d 6 (1996).

Regarding the granting of water diversion applications, the court's standard of review is to (1) search for errors appearing in the record; (2) determine whether the judgment conforms to law and whether it is supported by competent and relevant evidence; and (3) determine whether the director's action was arbitrary, capricious, or unreasonable. In re Applications A-15145, A-15146, A-15147, and A-15148, 230 Neb. 580, 433 N.W.2d 161 (1988).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record. In re Application U-2, 226 Neb. 594, 413 N.W.2d 290 (1987).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record; i.e., does the judgment conform to law, is it supported by competent and relevant evidence, and was the action neither arbitrary, capricious, nor unreasonable? To the extent that In re Applications A-15995 and A-16006, 223 Neb. 430, 390 N.W.2d 506 (1986), holds to the contrary, it is overruled. In re Application A-15738, 226 Neb. 146, 410 N.W.2d 101 (1987).

Under former law, appeal lies from final order of Department of Water Resources directly to Supreme Court. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Evidence not offered at hearing has no place in bill of exceptions. *State v. Birdwood Irr. Dist.*, 154 Neb. 52, 46 N.W.2d 884 (1951).

Under former law, the Department of Roads and Irrigation was neither a necessary nor a proper party to a proceeding on appeal to secure a reversal, modification, or vacation of an order made and entered by it. *Cozad Ditch Co. v. Central Nebraska Public Power & Irr. Dist.*, 132 Neb. 547, 272 N.W. 560 (1937).

Under former law, appeal in proceedings before Department of Roads and Irrigation to cancel water right on ground of abandonment from decision refusing cancellation could be properly taken to district court instead of to Supreme Court. *State v. Oliver Bros.*, 119 Neb. 302, 228 N.W. 864 (1930).

The proper standard of review for an appellate court to follow in cases involving appeals from the Department of Water Resources under this section is to search only for errors appearing on the record, i.e., to determine whether the judgment conforms to law, is supported by relevant evidence, and is not arbitrary, capricious, or unreasonable. In re Applications A-17004 et al., 1 Neb. App. 974, 512 N.W.2d 392 (1993).

61-208. Department of Natural Resources; powers; survey of streams.

The Department of Natural Resources may make surveys of streams showing location of possible water power developments and irrigation projects.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 30, p. 845; C.S.1922, § 8449; C.S.1929, § 81-6330; R.S.1943, § 46-212; Laws 1984, LB 897, § 4; R.S.1943, (1998), § 46-212; Laws 2000, LB 900, § 8.

61-209. Department of Natural Resources; powers; water data collection; fee.

The Department of Natural Resources may conduct special projects for water data collection on behalf of other state agencies, political subdivisions, or federal agencies. Such data shall be public information. The department may charge a fee to cover in whole or in part the costs of collecting, analyzing, and publishing the data and such fees shall be deposited in the Department of Natural Resources Cash Fund.

Source: Laws 1983, LB 33, § 1; R.S.1943, (1998), § 46-212.01; Laws 2000, LB 900, § 9.

61-210. Department of Natural Resources Cash Fund; created; use; investment.

The Department of Natural Resources Cash Fund is created. The State Treasurer shall credit to such fund such money as is specifically appropriated or reappropriated by the Legislature. The State Treasurer shall also credit such fund with payments, if any, accepted for services rendered by the department and fees collected pursuant to subsection (6) of section 46-606 and section 61-209. The funds made available to the Department of Natural Resources by the United States, through the Natural Resources Conservation Service of the Department of Agriculture or through any other agencies, shall be credited to the fund by the State Treasurer. 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. The Department of Natural Resources shall allocate money from the fund to pay costs of the programs or activities of the department. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on the fund, and the State Treasurer shall countersign and pay from, but never in excess of, the amounts to the credit of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

Source: Laws 1937, c. 8, § 13, p. 109; C.S.Supp.,1941, § 2-1913; R.S.1943, § 2-1547; Laws 1959, c. 6, § 25, p. 90; Laws 1969, c. 584, § 28, p. 2358; Laws 1973, LB 188, § 2; Laws 1987, LB 29, § 2; Laws 1995, LB 7, § 6; Laws 1999, LB 403, § 2; R.S.Supp.,1999, § 2-1547; Laws 2000, LB 900, § 10; Laws 2001, LB 667, § 26; Laws 2002, LB 458, § 8; Laws 2005, LB 335, § 81; Laws 2007, LB 701, § 26; Laws 2009, First Spec. Sess., LB 3, § 38.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

61-211. Department of Natural Resources; powers; measuring devices; gauge height reports; requirements; violation; penalty.

The Department of Natural Resources may direct managers or operators of interstate ditches to construct and maintain suitable measuring devices at or near the state line in Nebraska. A manager or operator shall within thirty days after receipt of notice from the department construct and complete installation of such a measuring device and shall furnish daily gauge height reports

to the department from the beginning to the end of the irrigation season, in such form and manner as recommended by the department. Failure of any manager or operator of an interstate ditch to comply with this section shall be a Class V misdemeanor.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 31, p. 846; C.S.1922, § 8450; C.S.1929, § 81-6331; R.S.1943, § 46-213; Laws 1977, LB 40, § 256; Laws 1991, LB 276, § 1; R.S.1943, (1998), § 46-213; Laws 2000, LB 900, § 11.

61-212. Water divisions; denomination.

The State of Nebraska is hereby divided into two water divisions, denominated water division No. 1 and water division No. 2, respectively.

Source: Laws 1895, c. 69, § 1, p. 244; R.S.1913, § 3378; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 10, p. 833; C.S.1922, § 8415; C.S.1929, § 46-510; R.S.1943, § 46-215; R.S.1943, (1998), § 46-215; Laws 2000, LB 900, § 12.

For administrative purposes, state is divided into two water divisions. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-213. Water division No. 1; boundaries.

Water division No. 1 shall consist of (1) all the lands of the state drained by the Platte Rivers and their tributaries lying west of the mouth of the Loup River and (2) all other lands lying south of the Platte and South Platte Rivers that may be watered from other superficial or subterranean streams not tributary to the Platte River.

Source: Laws 1895, c. 69, § 2, p. 244; R.S.1913, § 3379; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 11, p. 833; C.S.1922, § 8416; C.S.1929, § 46-511; R.S.1943, § 46-216; R.S.1943, (1998), § 46-216; Laws 2000, LB 900, § 13.

61-214. Water division No. 2; boundaries.

Water division No. 2 shall consist of (1) all lands that may be watered from the Loup, White, Niobrara, and Elkhorn Rivers and their tributaries and (2) all other lands of the state not included in any other water division.

Source: Laws 1895, c. 69, § 3, p. 245; Laws 1911, c. 153, § 2, p. 498; R.S.1913, § 3380; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 12, p. 833; C.S.1922, § 8417; C.S.1929, § 46-512; R.S.1943, § 46-217; R.S.1943, (1998), § 46-217; Laws 2000, LB 900, § 14.

Snake River is within the Niobrara River basin or watershed. *Ainsworth Irr. Dist. v. Bejot*, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-215. Water divisions; division supervisors.

There shall be one or more division supervisors acting for the Department of Natural Resources to administer the public water of the state in the water divisions created by section 61-212. Such a division supervisor, acting for the department, shall have the immediate direction and control of the distribution of water in such manner as directed by the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 3, p. 834; C.S.1922, § 8422; C.S.1929, § 81-6303; R.S.1943, § 46-218; Laws 1953, c. 157, § 1, p. 495; Laws 1987, LB 140, § 2; R.S.1943, (1998), § 46-218; Laws 2000, LB 900, § 15.

61-216. Water divisions; division supervisors; duties.

The division supervisor or supervisors shall, under the direction of the Department of Natural Resources, see that the laws relative to the distribution of water are executed in accordance with the rights of priority of appropriation.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 4, p. 835; C.S.1922, § 8423; C.S.1929, § 81-6304; R.S.1943, § 46-219; Laws 1953, c. 157, § 2, p. 495; R.S.1943, (1998), § 46-219; Laws 2000, LB 900, § 16.

Under former law, Department of Roads and Irrigation was authorized to shut and lock headgates of junior appropriators when there was not sufficient water to supply the needs of senior appropriators. *Platte Valley Irr. Dist. v. Tilley*, 142 Neb. 122, 5 N.W.2d 252 (1942).

Right to shut and lock headgates is not exclusive remedy. *Farmers & Merchants' Irr. Co. v. Cozad Irr. Co.*, 65 Neb. 3, 90 N.W. 951 (1902).

61-217. Repealed. Laws 2010, LB 682, § 1.

61-218. Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.

(1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. 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.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred 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, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, (e) allocated pursuant to section 81-15,175, and (f) received by the state for settlement of claims relating to interstate river compacts or decrees.

(3)(a) The fund shall be expended by the department in any area that has adopted an integrated management plan as provided in section 46-715.

(b) The fund shall be used in any such area:

(i) To aid management actions taken to reduce consumptive uses of water;

(ii) To enhance streamflows or ground water recharge;

(iii) For any other activity deemed necessary by the department in the development and implementation of an integrated management plan;

(iv) For purposes of the Resilient Soils and Water Quality Act; or

(v) For purposes of projects or proposals described in the grant application as set forth in subdivision (2)(h) of section 81-15,175.

(c) To the extent funds are not expended pursuant to subdivision (b) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement.

(d) The fund shall not be used to pay for administrative expenses or any salaries for any political subdivision.

(4) It is the intent of the Legislature that three million three hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2011-12 through FY2022-23, except that for FY2012-13 it is the intent of the Legislature that four million seven hundred thousand dollars be transferred from the General Fund to the Water Resources Cash Fund. It is the intent of the Legislature that the State Treasurer credit any money received from any Republican River Compact settlement to the Water Resources Cash Fund in the fiscal year in which it is received.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will achieve a sustainable balance of consumptive water uses or will assure compliance with an interstate compact or decree or a formal

state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components, including the local match as set forth in subdivision (5)(a) of this section.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit electronically an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

(a) Details regarding the use and cost of activities carried out by the department; and

(b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

(7)(a) Prior to the application deadline for fiscal year 2011-12, the Department of Natural Resources shall apply for a grant of nine million nine hundred thousand dollars from the Nebraska Environmental Trust Fund, to be paid out in three annual installments of three million three hundred thousand dollars. The purposes listed in the grant application shall be consistent with the uses of the Water Resources Cash Fund provided in this section and shall be used to aid management actions taken to reduce consumptive uses of water, to enhance streamflows, to recharge ground water, or to support wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(b) If the application is granted, funds received from such grant shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund for the purpose of supporting the projects set forth in the grant application. The department shall include in its grant application documentation that the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund into the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund for fiscal year 2013-14.

(c) It is the intent of the Legislature that the department apply for an additional three-year grant that would begin in fiscal year 2014-15, an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2017-18, and an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2020-21 if the criteria established in subsection (4) of section 81-15,175 are achieved.

(8) The department shall establish a subaccount within the Water Resources Cash Fund for the accounting of all money received as a grant from the Nebraska Environmental Trust Fund as the result of an application made pursuant to subsection (7) of this section. At the end of each calendar month, the department shall calculate the amount of interest earnings accruing to the subaccount and shall notify the State Treasurer who shall then transfer a like amount from the Water Resources Cash Fund to the Nebraska Environmental Trust Fund.

(9) Any funds transferred from the Nebraska Environmental Trust Fund to the Water Resources Cash Fund shall be expended in accordance with section 81-15,168.

(10) The State Treasurer shall transfer one million dollars from the Water Resources Cash Fund to the Nitrogen Reduction Incentive Cash Fund as soon as administratively possible after July 19, 2024, but before June 30, 2025, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2007, LB701, § 25; Laws 2009, First Spec. Sess., LB3, § 39; Laws 2010, LB689, § 1; Laws 2010, LB993, § 1; Laws 2011, LB229, § 1; Laws 2012, LB782, § 87; Laws 2012, LB950, § 1; Laws 2017, LB331, § 30; Laws 2018, LB945, § 15; Laws 2019, LB298, § 15; Laws 2023, LB818, § 12; Laws 2024, LB1368, § 9; Laws 2024, First Spec. Sess., LB3, § 22.

Note: Changes made by Laws 2024, LB1368, became effective July 19, 2024.

Note: Changes made by Laws 2024, First Spec. Sess., LB3, became effective August 21, 2024.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Environmental Trust Fund, see section 81-15,174.

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

Resilient Soils and Water Quality Act, see section 2-405.

61-219. Repealed. Laws 2010, LB 683, § 1.

61-222. Water Sustainability Fund; created; use; investment.

The Water Sustainability Fund is created in the Department of Natural Resources. The fund shall be used in accordance with the provisions established in sections 2-1506 to 2-1513 and for costs directly related to the administration of the fund. The Legislature shall not appropriate or transfer money from the Water Sustainability Fund for any other purpose, except that transfers may be made from the Water Sustainability Fund to the Department of Natural Resources Cash Fund and as a one-time transfer to the General Fund as described in this section.

The Water Sustainability Fund shall consist of money transferred to the fund by the Legislature, other funds as appropriated by the Legislature, and money donated as gifts, bequests, or other contributions from public or private entities. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by such department or

agency. 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. Prior to October 1, 2024, investment earnings from investment of money in the fund shall be credited to the fund. Beginning October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the General Fund.

It is the intent of the Legislature that twenty-one million dollars be transferred from the General Fund to the Water Sustainability Fund in fiscal year 2014-15 and that eleven million dollars be transferred from the General Fund to the Water Sustainability Fund each fiscal year beginning in fiscal year 2015-16.

The State Treasurer shall transfer one hundred seventy-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2021, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer four hundred twenty-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2021, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer five hundred thousand dollars from the Water Sustainability Fund to the General Fund on or before June 30, 2021, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer four hundred seventy-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2022, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer four hundred seventy-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2023, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2014, LB906, § 7; Laws 2015, LB661, § 31; Laws 2020, LB1009, § 4; Laws 2021, LB384, § 9; Laws 2021, LB507, § 6; Laws 2024, First Spec. Sess., LB3, § 23.

Effective Date: August 21, 2024

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

61-223. Water Sustainability Fund; legislative intent.

The Legislature finds that water sustainability programs, projects, and activities are complex, multiyear endeavors that require a stable source of state funding support in order for the required matching funds to be secured and for projects to be completed in a timely and successful manner. It is the intent of the Legislature that transfers of money from the General Fund to the Water Sustainability Fund be maintained at the level established in section 61-222 for a minimum of ten fiscal years.

Source: Laws 2015, LB 661, § 20.

61-224. Critical Infrastructure Facilities Cash Fund; created; use; investment.

There is hereby created the Critical Infrastructure Facilities Cash Fund in the Department of Natural Resources. The fund shall consist of funds appropriated or transferred by the Legislature. The fund shall be used by the Department of Natural Resources (1) to provide a grant to a natural resources district to offset costs related to soil and water improvements intended to protect critical infrastructure facilities within the district which includes military installations, transportation routes, and wastewater treatment facilities, (2) to provide a grant to an irrigation district for reimbursement of costs related to temporary repairs to the main canal and tunnels of an interstate irrigation system which experienced a failure, and (3) to provide a grant to an entity within a county with a population exceeding one hundred thousand inhabitants formed pursuant to the Interlocal Cooperation Act for the purpose of funding a portion of the cost of a wastewater system. Any funds remaining after all such project costs have been completely funded shall be transferred to the General Fund. Transfers may be made from the Critical Infrastructure Facilities Cash Fund to the General Fund at the direction of the Legislature. Any money in the Critical Infrastructure Facilities Cash 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, and any interest earned by the fund shall be credited to the General Fund.

Source: Laws 2016, LB 957, § 21; Laws 2018, LB 945, § 16; Laws 2020, LB 1009, § 5; Laws 2023, LB 818, § 13.

Cross References

Interlocal Cooperation Act, see section 13-801.

Nebraska Capital Expansion Act, see section 72-1269.

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

61-225. State flood mitigation plan; legislative findings.

The Legislature finds and declares that the State of Nebraska experienced a historic flood event in 2019. This flood event significantly impacted numerous communities and individual Nebraskans. Coordination and communication between state and local entities implementing flood mitigation strategies is essential to maximize federal funds for flood mitigation efforts.

Source: Laws 2020, LB 632, § 9.

61-226. State flood mitigation plan; scope.

The Department of Natural Resources shall develop a state flood mitigation plan as a stand-alone document to be annexed into the state hazard mitigation plan maintained by the Nebraska Emergency Management Agency. Such plan shall be structured in accordance with Federal Emergency Management Agency guidelines, and shall be comprehensive, collaborative, and statewide in scope with opportunities for input from diverse stakeholders.

Source: Laws 2020, LB 632, § 10.

61-227. State flood mitigation plan; plan development group; engage federal, state, and local agencies and other sources.

The Department of Natural Resources shall convene a plan development group which shall be housed and staffed for administrative purposes within such department. The Department of Natural Resources shall engage with federal, state, and local agency and community stakeholders in the development of the state flood mitigation plan, including, but not limited to, the Department of Transportation, the Department of Environment and Energy, the Department of Economic Development, the Department of Agriculture, the Nebraska Emergency Management Agency, natural resources districts, the United States Department of Agriculture, the United States Army Corps of Engineers, the United States Geological Survey, the Federal Emergency Management Agency, the University of Nebraska, representatives of counties, municipalities, and other political subdivisions, and the Natural Resources Committee of the Legislature. The Department of Natural Resources may engage other sources to provide technical expertise as needed.

Source: Laws 2020, LB 632, § 11.

61-228. State flood mitigation plan; department; duties.

The Department of Natural Resources shall:

(1) Evaluate the flood issues that occurred in 2019, and identify cost-effective flood mitigation strategies that should be adopted to reduce the disruption of lives and livelihoods and prioritize making Nebraska communities more resilient;

(2) Identify opportunities to implement flood hazard mitigation strategies with the intent to reduce the impact of flood events;

(3) Work to improve knowledge and understanding of available recovery resources while identifying potential gaps in current disaster program delivery;

(4) Identify potential available funding sources that can be accessed to improve the resilience of the state through flood mitigation and post-flood disaster recovery. The funding sources shall include, but not be limited to, assistance from (a) the Federal Emergency Management Agency's Flood Mitigation Assistance Grant Program, Building Resilient Infrastructure and Communities Grant Program, Hazard Mitigation Grant Program, Public Assistance Program, and Individual Assistance Program, (b) the United States Department of Housing and Urban Development's Community Development Block Grant Program and Community Development Block Grant Disaster Recovery Program, and (c) programs of the United States Department of Agriculture's Natural Resources Conservation Service. Identification of such funding sources shall be in addition to grants and cost-sharing programs available through other agencies that support flood hazard mitigation planning in communities;

(5) Compile a centralized list of critical infrastructure and state-owned facilities and identify those with the highest risk of flooding. In compiling such list, the Department of Natural Resources shall consult and collaborate with other state and local agencies that have information that identifies vulnerable facilities;

(6) Evaluate state laws, rules, regulations, policies, and programs related to flood hazard mitigation and development in flood hazard-prone areas to support the state's administration of the Federal Emergency Management Agency's National Flood Insurance Program, Community Rating System, and Risk Mapping, Assessment, and Planning Program;

(7) Examine existing law and, if necessary, recommend statutory or administrative changes to help ensure collaboration and coordination between state and local entities in statewide flood mitigation planning; and

(8) Hold two public hearings, one prior to the first state flood mitigation plan development meeting and one prior to the completion of such plan. Notice of each hearing shall be published at least thirty days prior to the hearing date.

Source: Laws 2020, LB 632, § 12.

61-229. State flood mitigation plan; report.

The state flood mitigation plan shall be completed and reported to the Governor and electronically to the Legislature on or before July 1, 2022.

Source: Laws 2020, LB 632, § 13.

CHAPTER 61

ARTICLE 3

PERKINS COUNTY CANAL PROJECT FUND

61-301. Act, how cited.

Sections 61-301 to 61-304 shall be known and may be cited as the Perkins County Canal Project Act.

Source: Laws 2022, LB 1015, § 1.

61-302. Legislative findings and declarations.

(1) The Legislature finds that it is essential to the economic prosperity, health, and welfare of the people of the State of Nebraska, and to the environmental health of the entire Platte River Basin, to protect Nebraska's full entitlement to the flows of the South Platte River as provided for in the South Platte River Compact. The South Platte River Compact is the law of Nebraska and of the United States that specifically authorizes Nebraska to develop a canal and associated storage facilities for the diversion of water from the South Platte River for beneficial use in Nebraska.

(2) The Legislature declares that a canal and associated storage facilities, which shall be known as the Perkins County Canal Project, shall be developed, constructed, managed, and operated under the authority of the State of Nebraska consistent with the South Platte River Compact and pursuant to the Perkins County Canal Project Act.

Source: Laws 2022, LB 1015, § 2.

61-303. Department of Natural Resources; powers and duties.

The Department of Natural Resources shall have the necessary authority to develop, construct, manage, and operate the Perkins County Canal Project consistent with the terms of the South Platte River Compact and pursuant to the Perkins County Canal Project Act. The department's powers under the act shall include: (a) Contracting for services, (b) acquiring permits, (c) acquiring and owning real property, (d) acquiring, holding, and exercising water rights, (e) employing personnel, (f) accepting grants, loans, donations, gifts, bequests, or other contributions from any person or entity, public or private, including any funds made available by any department or agency of the United States, (g) managing and expending such funds as are made available to it from the Perkins County Canal Project Fund, and (h) any other necessary functions consistent with the compact and pursuant to the act in protecting Nebraska's full entitlement to flows of the South Platte River. For purposes of the Perkins County Canal Project Act, the Department of Natural Resources is authorized to acquire real estate or access thereto in the name of the State of Nebraska by the use of eminent domain as provided under section 76-725. The department is also authorized to resolve

all disputes that may arise, including the initiation or defense of legal actions of any kind, as necessary to achieve the purposes of the act.

Source: Laws 2022, LB 1015, § 3.

61-304. Conflict of interest, prohibited.

(1) An individual listed in subsection (2) of this section or his or her immediate family member shall not, directly or indirectly, hold a financial interest in any entity which is party to a contract or have a financial interest in the ownership or lease of any property relating to the development, construction, management, or operation of the Perkins County Canal Project.

(2) This section shall apply to:

(a) Any elected official in the executive branch of state government. This section shall apply to such official while he or she is in office and for two years after he or she leaves office; and

(b) Any member of the Legislature.

(3) For purposes of this section, immediate family member means a spouse, child, sibling, or parent and includes the spouse of any child, sibling, or parent.

Source: Laws 2022, LB 1015, § 4.

61-305. Perkins County Canal Project Fund; created; use; investment; study; required.

(1) The Perkins County Canal Project Fund is created. The fund shall be administered by the Department of Natural Resources. The State Treasurer shall credit to the fund any money transferred by the Legislature and such grants, loans, donations, gifts, bequests, or other money received from any federal or state agency or public or private source for use by the department for the canal project. Any fees collected for water delivery may be credited to the fund. Any money in the Perkins County Canal Project 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. Any investment earnings from investment of money in the Perkins County Canal Project Fund shall be credited to such fund, except that for fiscal years 2023-24, 2024-25, and 2025-26, such investment earnings shall be credited as provided in section 84-622.

(2)(a) The department shall use the Perkins County Canal Project Fund to identify the optimal route and purchase land for and develop, construct, manage, and operate the Perkins County Canal as outlined by the South Platte River Compact and to contract with an independent firm for the purposes of completing a study of such canal. The study shall include, but may not be limited to, the following:

(i) Costs of completion of a canal and adjoining reservoirs as outlined in the South Platte River Compact;

(ii) A timeline for completion of a canal and adjoining reservoirs as outlined in the South Platte River Compact;

(iii) A cost-effectiveness study examining alternatives, including alternatives that may reduce environmental or financial impacts; and

(iv) The impacts of the canal on drinking water supplies for the cities of Lincoln and Omaha.

(b) The department shall provide the findings of such study electronically to the Clerk of the Legislature and present the findings at a public hearing held by the Appropriations Committee of the Legislature on or before December 31, 2022.

Source: Laws 2022, LB1012, § 4; Laws 2023, LB531, § 25; Laws 2023, LB818, § 14; Laws 2024, LB164, § 14.

Operative Date: April 17, 2024

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

CHAPTER 61

ARTICLE 4

JOBS AND ECONOMIC DEVELOPMENT INITIATIVE ACT

61-401. Act, how cited.

Sections 61-401 to 61-404 shall be known and may be cited as the Jobs and Economic Development Initiative Act and may also be referred to as the JEDI Act.

Source: Laws 2022, LB 1023, § 1.

61-402. Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) The future vibrancy of the people, communities, and businesses of Nebraska depends on reliable sources of water;

(2) While it is in the state's best interest to retain control over its water supplies, much of the state's water resources are currently underutilized;

(3) In 2019, the state experienced historic flooding along the Platte River which caused loss of life and over one billion dollars in damage to private and public property and infrastructure;

(4) Well-planned flood control is critical to the future of the people, communities, and businesses of Nebraska;

(5) In light of the disruption from the COVID-19 pandemic and the trend toward a remote workforce around the country, people around the country are rethinking where they want to work, live, and raise a family. As people consider where to live, access to sustainable water resources and outdoor recreational opportunities will be important considerations in making Nebraska a competitive choice for the future;

(6) The state's lakes and rivers help Nebraskans enjoy the water resources in our state and make Nebraska an even more attractive place to live and raise a family;

(7) The state's water resources provide economic benefits to the people, communities, and businesses of Nebraska by helping to attract visitors from other states and boosting local economies;

(8) In 2021, the Legislature passed LB406, which established the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature. The committee was tasked with conducting studies on:

(a) The need to protect public and private property, including use of levee systems, enhance economic development, and promote private investment and the creation of jobs along the Platte River and its tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

(b) The need to provide for public safety, public infrastructure, land-use planning, recreation, and economic development in the Lake McConaughy region of Keith County, Nebraska; and

(c) The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park;

(9) After considerable study, the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee identified potential opportunities within the floodway near the Platte River that could be used to build a combined reservoir of approximately three thousand six hundred surface acres, or greater, in or near a county having a population of at least one hundred thousand but not more than three hundred thousand inhabitants. Such a reservoir could be built without a dam of a Platte River channel and without negatively impacting any existing municipalities, their surrounding communities, or any economic development already occurring in such areas;

(10) It is in the public interest to construct a lake at or near this location. Such a lake would provide flood control by providing additional off-channel storage during flood events and public recreational opportunities that would benefit generations of Nebraskans, similar to the recreational opportunities provided by Lake McConaughy, Lewis and Clark Lake, and Eugene T. Mahoney State Park;

(11) In addition to the primary purposes of providing flood control and public recreational opportunities that will benefit the public, building a lake will provide the collateral benefit of economic development opportunities;

(12) It is in the public interest, and the purpose of the Jobs and Economic Development Initiative Act, that private parties contribute to the cost of constructing and developing the lake and that the state seek out donations and investments from private parties to fund such construction and development;

(13) It is in the public interest, and the purpose of the act, that the state (a) manage the construction and development of the lake in a manner that encourages private donations and investments, including through the use of public-private partnerships, (b) maintain sufficient oversight to protect the state's investment in the lake, and (c) retain ownership of the lake as an asset for Nebraskans; and

(14) It is in the public interest, and the purpose of the act, that the lake, and the land near or adjacent thereto, be developed in a thoughtful and planned manner by the state and be free from

control of political subdivisions or municipalities to further the act's purposes of providing flood control, recreational opportunities, and orderly development of the project.

Source: Laws 2022, LB 1023, § 2.

61-403. Department of Natural Resources; powers and duties; legislative intent; contract proposals; selection of land; conflict-of-interest provisions.

(1) The Department of Natural Resources is granted all power necessary to carry out the purposes of the Jobs and Economic Development Initiative Act, including, but not limited to, the power to:

(a) Purchase, sell, or lease land;

(b) Enter into contracts, including, but not limited to, contracts relating to the provision of construction services, management services, legal services, auditor services, and other consulting services or advice as the department may require in the performance of its duties; and

(c) Enter into agreements with natural resources districts to accomplish the purposes of the act. In any such agreement, a natural resources district may use the full powers granted to it by law.

(2) It is the intent of the Legislature that the department engage private parties and entities to construct and develop the lake and enter into contracts or public-private partnerships that the department deems advantageous to the construction and development of the lake, and land adjacent thereto, and to advance the purposes of the act.

(3) Notwithstanding any other provision of law, the department shall give preference to:

(a) Contract proposals relating to the development or management of the lake from a Nebraska nonprofit corporation whose board of directors include at least four directors who are appointed by the Governor with the approval of a majority of the Legislature, one representative of the Game and Parks Commission who is a nonvoting, ex officio member of such board of directors, and one member of the Legislature who is appointed by the Executive Board of the Legislative Council and who is a nonvoting, ex officio member of such board of directors. All such directors must agree to be bound by the conflict-of-interest provisions in sections 49-1493 to 49-14,104. Any such nonprofit corporation shall be bound by the Open Meetings Act and sections 84-712 to 84-712.09 and shall publicly let contracts valued in excess of twenty-five thousand dollars; and

(b) Contract proposals which provide for a public-private partnership with the state in constructing, developing, or managing the lake.

(4) The department is granted authority to select the land upon which the lake will be built. In making such selection, the following shall apply:

(a) The land shall be located in or near a county having a population of at least one hundred thousand but not more than three hundred thousand inhabitants and within the flood plain or floodway of the Platte River;

(b) Preference shall be given to locations that were materially underwater when the Platte River flooded in 2019;

(c) It is the intent of the Legislature that the lake be at least three thousand six hundred surface acres in size;

(d) No dam shall be constructed on the main channel of the Platte River in order to construct the lake; and

(e) No city or village, or any part thereof, shall be flooded in order to construct the lake.

(5) The department is granted authority to designate the land selected for the lake under subsection (4) of this section, and land near or adjacent thereto, as the Lake Development District.

(6) The department may, in the performance of its duties, seek input and advice from any natural resources district that encompasses any of the area included in the Lake Development District.

(7) It is the intent of the Legislature that the department engage local stakeholders as the department carries out its duties under this section.

(8) The land selected for the lake shall be owned by the state, and the department shall ensure that the general public has complete access to the lake. No private entity involved in the constructing, developing, or managing of the lake shall designate any portion of the lake for exclusively private use. Nothing in this subsection shall preclude reasonable limitations on the number of people using the lake, a marina, or any other access point so long as such limitation does not restrict access to a designated class of private parties.

(9) Neither the Director of Natural Resources nor any employee of the Department of Natural Resources shall have a financial interest, either personally or through an immediate family member, in any purchase, sale, or lease of real property relating to the construction or development of the lake or in any contract entered into by the department relating to the construction, development, or management of the lake. For purposes of this subsection, immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild.

Source: Laws 2022, LB 1023, § 3.

Cross References

Open Meetings Act, see section 84-1407.

61-404. Annexation prohibited.

Notwithstanding any other provision of law, no land within the Lake Development District, as designated by the Department of Natural Resources pursuant to section 61-403, shall be annexed.

Source: Laws 2022, LB 1023, § 4.

61-405. Jobs and Economic Development Initiative Fund; created; use; investment; studies required.

(1) The Jobs and Economic Development Initiative Fund is created. The fund shall be administered by the Department of Natural Resources. The State Treasurer shall credit to the fund any money transferred to the fund by the Legislature and such donations, gifts, bequests, or other money received from any federal or state agency or public or private source. The fund shall be used for water and recreational projects pursuant to the Jobs and Economic Development Initiative Act. 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. Any investment earnings from investment of money in the fund shall be credited to the fund.

(2) An amount, not to exceed twenty million dollars, shall be available for site selection costs, feasibility and public water supply studies, and flood mitigation costs of the Department of Natural Resources related to any projects pursuant to the Jobs and Economic Development Initiative Act. The Department of Natural Resources shall, in cooperation with impacted communities, including, but not limited to, any city of the primary class and metropolitan utilities district, contract with an independent consultant to conduct a study on the consequences of any lake located in the Lower Platte River Basin to the public water supply of such communities. Such study shall consider all aspects of water quality, water quantity, and water infrastructure, and any other issues necessary to protect the public water supply, including the impact to future water supply opportunities to the impacted communities.

(3) No funds shall be expended for any project, other than those enumerated in subsection (2) of this section, from the Jobs and Economic Development Initiative Fund unless the Director of Natural Resources certifies to the budget administrator of the budget division of the Department of Administrative Services that the Department of Natural Resources has conducted any environmental, hydrological, or other feasibility studies the director deems necessary to establish the feasibility of any projects pursuant to the Jobs and Economic Development Initiative Act and that, based on the results of such studies, the director has deemed the projects feasible.

Source: Laws 2022, LB 1012, § 7.

Cross References

Jobs and Economic Development Initiative Act, see section 61-401.

Nebraska Capital Expansion Act, see section 72-1269.

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

CHAPTER 61

ARTICLE 5

PUBLIC WATER AND NATURAL
RESOURCES PROJECT CONTRACTING ACT

61-501. Act, how cited.

Sections 61-501 to 61-520 shall be known and may be cited as the Public Water and Natural Resources Project Contracting Act.

Source: Laws 2023, LB 565, § 1.

61-502. Terms, defined.

For purposes of the Public Water and Natural Resources Project Contracting Act:

(1) Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to the department's basic configurations, project scope, design, or construction criteria;

(2) Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors;

(3) Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the act;

(4) Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between the department and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the department, construction services for the construction phase of the project;

(5) Construction services means activities associated with building the project;

(6) Department means the Department of Natural Resources;

(7) Design-build contract means a contract between the department and a design-builder which is subject to a best value-based selection process to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services;

(8) Design-builder means the legal entity which proposes to enter into a design-build contract;

(9) Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis;

(10) Private partner means any entity that is a partner in a public-private partnership other than the State of Nebraska, any agency of the State of Nebraska, the federal government, any agency of the federal government, any other state government, or any agency of any government at any level;

(11) Progressive design-build means a project-delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualification-based selection process at the earliest feasible stage of the project;

(12) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project;

(13) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract or (b) by a construction manager to enter into a construction manager-general contractor contract;

(14) Public-private partnership means a project delivery method for construction or financing of capital projects or procurement of services under a written public-private partnership agreement entered into pursuant to section 61-520 between at least one private partner and the State of Nebraska or any agency of the state;

(15) Qualification-based selection process means a process of selecting a construction manager or progressive design-builder based on qualifications;

(16) Request for proposals means the documentation by which the department solicits proposals; and

(17) Request for qualifications means the documentation or publication by which the department solicits qualifications.

Source: Laws 2023, LB 565, § 2.

61-503. Purpose of act.

The purpose of the Public Water and Natural Resources Project Contracting Act is to provide the department alternative methods of contracting for public water and natural resources projects. The alternative methods of contracting shall be available to the department for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the Public Water and Natural Resources Project Contracting Act shall govern the design-build, progressive design-build, and construction manager-general contractor procurement processes.

Source: Laws 2023, LB 565, § 3.

61-504. Design-build contract; progressive design-build contract; construction manager-general contractor contract; authorized.

The department, in accordance with the Public Water and Natural Resources Project Contracting Act, may solicit and execute a design-build contract, a progressive design-build contract, or a construction manager-general contractor contract for a public surface water or groundwater-related infrastructure project.

Source: Laws 2023, LB 565, § 4.

61-505. Engineering or architectural consultant; hiring authorized.

The department may hire an engineering or architectural consultant to assist the department with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the department to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which the person or organization has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2023, LB 565, § 5.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

61-506. Guidelines for contracts.

The department shall adopt guidelines for entering into a design-build contract, a progressive design-build contract, or a construction manager-general contractor contract. The department's guidelines shall include the following:

- (1) Preparation and content of requests for qualifications;
- (2) Preparation and content of requests for proposals;

(3) Qualification and short-listing of design-builders, progressive design-builders, and construction managers. The guidelines shall provide that the department will evaluate prospective design-builders, progressive design-builders, and construction managers based on the information submitted to the department in response to a request for qualifications and will select a short list of design-builders, progressive design-builders, or construction managers who shall be considered qualified and eligible to respond to the request for proposals;

- (4) Preparation and submittal of proposals;

- (5) Procedures and standards for evaluating proposals;

(6) Procedures for negotiations between the department and the design-builders, progressive design-builders, or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(7) Procedures for the evaluation of construction under a design-build contract or a progressive design-build contract to determine adherence to the project performance criteria.

Source: Laws 2023, LB 565, § 6.

61-507. Process for selecting design-builder or progressive design-builder.

(1) The process for selecting a design-builder and entering into a design-build contract shall be in accordance with sections 61-508 to 61-511.

(2) Except as otherwise specifically provided in the Public Water and Natural Resources Project Contracting Act, the process for selecting a progressive design-builder and entering into a progressive design-build contract shall be in accordance with sections 61-508 to 61-511.

Source: Laws 2023, LB 565, § 7.

61-508. Request for qualifications; prequalify design-builders and progressive design-builders; notice; short list.

(1) The department shall prepare a request for qualifications for design-build and progressive design-build proposals and shall prequalify design-builders and progressive design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder or a progressive design-builder to respond. The request for qualifications shall identify the maximum number of design-builders or progressive design-builders the department will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the department under section 61-505 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder or progressive design-builder upon request.

(4) The department shall create a short list of qualified and eligible design-builders or progressive design-builders in accordance with the guidelines adopted pursuant to section 61-506. The department shall select at least two prospective design-builders or progressive design-builders, except that if only one design-builder or progressive design-builder has responded to the request for qualifications, the department may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders or progressive design-builders placed on the short list.

Source: Laws 2023, LB 565, § 8.

61-509. Design-build or progressive design-build contract; request for proposals; contents.

The department shall prepare a request for proposals for each design-build or progressive design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted in accordance with section 61-506. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build or progressive design-build contract, including any terms and conditions which are subject to further negotiation;

(3) A project statement which contains information about the scope and nature of the project;

(4) If applicable, a statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the department;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. For both design-build and progressive design-build contracts, the criteria shall include, but are not limited to, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. For design-build contracts only, the criteria shall also include the cost of the work. For progressive design-build contracts only, the criteria shall also include consideration of the historic reasonableness of the progressive design-builder's costs and expenses when bidding and completing projects, whether such projects were completed using the progressive design-build process or another bidding and contracting process. The relative weight to apply to any criterion shall be at the discretion of the department based on each project, except that for all design-build contracts, the cost of the work shall be given a relative weight of at least fifty percent;

(9) A requirement that the design-builder or progressive design-builder provide a written statement of the design-builder's or progressive design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction and shall include price proposals;

(10) A requirement that the design-builder or progressive design-builder agree to the following conditions:

(a) At the time of the design-build or progressive design-build proposal, the design-builder or progressive design-builder must furnish to the department a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder or progressive design-builder to perform the architectural or engineering work with respect to the project must have direct supervision of such work and may not be removed by the design-builder or progressive design-builder prior to the completion of the project without the written consent of the department;

(b) At the time of the design-build or progressive design-build proposal, the design-builder or progressive design-builder must furnish to the department a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services. The general contractor identified by the design-builder or progressive design-builder may not be removed by the design-builder or progressive design-builder prior to completion of the project without the written consent of the department;

(c) A design-builder or progressive design-builder offering design-build or progressive design-build services with its own employees who are design professionals licensed to practice in Nebraska must (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance in the amount required by the department; and

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder or progressive design-builder must conform to the Engineers and Architects Regulation Act;

(11) The amount and terms of the stipend required pursuant to section 61-510, if any; and

(12) Other information or requirements which the department, in its discretion, chooses to include in the request for proposals.

Source: Laws 2023, LB 565, § 9.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

61-510. Stipend.

The department shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the department ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the department as disclosed in the request for proposals.

Source: Laws 2023, LB 565, § 10.

61-511. Alternative technical concepts; evaluation of proposals; department; power to negotiate.

(1) Design-builders and progressive design-builders shall submit proposals as required by the request for proposals. The department may meet with individual design-builders and progressive design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the department, it may be incorporated as part of the proposal by the design-builder or progressive design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders, progressive design-builders, or members of the public from the time the proposals are submitted until such proposals are opened by the department.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to the opening of such proposals, in which case no stipend shall be paid. The department shall have the right to reject any and all proposals at no cost to the department other than any stipend for design-builders who have submitted responsive proposals. The department may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build or progressive design-build solicitation.

(4) The department shall rank the design-builders or progressive design-builders in order of best value pursuant to the criteria in the request for proposals. The department may meet with design-builders or progressive design-builders prior to ranking.

(5) The department may attempt to negotiate a design-build or progressive design-build contract with the highest ranked design-builder or progressive design-builder selected by the department and may enter into a design-build or progressive design-build contract after negotiations. If the department is unable to negotiate a satisfactory design-build or progressive design-build contract with the highest ranked design-builder or progressive design-builder, the department may terminate negotiations with that design-builder or progressive design-builder. The department may then undertake negotiations with the second highest ranked design-builder or progressive design-builder and may enter into a design-build or progressive design-build contract after negotiations. If the department is unable to negotiate a satisfactory contract with the second highest ranked design-builder or progressive design-builder, the department may undertake negotiations with the third highest ranked design-builder or progressive design-builder, if any, and may enter into a design-build or progressive design-build contract after negotiations.

(6) If the department is unable to negotiate a satisfactory contract with any of the ranked design-builders or progressive design-builders, the department may either revise the request for proposals and solicit new proposals or cancel the design-build or progressive design-build process under the Public Water and Natural Resources Project Contracting Act.

Source: Laws 2023, LB 565, § 11.

61-512. Process for selection of construction manager and entering into construction manager-general contractor contract.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 61-513 to 61-515.

(2) The department shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction

managers the department will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The department shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 61-506. The department shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the department may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

Source: Laws 2023, LB 565, § 12.

61-513. Construction manager-general contractor contract; request for proposals; contents.

The department shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the department in accordance with section 61-506. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;

(3) Any bonding and insurance required by law or as may be additionally required by the department;

(4) General information about the project which will assist the department in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(5) The criteria for evaluation of proposals and the relative weight of each criterion;

(6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the department. In no case shall the department allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and

(7) Other information or requirements which the department, in its discretion, chooses to include in the request for proposals.

Source: Laws 2023, LB 565, § 13.

61-514. Submission of proposals; procedure; evaluation of proposals; department; power to negotiate.

(1) Construction managers shall submit proposals as required by the request for proposals.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The department shall have the right to reject any and all proposals at no cost to the department. The department may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

(4) The department shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The department may meet with construction managers prior to the ranking.

(5) The department may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the department is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the department may terminate negotiations with that construction manager. The department may then undertake negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the department is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the department may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the department is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the department may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under the Public Water and Natural Resources Project Contracting Act.

Source: Laws 2023, LB 565, § 14.

61-515. Department; duties; powers.

(1) Before the construction manager begins any construction services, the department shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the department are unable to negotiate a contract, the department may use other contract procurement processes. Persons or organizations who submitted proposals but were unable to negotiate a contract with the department shall be eligible to compete in the other contract procurement processes.

Source: Laws 2023, LB 565, § 15.

61-516. Contract changes authorized.

A design-build contract, a progressive design-build contract, and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the department in agreement with the design-builder, progressive design-builder, or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2023, LB 565, § 16.

61-517. Projects for political subdivisions; department; powers; applicability of act.

The department may enter into agreements under the Public Water and Natural Resources Project Contracting Act to let, design, and construct projects for political subdivisions when any of the funding for such projects is provided by or through the department. In such instances, the department may enter into contracts with the design-builder, progressive design-builder, or construction manager. The Political Subdivisions Construction Alternatives Act shall not apply to projects let, designed, and constructed under the supervision of the department pursuant to agreements with political subdivisions under the Public Water and Natural Resources Project Contracting Act.

Source: Laws 2023, LB 565, § 17.

Cross References

Political Subdivisions Construction Alternatives Act, see section 13-2901.

61-518. Insurance requirements.

Nothing in the Public Water and Natural Resources Project Contracting Act shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2023, LB 565, § 18.

61-519. Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Public Water and Natural Resources Project Contracting Act.

Source: Laws 2023, LB 565, § 19.

61-520. Public-private partnership delivery method; authorized.

(1) A public-private partnership delivery method may be used for projects under the Public Water and Natural Resources Project Contracting Act as provided in this section and rules and regulations adopted and promulgated pursuant to this section only to the extent allowed under the Constitution of Nebraska. State contracts using this method shall be awarded by competitive negotiation.

(2) The department utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.

(3) On or before July 1, 2024, the Director of Natural Resources shall adopt and promulgate rules and regulations setting forth criteria to be used in determining when a public-private partnership is to be used for a particular project. The rules and regulations shall reflect the intent of the Legislature to promote and encourage the use of public-private partnerships in the State of Nebraska. The Director of Natural Resources shall consult with design-builders, progressive design-builders, construction managers, other contractors and design professionals, including engineers and architects, and other appropriate professionals during the development of the rules and regulations.

(4) A request for proposals for a project utilizing a public-private partnership shall include at a minimum:

- (a) The parameters of the proposed public-private partnership agreement;
- (b) The duties and responsibilities to be performed by the private partner or private partners;
- (c) The methods of oversight to be employed by the department;

(d) The duties and responsibilities that are to be performed by the department and any other parties to the contract;

(e) The evaluation factors and the relative weight of each factor to be used in the scoring of awards;

(f) Plans for financing and operating the project and the revenue, service payments, bond financings, and appropriations of public funds needed for the qualifying project;

(g) Comprehensive documentation of the experience, capabilities, capitalization and financial condition, and other relevant qualifications of the private entity submitting the proposal;

(h) The ability of a private partner or private partners to quickly respond to the needs presented in the request for proposals and the importance of economic development opportunities represented by the project. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal or other funds; and

(i) Other information required by the department to evaluate the proposals submitted and the overall proposed public-private partnership.

(5) A private entity desiring to be a private partner shall demonstrate to the satisfaction of the department that it is capable of performing any duty, responsibility, or function it may be authorized or directed to perform as a term or condition of the public-private partnership agreement.

(6) A request for proposals may be canceled, or all proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the State of Nebraska and approved by the purchasing officer.

(7) Upon execution of a public-private partnership agreement, the department shall ensure that the contract clearly identifies that a public-private partnership is being utilized.

(8) The department shall:

(a) Adhere to the rules and regulations adopted and promulgated under this section when utilizing a public-private partnership for financing capital projects; and

(b) Electronically report annually to the Natural Resources Committee of the Legislature regarding private-public partnerships which have been considered or are approved pursuant to this section.

Source: Laws 2023, LB 565, § 20.

CHAPTER 2

ARTICLE 4

RESILIENT SOILS AND WATER QUALITY ACT

2-405. Act, how cited.

Sections 2-405 to 2-409 shall be known and may be cited as the Resilient Soils and Water Quality Act.

Source: Laws 2022, LB 925, § 1.

2-406. Legislative findings.

The Legislature finds that:

(1) With over ninety percent of Nebraska's land base in cropland and rangeland agricultural production, its agricultural sector is foundational to the state's economy. Nebraska agricultural producers face many challenges, from shrinking profit margins, depletion of natural resources, and extreme weather events, to increased public interest concerning the impact of current agricultural practices on the environment;

(2) Since the prairie was plowed for farming, Nebraska has lost topsoil and organic matter to both water and wind erosion. Soil erosion reduces soil productivity and deteriorates water quality. Organic matter is vital to soil fertility, structure, and water retention ability and is only at one-half of its original level;

(3) This state's soil and abundant water are Nebraska's most critical natural resources. The quality of both is vital for productive and profitable agricultural production, rural and urban economic viability, long-term food security, natural resource resiliency, and the associated influences on human health and quality of life. The relative quality and availability of the state's ground water and surface waters are directly impacted by the health of the land, particularly its agricultural soil;

(4) It is not uncommon to find nitrate levels in excess of federal drinking water standards in wells across the state. Elevated levels of nitrates in Nebraska's ground water are alarming as approximately eighty-five percent of Nebraska residents rely on drinking water pumped from the ground. While nitrate levels in Nebraska's ground water are gradually improving in some areas, they remain at troublesome levels elsewhere, particularly in the central and northeastern parts of Nebraska;

(5) The Healthy Soils Task Force created under section 2-402 concluded that healthier soils produced through best soil management practices improve yield stability, produce greater financial returns over time, reduce the need for chemical inputs, increase water infiltration rates and water storage capacity making soil more resilient to drought, flooding, and erosion, and protect and improve water quality. The task force also concluded that two significant barriers to adoption of healthy soil management practices by agricultural producers are uncertainty of the positive

economic return on investment in healthy soil management practices and the lack of education and information available to a broader audience; and

(6) With the general public's growing interest in how food is grown relative to human health and long-term resiliency of our natural resources, greater adoption of healthy soil management practices is beneficial to both rural and urban contingencies. A voluntary grassroots effort to accelerate the means to protect and enhance Nebraska's soil and receive the benefits described in the task force report should be encouraged and supported.

Source: Laws 2022, LB 925, § 2.

2-407. Purposes of act.

The purposes of the Resilient Soils and Water Quality Act are to (1) initiate first steps to accelerate the use and scope of best practices for healthy soil management, (2) protect and improve soil and water quality throughout the state, (3) protect the public's health and enhance agricultural production and profitability, (4) address soil health economics, resource stewardship, and managerial and environmental issues, (5) increase awareness, education, and promotion of healthy soil best practices through producer-to-producer, peer-to-peer, and mentoring relationships, networking, and sharing of technical information, and (6) provide observational proof of healthy soil benefits through access to demonstration and research farms and data.

Source: Laws 2022, LB 925, § 3.

2-408. Terms, defined.

For purposes of the Resilient Soils and Water Quality Act:

(1) Demonstration and research farms means large-scale field and pasture settings located across the state that provide a demonstration of healthy soil practices in support of the educational and research programs of the producer learning community;

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

(3) Producer learning community means an agricultural producer-led, nonprofit, voluntary membership organization dedicated to fostering learning, skills, and abilities and the gathering and sharing of knowledge for the purpose of carrying out the Resilient Soils and Water Quality Act.

Source: Laws 2022, LB 925, § 4.

2-409. Producer learning community; department; powers and duties; regions, established; demonstration and research farms; report.

(1) The department shall provide technical and legal assistance in the formation of a producer learning community comprised of active agricultural producers, landowners, and others who have an interest in soil health and water quality. The department shall assist the producer learning community in building awareness and knowledge relating to soil health and water quality to guide agricultural producers and landowners in making informed decisions in order to bring about a more

rapid and widespread adoption of best management practices. The department shall hire a facilitator to lead a collaborative effort to organize the producer learning community and assist the producer learning community in acquiring gifts, grants, and sponsorships. The department shall authorize the facilitator to serve as an ex officio member of the producer learning community and may locate the facilitator outside of the city of Lincoln.

(2) The department may partner or contract with any entity or entities that have resources that would assist in the formation of the producer learning community, including, but not limited to, the University of Nebraska and any association of natural resources districts. The department may also collaborate with the Corn Development, Utilization, and Marketing Board, the Soybean Development, Utilization, and Marketing Board, the Grain Sorghum Development, Utilization, and Marketing Board, the Nebraska Wheat Development, Utilization, and Marketing Board, and any private farm and ranch associations or membership organization.

(3) Because of the state's diversity of soils, topography, rainfall, cropping systems, and other environmental factors, one set of healthy soil management practices will not fit the entire state and such practices will differ by region. The department shall divide the state into different regions in which to establish demonstration and research farms that are representative of each region's particular agricultural diversity. In establishing such regions, the department may use the land management areas of the Natural Resources Conservation Service of the United States Department of Agriculture, the state's natural resources district boundaries, and the Nebraska Extension Engagement Zones of the University of Nebraska Institute of Agriculture and Natural Resources as guidance in establishing boundaries. The department may enter into lease agreements with private landowners for the purpose of establishing demonstration and research farms.

(4) Beginning in 2022 and through 2027, the department shall submit an annual report on or before December 31 to the Governor and electronically to the Agriculture Committee of the Legislature and the Natural Resources Committee of the Legislature to report on the status and progress of implementing the Resilient Soils and Water Quality Act and any impacts and accomplishments made in protecting and improving soil and water quality across the state.

Source: Laws 2022, LB 925, § 5.

2-410. Legislative intent to appropriate.

It is the intent of the Legislature to appropriate two hundred fifty thousand dollars beginning in FY2022-23 through FY2026-27 to carry out the Resilient Soils and Water Quality Act.

Source: Laws 2022, LB 925, § 6.

Cross References

Resilient Soils and Water Quality Act, see section 2-405.

CHAPTER 2

ARTICLE 4

NITROGEN REDUCTION INCENTIVE ACT

2-411. Nitrogen Reduction Incentive Act, how cited.

Sections 2-411 to 2-417 shall be known and may be cited as the Nitrogen Reduction Incentive Act.

Source: Laws 2024, LB1368, § 1.

Effective Date: July 19, 2024

Termination Date: December 31, 2029

2-412. Legislative findings.

The Legislature finds and declares that:

(1) Agriculture is Nebraska's number one industry;

(2) Water is Nebraska's most precious natural resource;

(3) Nebraska farmers are leading the charge on sustainable agriculture initiatives that will make Nebraska a world-renowned leader and ensure protection of the land and water of Nebraska for generations to come; and

(4) The Nitrogen Reduction Incentive Act encourages farmers to adopt efficient and sustainable practices to help Nebraska protect these natural resources and positions Nebraska farmers to compete.

Source: Laws 2024, LB1368, § 2.

Effective Date: July 19, 2024

Termination Date: December 31, 2029

2-413. Commercial fertilizer, defined.

For purposes of the Nitrogen Reduction Incentive Act, commercial fertilizer has the same meaning as in section 81-2,162.02.

Source: Laws 2024, LB1368, § 3.

Effective Date: July 19, 2024

Termination Date: December 31, 2029

2-414. Nitrogen reduction incentive program; created; incentive payments; authorized.

(1) The nitrogen reduction incentive program is created and shall be administered by the Department of Natural Resources. The department may collaborate with natural resources districts to administer the program.

(2) The purposes of the program are to:

(a) Provide incentive payments to farmers; and

(b) Encourage farmers to (i) reduce the use of commercial fertilizer and (ii) incorporate innovative technology into farming practices, including the proper use of biological nitrogen products.

(3) The program shall provide an annual per-acre incentive for any farmer who verifies through documentation that commercial fertilizer rates were reduced by the lesser of forty pounds per acre for nitrogen or fifteen percent by incorporating a qualifying product in the farmer's nutrient plans.

(4) A commercial fertilizer rate reduction from historic baseline use shall be completed to qualify for the program.

(5) The department shall review the required commercial fertilizer rate of reduction for the program on a biennial basis to determine if higher reduction targets are necessary.

(6) The department shall:

(a) Collaborate with natural resources districts to add any new technology to the program as it becomes available. Such technology shall replace nitrogen fertilizer use and maintain farm productivity;

(b) Identify geographically beneficial target areas while keeping the program open to all farmers in the state;

(c) Consult with farmers and commercial entities in the agriculture industry to determine a per-acre payment rate tied to the commercial fertilizer rate reduction but not less than ten dollars per acre; and

(d) Review the per-acre payment rate based on inflation or emerging technology in subsequent years.

(7)(a) The department shall not award an amount of incentive payments in total per year under the nitrogen reduction incentive program that is greater than the lesser of:

(i) Five million dollars; or

(ii) The amount appropriated for such purpose by the Legislature.

(b) It is the intent of the Legislature that any appropriation from the General Fund to carry out the Nitrogen Reduction Incentive Act be used only for operating expenses.

Source: Laws 2024, LB1368, § 4.
Effective Date: July 19, 2024
Termination Date: December 31, 2029

2-415. Rules and regulations.

The Department of Natural Resources may adopt and promulgate rules and regulations that adopt a standard for labeled commercial fertilizer products to qualify for the nitrogen reduction incentive program and may adopt and promulgate rules and regulations to carry out the Nitrogen Reduction Incentive Act.

Source: Laws 2024, LB1368, § 5.
Effective Date: July 19, 2024
Termination Date: December 31, 2029

2-416. Nitrogen Reduction Incentive Cash Fund; created; use; investment.

(1) The Nitrogen Reduction Incentive Cash Fund is created and shall be administered by the Department of Natural Resources for purposes of the Nitrogen Reduction Incentive Act. The Nitrogen Reduction Incentive Cash Fund may consist of transfers as directed by the Legislature and gifts, grants, bequests, and money from any public or private source.

(2) The Department of Natural Resources may apply for all grants from state, federal, and private sources that are applicable to the purposes of the Nitrogen Reduction Incentive Act.

(3) Any such grant applied for by the Department of Natural Resources that is awarded to the Department of Natural Resources or the State of Nebraska shall be credited to the Nitrogen Reduction Incentive Cash Fund.

(4) 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 2024, LB1368, § 6.
Effective Date: July 19, 2024
Termination Date: December 31, 2029

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

2-417. Act, termination.

The Nitrogen Reduction Incentive Act terminates on December 31, 2029.

Source: Laws 2024, LB1368, § 7.

Effective Date: July 19, 2024

Termination Date: December 31, 2029

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 means the Nebraska Natural Resources Commission;

(2) Conservation agreement means 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 means the Director of Natural Resources;

(4) District means a natural resources district;

(5) Erosion or sediment control practice means:

(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 tolerance level 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 tolerance level 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 tolerance level;

(6) Excess erosion means the occurrence of erosion in excess of the applicable soil-loss tolerance level which causes or contributes to an accumulation of sediment upon the lands of any other person to the detriment or damage of such other person;

(7) Farm unit conservation plan means 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 tolerance level. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(8) Nonagricultural land-disturbing activity means 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 does 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;

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

(e) Activities related to the operation, construction, or maintenance of industrial or commercial public power district or public power and irrigation district facilities or sites when such activity is conducted pursuant to state or federal law or is part of the operational plan for such facility or site;

(9) Person means 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;

(10) Soil and water conservation practice means a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss tolerance level from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice includes, but is not 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

(11) Soil-loss tolerance level means 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. Soil loss may be impacted by water erosion which may include (a) sheet and rill erosion which includes relatively uniform soil loss across the entire field slope which may leave small channels located at regular intervals across the slope and (b) ephemeral gully erosion which occurs in well-defined depressions or natural drainageways where concentrated overland flow results in the convergence of rills forming deeper and wider channels.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22; Laws 2015, LB206, § 1.

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

(1) The director shall, in cooperation with the commission, the Department of Environment and Energy, the Natural Resources Conservation Service of the United States Department of Agriculture, 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 tolerance level 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 tolerance level;

(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 may be revised by the director and the commission at any time. Before approving any such changes, 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.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5; Laws 2015, LB206, § 2; Laws 2019, LB302, § 14.

2-4605. District program; contents; review.

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

(a) Soil-loss tolerance levels for the various types of soils in the district. The soil-loss tolerance levels 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 tolerance level 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; Laws 2015, LB206, § 3.

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; cease and desist order.

(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 tolerance level. 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 excess 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 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 tolerance level. 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 tolerance level. 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 tolerance level or to prevent sediment resulting from excess 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) Following refusal of a landowner to discontinue an activity causing erosion described in this section and to establish a plan and schedule for eliminating excess erosion pursuant to subsection (2) of this section, and if the immediate discontinuance of such activity is necessary to reduce or eliminate damage to neighboring property, the district may petition the district court for an order to the owner and, if appropriate, the operator, to immediately cease and desist such activity until excess erosion can be brought into conformance with the soil-loss tolerance level or sediment resulting from excess erosion is prevented from leaving the property.

(5) 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; Laws 2015, LB206, § 4.

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 tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.

(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 tolerance level 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) To prevent excess erosion and sediment from leaving the land due to any agricultural or 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. The lack of available cost-sharing assistance does not offset the requirement that the owner and, if appropriate, the operator of such land comply with the terms of an approved plan of compliance or an administrative order.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24; Laws 2015, LB 206, § 5.

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 an 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 tolerance level or, to the extent excess erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excess 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; Laws 2015, LB206, § 6.

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 tolerance level 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; Laws 2015, LB 206, § 7.

CHAPTER 46

ARTICLE 14

DECOMMISSIONING FUND

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., LB 3, § 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 2

ARTICLE 15

DATA BANK

2-1568. Department; data bank; establish; maintain; administer; available to other agencies.

The department shall maintain and administer a data bank in the field of soil and water resources in the State of Nebraska. The collection of basic data and necessary interpretations of these data in the area of soil and water resources by agencies, departments, and political subdivisions of the State of Nebraska shall not be affected by this section. Such data and necessary interpretations of them shall be made available to the department for inclusion in the data bank when published or earlier if deemed by the originator to be suitable for inclusion. The source of data shall be identified in the data bank and when appropriate shall be associated with subsequent publication or other use. Processing and interpretation of the basic data shall be carried out by the department, except that this section does not preclude the independent processing and interpretation of such data by the collecting agency or other agencies. The resources of the data bank shall be made available to all interested agencies and persons.

Source: Laws 1969, c. 382, § 1, p. 1348; Laws 2000, LB 900, § 24; Laws 2005, LB 342, § 1.

Cross Reference

Intergovernmental Data Communications Advisory Council, see section 86-539.

2-1569. Basic data, defined.

For purposes of section 2-1568, basic data means recorded observations, calculations, or other information concerning: (1) Climatological, meteorological, hydrologic, hydraulic, topographic, and geologic conditions and phenomena, including soils and land use, as these relate to or affect surface and ground water resources, developed water supplies, water demands, and hydraulic structures; (2) occurrence, quantity, and quality of surface water resources, including variations with time, both short term and long range; (3) occurrence, quantity, and quality of ground water resources, including variations with time, natural and artificial recharge, natural and artificial disposal, and information as to the hydraulic characteristics of underground aquifers and reservoirs; (4) sediment production, transport, and disposition; (5) biologic data for streams, lakes, and reservoirs; (6) water rights; (7) occurrence, types, locations, and amounts of consumptive and nonconsumptive uses and demands for water, including diversions and extractions therefor, and variations over time; (8) occurrence, quantity, and quality of waste discharges and return flows, and variations thereof over time; (9) locations, characteristics, and operational criteria of works constructed to store, replenish, regulate, divert, extract, transport, distribute, protect, and improve surface and ground water resources; (10) project and facility operation data; (11) demographic data; and (12) economic and fiscal information.

Source: Laws 1969, c. 382, § 2, p. 1349; Laws 2005, LB 342, § 2.

CHAPTER 2

ARTICLE 15

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 Environment and Energy, 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, LB 296, § 16; Laws 2019, LB302, § 10.

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 subsection (1) of 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 submitted to the Legislature shall be submitted electronically. 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; Laws 2012, LB 782, § 4; Laws 2016, LB 1092, § 1.

CHAPTER 2

ARTICLE 26

PESTICIDE ACT

2-2626. Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environment and Energy or the Department of Natural Resources, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environment and Energy shall be responsible for the adoption of standards for pesticides in surface water, ground water, and drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2021. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environment and Energy pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the specific time, locations, and conditions restricting the use of a state-limited-use pesticide, including allowable quantities or concentrations, and may require that it be purchased or possessed only with permission or under the direct supervision of the department or its designee;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environment and Energy; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations may include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under 7 U.S.C. 136i-1 of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide or state-limited-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. part 171, as such regulations existed on January 1, 2019; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under 7 U.S.C. 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide or use of the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide or its use is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars for each violation on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take reasonable measures to assess and collect all fees and fines prescribed by the act and the rules or regulations adopted under the act;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or

which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(15) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(16) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(17) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(18) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(19) To issue a cease and desist order pursuant to section 2-2649;

(20) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(21) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(22) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB 296, § 17; Laws 2010, LB 254, § 7; Laws 2013, LB 69, § 2; Laws 2019, LB 302, § 11; Laws 2019, LB 320, § 2; Laws 2021, LB 148, § 39.

CHAPTER 2

ARTICLE 32

IMPROVEMENT PROJECT AREAS

2-3254. Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.

(1) The board shall hold a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the establishment of or altering the boundaries of an existing improvement project area and the undertaking of such a project, upon the question of the appropriate boundaries describing affected land, upon the propriety of the petition, and upon all relevant questions regarding such inquiries. When a hearing has been initiated by petition, such hearing shall be held within one hundred twenty days of the filing of such petition. Notice of such hearing shall be published prior thereto once each week for three consecutive weeks in a legal newspaper published or of general circulation in the district. Landowners within the limits of the territory described in the petition and all other interested parties, including any appropriate agencies of state or federal government, shall have the right to be heard. If the board finds, after consultation with such appropriate agencies of state and federal government and after the hearing, that the project conforms with all applicable law and with the district's goals, criteria, and policies, it shall enter its findings in the board's official records and shall, with the aid of such engineers, surveyors, and other assistants as it may have chosen, establish an improvement project area or alter the boundaries of an existing improvement project area, proceed to make detailed plans and cost estimates, determine the total benefits, and carry out the project as provided in subsections (2) and (3) of this section. If the board finds that the project does not so conform, the findings shall be entered in the board's records and copies of such findings shall be furnished to the petitioners and the commission.

(2) When any such special project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of construction of such project, determine, by circulation of petitions or by some other appropriate method, if such project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the project cannot be reasonably expected to generate sufficient revenue, the project and all work in connection therewith shall be suspended. If it is determined that the project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the project as provided in sections 2-3252 to 2-3254. If the proposed project involves the supply of water for any beneficial use, all plans and specifications for the project shall be filed with the secretary of the district and the Director of Natural Resources, except that if such project involves a public water system as defined in section 71-5301, the filing of the information shall be with the Department of Environment and Energy rather than the Director of Natural Resources. No construction of any such special project shall begin until the plans and specifications for such improvement have been approved by the Director of Natural Resources and the Department of Environment and Energy, if applicable, except that if such special project involves a public water system as defined in section 71-5301, only the Department of Environment and Energy shall be

required to review such plans and specifications and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. All prescribed conditions having been complied with, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the special project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such unit. The unit fees made and charged pursuant to this section shall be levied and fixed by rules and regulations of the district. The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.

(3) When the special project would not result in the provision of revenue-producing continuing services, the board shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained in this section shall prevent the district from establishing separate areas within the improvement project area so as to permit future allocation of costs for particular portions of the work to specific subareas. This subarea method of allocation shall not be used in any improvement project area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(4) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the improvement project area stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement, at which time and place such parties may appear in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and shall make the apportionments fair and just according to benefits received from the improvement. The directors, having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the proposed project and the actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the improvement project area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal

interest in such apportionment, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the project assessable to such lands upon completion thereof, as provided by sections 25-520.01 to 25-520.03. If the owners of record title representing more than fifty percent of the estimated total assessments file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area, and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such improvement project in accordance with the apportionment of benefits determined and procedures established in this section. Upon completing the establishment of an improvement project area or altering the boundaries of an existing improvement project area as provided in this subsection and upon determining the reimbursable cost of the project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area and apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such project. The chairperson and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments.

Source: Laws 1969, c. 9, § 54, p. 131; Laws 1972, LB 543, § 14; Laws 1973, LB 206, § 6; Laws 1981, LB 326, § 10; Laws 1994, LB 480, § 15; Laws 1996, LB 1044, § 39; Laws 1999, LB 436, § 10; Laws 2000, LB 900, § 58; Laws 2001, LB 136, § 3; Laws 2001, LB 667, § 1; Laws 2007, LB 296, § 18; Laws 2021, LB148, § 40.

Cross Reference

Nebraska Safe Drinking Water Act, see section 71-5313.

CHAPTER 2

ARTICLE 32

INTERSTATE AGREEMENTS

2-32,102. Natural resources; agreements with other states; authorized.

The State of Nebraska may enter into agreements for the purpose of providing interstate cooperation and coordination in matters relating to natural resources with two or more of the following states: South Dakota, North Dakota, Montana, Wyoming, and Colorado. These states have cultural, economic, social, agricultural, and natural resources similarities as evidenced by such states' (1) past affiliations in interstate organizations such as the Old West Regional Commission and the Missouri River Basin Commission and (2) identity as reclamation states in the Upper and Lower Regions of the United States Bureau of Reclamation.

Source: Laws 1985, LB 705, § 1.

CHAPTER 2

ARTICLE 42

CONSERVATION CORPORATION

2-4215. Coordinate activities with state and natural resources districts.

In exercising any powers granted by the Conservation Corporation Act, the corporation shall coordinate its activities with the land and water resources policies, programs, and planning efforts of the state, particularly the Department of Environment and Energy and the Department of Natural Resources, and with the several natural resources districts throughout the state.

Source: Laws 1981, LB 385, § 15; Laws 1993, LB 3, § 4; Laws 2000, LB 900, § 62; Laws 2019, LB 302, § 13.

CHAPTER 2

ARTICLE 49

CLIMATE ASSESSMENT RESPONSE COMMITTEE

2-4901. Climate Assessment Response Committee; created; members; expenses; meetings.

(1) The Climate Assessment Response Committee is hereby created. The office of the Governor shall be the lead agency and shall oversee the committee and its activities. The committee shall be composed of representatives appointed by the Governor with the approval of a majority of the Legislature from livestock producers, crop producers, the Nebraska Emergency Management Agency, and the Conservation and Survey Division and Cooperative Extension Service of the University of Nebraska. The Director of Agriculture or his or her designee, the chief executive officer of the Department of Health and Human Services or his or her designee, and the Director of Natural Resources or his or her designee shall be ex officio members of the committee. Representatives from the federal Consolidated Farm Service Agency and Federal Crop Insurance Corporation may also serve on the committee at the invitation of the Governor. The chairperson of the Committee on Agriculture of the Legislature and the chairperson of the Committee on Natural Resources of the Legislature shall be nonvoting, ex officio members of the committee. The Governor may appoint a member of the Governor's Policy Research Office and any other state agency representatives or invite any other federal agencies to name representatives as he or she deems necessary. The Governor shall appoint one of the Climate Assessment Response Committee members to serve as the chairperson of the committee. Committee members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(2) The committee shall meet at least twice each year and shall meet more frequently (a) at the call of the chairperson, (b) upon request of a majority of the committee members, and (c) during periods of drought or other severe climate situations.

(3) The chairperson may establish subcommittees and may invite representatives of agencies other than those with members on the committee to serve on such subcommittees.

(4) Any funds for the activities of the committee and for other climate-related expenditures may be appropriated directly to the office of the Governor for contracting with other agencies or persons for tasks approved by the committee.

Source: Laws 1992, LB 274, § 1; Laws 1996, LB 43, § 1; Laws 1996, LB 1044, § 43; Laws 1999, LB 403, § 5; Laws 2000, LB 900, § 63; Laws 2007, LB 296, § 22; Laws 2009, LB 389, § 1; Laws 2020, LB 381, § 11.

CHAPTER 25

ARTICLE 10

COURTS CIVIL PROCEDURE

25-1062.01. Director of Natural Resources, defined; notice to appropriator; how given.

(1) The words Director of Natural Resources as used in this section and in sections 25-1064, 25-2159, and 25-2160 mean the Director of Natural Resources, State of Nebraska, his or her successor in office, or any agent, servant, employee, or officer of the State of Nebraska, now or hereafter exercising any powers or duties with respect to the administration of the irrigation water in the state, who may be a party in any court of the state in an action when the relief demanded involves the delivery of irrigation water.

(2) Whenever notice by either registered or certified letter to an appropriator is required in such sections, the address of the appropriator shall be that recorded in the office of the Department of Natural Resources under section 46-230.

Source: Laws 1941, c. 29, § 1, p. 133; C.S.Supp.,1941, § 20-10,111; R.S.1943, § 25-1062.01; Laws 1957, c. 242, § 14, p. 828; Laws 1957, c. 365, § 1, p. 1232; Laws 1986, LB 516, § 10; Laws 2000, LB 900, § 65.

CHAPTER 33

ARTICLE 1

FEES

33-105. Repealed. Laws 2024, LB1368, § 11.

CHAPTER 37

ARTICLE 7

STATE GAME REFUGES

37-707. Game refuges; boundaries; marking; Department of Natural Resources; duties; access to property; when.

(1) The commission is directed to place suitable signs showing the boundaries of the refuges, as designated in section 37-706, using the map adopted by the Department of Natural Resources pursuant to this section, on all roads leading into such refuges.

(2)(a) The Department of Natural Resources shall adopt and promulgate rules and regulations determining the boundaries of the state game refuges. The department's determination shall be based on the definitions in sections 37-701 to 37-708 and shall include maps showing such boundaries.

(b) The department shall make the initial boundary determinations for the state game refuge in Garden County by March 1, 2005. The department shall make the initial boundary determinations for the remaining state game refuges by January 1, 2006.

(c) Until the initial determinations are made pursuant to subdivision (a) of this subsection, the boundaries that have been determined and maintained by the commission shall remain in effect.

(d) The department shall update any boundary determination required by subdivision (a) of this subsection whenever it determines that there has been a substantial change in the location of the banks of said stream used for locating such boundary.

(e) To the extent necessary to fulfill their obligations under sections 37-701 to 37-708 and pursuant to notice as provided in subdivision (f) of this subsection, the department and the commission shall have access at all reasonable times to all properties to which access is needed to fulfill such obligations. Entry upon such properties for the purposes set forth in such sections shall not be considered trespass.

(f) Notice of intent to enter upon property for the purposes of subdivision (2)(e) of this section shall be satisfied by publishing such notice at least once each week for three consecutive weeks in a legal newspaper published or of general circulation in the county or counties in which such property and such game refuge are located.

Source: Laws 1939, c. 43, § 2, p. 202; C.S.Supp.,1941, § 37-429; R.S.1943, § 37-419; Laws 1947, c. 135, § 3, p. 380; R.S.1943, (1993), § 37-419; Laws 1998, LB 922, § 321; Laws 2004, LB 826, § 4.

Game Refuge Act was sustained as constitutional against contention that it was special law for protection of game and

fish. Bauer v. State Game, Forestation and Parks Com., 138 Neb. 436, 293 N.W. 282 (1940).

CHAPTER 37

ARTICLE 8

NONGAME AND ENDANGERED SPECIES ACT

37-807. Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required.

(1) The commission shall establish such programs, including acquisition of land or aquatic habitat or interests therein, as are necessary for the conservation of nongame, threatened, or endangered species of wildlife or wild plants. Acquisition for the purposes of this subsection shall not include the power to obtain by eminent domain.

(2) In carrying out programs authorized by this section, the commission shall consult with other states having a common interest in particular species of nongame, endangered, or threatened species of wildlife or wild plants and may enter into agreements with federal agencies, other states, political subdivisions of this state, or private persons with respect to programs designed to conserve such species including, when appropriate, agreements for administration and management of any area established under this section or utilized for conservation of such species.

(3) The Governor shall review other programs administered by him or her and utilize such programs in furtherance of the purposes of the Nongame and Endangered Species Conservation Act. All other state agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 37-806 and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the commission to be critical. For purposes of this subsection, state agency means any department, agency, board, bureau, or commission of the state or any corporation whose primary function is to act as, and while acting as, an instrumentality or agency of the state, except that state agency shall not include a natural resources district or any other political subdivision.

(4) The commission shall provide notice and hold a public meeting prior to the implementation of conservation programs designed to reestablish threatened, endangered, or extirpated species of wildlife or wild plants through the release of animals or plants to the wild. The purpose of holding such a public meeting shall be to inform the public of programs requiring the release to the wild of such wildlife or wild plants and to solicit public input and opinion. The commission shall set a date and time for the public meeting to be held at a site convenient to the proposed release area and shall publish a notice of such meeting in a legal newspaper published in or of general circulation in the county or counties where the proposed release is to take place. The notice shall

be published at least twenty days prior to the meeting and shall set forth the purpose, date, time, and place of the meeting.

Source: Laws 1975, LB 145, § 6; Laws 1984, LB 1106, § 22; Laws 1987, LB 150, § 3; Laws 1991, LB 772, § 3; R.S.1943, (1993), § 37-435; Laws 1998, LB 922, § 357.

As the Department of Water Resources is a state agency within the meaning of the Nongame and Endangered Species Act, the issuance of a permit through its director would qualify as an "action" taken by a state agency. Therefore, the director may not issue permits which would jeopardize the continued existence of an endangered or threatened species, or result in the destruction or modification of their habitat. *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W.2d 112 (1996).

Before authorizing a diversion project, the Department of Water Resources must consult with the Game and Parks Commission and must obtain an opinion as to whether the project will jeopardize threatened or endangered species. However, the opinion, merely by being issued, does not impose affirmative requirements upon an application. *Central Platte NRD v. State of Wyoming*, 245 Neb. 439, 513 N.W.2d 847 (1994).

If the director of the state Department of Water Resources, pursuant to subsection (3) of this section, considers and relies

on the opinion of the state Game and Parks Commission in making his or her decision about diversion of unappropriated waters, the applicant is affected by the statute and thus is entitled to challenge its constitutionality. This section does not violate the provisions of Article XV, sections 4, 5, and 6, of the Constitution of Nebraska. *In re Applications A-10627 et al.*, 243 Neb. 419, 499 N.W.2d 548 (1993).

This section places two separate and distinct duties upon state departments and agencies, that of consultation with the Game and Parks Commission and, once done, an independent duty to insure that the actions they take or authorize do not jeopardize the continued existence of an endangered species or its habitat. Both the Department of Water Resources and the various natural resources districts are state departments or agencies within the meaning of this act. *Little Blue N.R.D. v. Lower Platte North N.R.D.*, 210 Neb. 862, 317 N.W.2d 726 (1982).

CHAPTER 46

ARTICLE 1

SURFACE WATER INFRASTRUCTURE FACILITIES FUND

46-1,164. Surface Water Irrigation Infrastructure Fund; created; use; investment.

There is hereby created the Surface Water Irrigation Infrastructure Fund to be administered by the Department of Natural Resources. The fund shall be used to provide grants in accordance with section 46-1,165 to irrigation districts. There shall be a one-time transfer of fifty million dollars from the Cash Reserve Fund to the Surface Water Irrigation Infrastructure Fund to carry out the purposes of section 46-1,165. Any money in the Surface Water Irrigation Infrastructure 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. Investment earnings from investment of money in the fund shall be credited to the fund.

Source: Laws 2022, LB1012, § 9; Laws 2023, LB818, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

46-1,165. Surface water irrigation infrastructure; grants; matching funds.

The Department of Natural Resources shall establish procedures and criteria for awarding grants to irrigation districts from the Surface Water Irrigation Infrastructure Fund to be used for repair or construction of any headgate, flume, diversion structure, check valve, or any other physical structure used for irrigation projects. The department may award grants, not to exceed five million dollars per applicant, to an irrigation district that applies to the department based on criteria and procedures established by the department. In order to receive a grant under this section, a grant applicant shall provide matching funds equal to ten percent of the grant amount awarded for such project.

Source: Laws 2022, LB 1012, § 10.

CHAPTER 46

ARTICLE 2

REPUBLICAN RIVER BASIN
SUSTAINABILITY TASK FORCE

46-2,140. Repealed. Laws 2015, LB 9, § 1.

46-2,141. Repealed. Laws 2015, LB 9, § 1.

CHAPTER 46

ARTICLE 12

WATER WELL CONTRACTORS LICENSING BOARD

46-1217. Water Well Standards and Contractors' Licensing Board; created; members; qualifications.

(1) There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be appointed by the Governor as follows: (a) A licensed water well contractor representing irrigation water well contractors, (b) a licensed water well contractor representing domestic water well contractors, (c) a licensed water well contractor representing municipal and industrial water well contractors, (d) a licensed pump installation contractor, (e) a manufacturer or supplier of water well or pumping equipment, and (f) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environment and Energy or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state. Each industry representative shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Source: Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32; Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266; Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5; Laws 2007, LB 296, § 209; Laws 2007, LB 463, § 1155; Laws 2019, LB302, § 48.

Cross Reference

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-151, 38-155, and 38-158 to 38-174.

CHAPTER 81

ARTICLE 1

GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

81-101. Executive department; civil administration vested in Governor; departments created.

The civil administration of the laws of the state is vested in the Governor. For the purpose of aiding the Governor in the execution and administration of the laws, the executive and administrative work shall be divided into the following agencies: (1) Department of Agriculture; (2) Department of Labor; (3) Department of Transportation; (4) Department of Natural Resources; (5) Department of Banking and Finance; (6) Department of Insurance; (7) Department of Motor Vehicles; (8) Department of Administrative Services; (9) Department of Economic Development; (10) Department of Correctional Services; (11) Nebraska State Patrol; and (12) Department of Health and Human Services.

Source: Laws 1929, c. 51, § 1, p. 209; C.S.1929, § 81-101; Laws 1933, c. 149, § 1, p. 571; C.S.Supp.,1941, § 81-101; R.S.1943, § 81-101; Laws 1955, c. 329, § 4, p. 1027; Laws 1957, c. 365, § 8, p. 1236; Laws 1957, c. 366, § 51, p. 1282; Laws 1959, c. 424, § 1, p. 1423; Laws 1961, c. 415, § 29, p. 1259; Laws 1961, c. 416, § 9, p. 1267; Laws 1963, c. 504, § 1, p. 1609; Laws 1969, c. 778, § 1, p. 2949; Laws 1973, LB 563, § 16; Laws 1976, LB 561, § 4; Laws 1981, LB 541, § 4; Laws 1991, LB 58, § 2; Laws 1996, LB 1044, § 835; Laws 1999, LB 36, § 35; Laws 2000, LB 900, § 246; Laws 2007, LB 296, § 726; Laws 2007, LB 334, § 102; Laws 2017, LB 339, § 272.

Cross References

Department of Administrative Services, see section 81-1103.

Department of Aeronautics, see section 3-103.

Department of Correctional Services, see section 83-171.

Department of Economic Development, see section 81-1201.02.

Department of Environment and Energy, see section 81-1502.

Department of Health and Human Services, see section 81-3113.

Department of Revenue, see section 77-360.

Department of Veterans' Affairs, see section 80-401.02.

Military Department, see section 55-120.

Cross References - continued on next page

Nebraska State Patrol, see section 81-2001.

State Department of Education, see section 79-301 and Article VII, section 2, Constitution of Nebraska.

The statutes which give the Court of Industrial Relations jurisdiction over public employees are not unconstitutional. *American Fed. of S., C. & M. Emp. v. Department of Public Institutions*, 195 Neb. 253, 237 N.W.2d 841 (1976).

Matters of fair employment practices and civil rights are matters of statewide and not local concern. *Midwest Employers Council, Inc. v. City of Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964).

The terms of this section limit its application to the departments named therein. *State ex rel. Beck v. Obbink*, 172 Neb. 242, 109 N.W.2d 288 (1961).

Department of Water Resources was created by this section. *Ainsworth Irr. Dist. v. Harms*, 170 Neb. 228, 102 N.W.2d 429 (1960).

Reclamation Act was not unconstitutional as conferring judicial powers on an executive or administrative body. *Nebraska Mid-State Reclamation District v. Hall County*, 152 Neb. 410, 41 N.W.2d 397 (1950).

Language used in the civil administrative code refers to executive departments. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Executive department was reorganized in 1933, and, by the terms of the reorganization, heads were established for various departments. *State ex rel. Howard v. Marsh*, 146 Neb. 750, 21 N.W.2d 503 (1946).

Department of Banking is an executive and administrative branch of state government with general supervision of banks and banking laws. *State v. Kastle*, 120 Neb. 758, 235 N.W. 458 (1931).

Civil administration of laws is vested in Governor, and to aid Governor, departments of state government were created. *Eidenmiller v. State*, 120 Neb. 430, 233 N.W. 447 (1930).

Department secretary was not authorized to lease building for use of his department, and state was not bound thereby. *State ex rel. Brownell Bldg. Co. v. Cochran*, 113 Neb. 846, 205 N.W. 568 (1925)

CHAPTER 81

ARTICLE 1

DEPARTMENT HEADS

81-102. Department heads; enumeration; appointment and confirmation; removal.

The Governor shall appoint heads for the various agencies listed in section 81-101, subject to confirmation by a majority vote of the members elected to the Legislature. Such appointments shall be submitted to the Legislature within sixty calendar days following the first Thursday after the first Tuesday in each odd-numbered year. The officers shall be designated as follows: (1) The Director of Agriculture for the Department of Agriculture; (2) the Commissioner of Labor for the Department of Labor; (3) the Director-State Engineer for the Department of Transportation; (4) the Director of Natural Resources for the Department of Natural Resources; (5) the Director of Banking and Finance for the Department of Banking and Finance; (6) the Director of Insurance for the Department of Insurance; (7) the Director of Motor Vehicles for the Department of Motor Vehicles; (8) the Director of Administrative Services for the Department of Administrative Services; (9) the Director of Correctional Services for the Department of Correctional Services; (10) the Director of Economic Development for the Department of Economic Development; (11) the Superintendent of Law Enforcement and Public Safety for the Nebraska State Patrol; (12) the Property Tax Administrator as the chief administrative officer of the property assessment division of the Department of Revenue; and (13) the chief executive officer for the Department of Health and Human Services. Whoever shall be so nominated by the Governor and shall fail to receive the number of votes requisite for confirmation, shall not be subject to nomination or appointment for this or any other appointive state office requiring confirmation by the Legislature during the period for which his or her appointment was sought. In case of a vacancy in any of such offices during the recess of the Legislature, the Governor shall make a temporary appointment until the next meeting of the Legislature, when he or she shall nominate some person to fill such office. Any person so nominated who is confirmed by the Legislature, shall hold his or her office during the remainder of the term if a specific term has been provided by law, otherwise during the pleasure of the Governor subject to the provisions of this section; except any such officers may be removed by the Governor pursuant to Article IV of the Constitution of Nebraska.

Source: Laws 1929,c. 51, § 2, p. 209; C.S.1929, § 81-102; Laws 1933,c. 149, § 2, p. 571; Laws 1941, c. 177, § 1, p. 695; C.S.Supp.,1941, § 81-102; R.S.1943, § 81-102; Laws 1953, c. 335, § 1, p. 1100; Laws 1957, c. 365, § 9, p. 1237; Laws 1957, c. 366, § 52, p. 1282; Laws 1961, c. 415, § 30, p. 1260; Laws 1961, c. 416, § 10, p. 1268; Laws 1963, c. 504, § 2, p. 1609; Laws 1969, c. 778, § 2, p. 2950; Laws 1969, c. 514, § 4, p. 2105; Laws 1973, LB 563, § 17; Laws 1976, LB 561, § 5; Laws 1981, LB 249, § 4; Laws 1981, LB 541, § 5; Laws 1982, LB 404, § 34; Laws 1996, LB 1044, § 836; Laws 1999, LB 36, § 36; Laws 2000, LB 900, § 247; Laws 2007, LB 296, § 727; Laws 2007, LB 334, § 103; Laws 2017, LB339, § 273.

The Director of Water Resources is a state officer and membership on the Natural Resources Commission is an additional duty which could be imposed by the Legislature. *Neeman v. Nebraska Nat. Resources Commission*, 191 Neb. 672, 217 N.W.2d 166 (1974).

Governor appoints heads of executive departments, subject to confirmation by Legislature. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Head of the Department of Agriculture and Inspection is the director, who is appointed by the Governor. *State ex rel. Howard v. Marsh*, 146 Neb. 750, 21 N.W.2d 503 (1946).

CHAPTER 86

ARTICLE 5

GEOGRAPHIC INFORMATION SYSTEMS COUNCIL

86-570. Geographic Information Systems Council; created; members; appointment; terms; expenses.

(1) The Geographic Information Systems Council is hereby created and shall consist of:

(a) The Chief Information Officer or his or her designee, the chief executive officer or designee of the Department of Health and Human Services, and the director or designee of the Department of Environment and Energy, the Conservation and Survey Division of the University of Nebraska, the Department of Natural Resources, and the Governor's Policy Research Office;

(b) The Director-State Engineer or designee;

(c) The State Surveyor or designee;

(d) The Clerk of the Legislature or designee;

(e) The secretary of the Game and Parks Commission or designee;

(f) The Property Tax Administrator or designee;

(g) One representative of federal agencies appointed by the Governor;

(h) One representative of the natural resources districts nominated by the Nebraska Association of Resources Districts and appointed by the Governor;

(i) One representative of the public power districts appointed by the Governor;

(j) Two representatives of the counties nominated by the Nebraska Association of County Officials and appointed by the Governor;

(k) One representative of the municipalities nominated by the League of Nebraska Municipalities and appointed by the Governor;

(l) Two members at large appointed by the Governor; and

(m) Such other members as nominated by the Nebraska Information Technology Commission and appointed by the Governor.

(2) The appointed members shall serve terms as determined by the Nebraska Information Technology Commission.

(3) The members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 639, § 2; Laws 1993, LB 3, § 72; Laws 1998, LB 924, § 48; Laws 1999, LB 594, § 71; Laws 2000, LB 900, § 250; R.S.Supp., 2000, § 81-2602; Laws 2002, LB 1105, § 340; Laws 2006, LB 921, § 28; Laws 2007, LB 296, § 812; Laws 2008, LB 797, § 29; Laws 2008, LB 823, § 18; Laws 2019, LB 302, § 177; Laws 2020, LB 381, § 143.

CHAPTER 28

ARTICLE 1

CLASSIFICATION OF PENALTIES

28-106. Misdemeanors; classification of penalties; sentences; where served.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor	Maximum — not more than one year imprisonment, or one thousand dollars fine, or both Minimum — none
Class II misdemeanor.....	Maximum — six months imprisonment, or one thousand dollars fine, or both Minimum — none
Class III misdemeanor	Maximum — three months imprisonment, or five hundred dollars fine, or both Minimum — none
Class IIIA misdemeanor	Maximum — seven days imprisonment, five hundred dollars fine, or both Minimum — none
Class IV misdemeanor	Maximum — no imprisonment, five hundred dollars fine Minimum — none
Class V misdemeanor	Maximum — no imprisonment, one hundred dollars fine Minimum — none
Class W misdemeanor.....	Driving under the influence or implied consent First conviction Maximum — sixty days imprisonment and five hundred dollars fine Mandatory minimum — seven days imprisonment and five hundred dollars fine Second conviction Maximum — six months imprisonment and five hundred dollars fine Mandatory minimum — thirty days imprisonment and five hundred dollars fine Third conviction Maximum — one year imprisonment and one thousand dollars fine Mandatory minimum — ninety days imprisonment and one thousand dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that such sentences may be served in institutions under the jurisdiction of the Department of Correctional Services if the sentence is to be served concurrently or consecutively with a term for conviction of a felony and the combined sentences total a term of one year or more. A determinate sentence shall be imposed for a misdemeanor if the sentence is to be served concurrently or consecutively with a determinate sentence for a Class III, IIIA, or IV felony.

Source: Laws 1977, LB 38, § 6; Laws 1982, LB 568, § 1; Laws 1986, LB 153, § 1; Laws 1992, LB 291, § 1; Laws 1998, LB 309, § 1; Laws 2002, LB 82, § 3; Laws 2005, LB 594, § 1; Laws 2011, LB 675, § 1; Laws 2015, LB 605, § 7; Laws 2016, LB 1094, § 3.

A determinate sentence, as used in subsection (2) of this section, is imposed when the defendant is sentenced to a single term of years. *State v. Vanness*, 300 Neb. 159, 912 N.W.2d 736 (2018).

The proper determination of punishment for fourth offense driving under the influence of an alcoholic liquor or drug is governed by subsection (1) of this

section and not by section 28-107(3). *State v. Schultz*, 252 Neb. 746, 566 N.W.2d 739 (1997).

For a Class III misdemeanor, a sentence of five days in jail with a fine of three hundred dollars is within the statutory maximum and will not be disturbed on appeal absent an abuse of discretion. *State v. Rosenberry*, 209 Neb. 383, 307 N.W.2d 823 (1981).