

COMPILATION OF STATUTES
REGARDING THE
DEPARTMENT OF NATURAL RESOURCES

FLOOD PLAIN MANAGEMENT

- Includes:
- I. Chapter 31, Article 10: Flood Plain
 - II. *Neb. Rev. Stat.* § 16-6,106: Cities of the First Class Flood Control
 - III. *Neb. Rev. Stat.* §§ 31-508 & 31-509: Sanitary Districts for Cities
100,000 to 300,000
 - IV. *Neb. Rev. Stat.* §§ 31-515 & 31-516: Sanitary Districts for Cities
100,000 to 300,000

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TABLE OF CONTENTS

CHAPTER 31

ARTICLE 10

FLOOD PLAIN

<u>Section</u>		<u>Page</u>
31-1001	Legislative findings; purpose of sections.	1
31-1002	Definitions, where found.	1
31-1003	Department, defined.	1
31-1004	Repealed.	1
31-1005	Base flood, defined.	2
31-1006	Drainway, defined.	2
31-1007	Flood, defined.	2
31-1008	Floodway, defined.	2
31-1009	Flood fringe, defined.	2
31-1010	Flood plain, defined.	2
31-1011	Flood plain management, defined.	3
31-1012	Flood plain management regulations, defined.	3
31-1013	Local government, defined.	3
31-1014	National flood insurance program, defined.	3
31-1015	Obstruction, defined.	3
31-1016	Watercourse, defined.	4
31-1017	Department; flood plain management; powers and duties.	4

<u>Section</u>		<u>Page</u>
31-1018	Preparation of flood hazard data and maps; department; duties; considerations.	5
31-1019	Local government; flood plain management; duties.	6
31-1020	Local government; failure to implement flood plain management regulations; department; powers and duties.	6
31-1021	Local government; enforce department regulations.	7
31-1022	Adoption of regulations; notice; hearing; appeal.	7
31-1023	State agencies, boards, and commissions; flood plain management duties.	8

CHAPTER 16

ARTICLE 6

CITIES OF THE FIRST CLASS

<u>Section</u>		<u>Page</u>
16-6,106	Powers.	9

CHAPTER 31

ARTICLE 5

DRAINAGE

<u>Section</u>		<u>Page</u>
31-508	Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; plan and estimate; duty of Department of Natural Resources.	10
31-509	Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; publication of notices; election; vote required; effect of negative vote.	10

<u>Section</u>		<u>Page</u>
31-515	Special assessments; levy; procedure; improvements recommended by Department of Natural Resources.	11
31-516	Improvements recommended by Department of Natural Resources; board of trustees as board of equalization; notice of meeting; appeal.	11

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CHAPTER 31

ARTICLE 10

FLOOD PLAIN

31-1001. Legislative findings; purpose of sections.

(1) The Legislature finds that recurrent flooding in various areas of the state presents serious hazards to the health, safety, welfare, and property of the people of the state, both within and outside such areas. The hazards include loss of life, loss of and damage to private and public property, disruption of lives and of livelihoods, interruption of commerce, transportation, communication, and governmental services, and unsanitary and unhealthy living and environmental conditions. The wise use of land subject to flooding is a matter of state concern. The Legislature further finds that the establishment of improved flood plain management practices and the availability of financial assistance to citizens of the state whose property is damaged during times of flooding are essential to the health, safety, and general welfare of the people of Nebraska.

(2) The purposes of sections 31-1001 to 31-1023 shall be to:

(a) Accelerate the mapping of flood-prone areas;

(b) Assist local governments in the promulgation and implementation of effective flood plain management regulations and other flood plain management practices;

(c) Assure that when state lands are used and state-owned and state-financed facilities are located and constructed, flood hazards are prevented, flood losses are minimized, and the state's eligibility for flood insurance is maintained; and

(d) Encourage local governments with flood-prone areas to qualify for participation in the national flood insurance program.

Source: Laws 1983, LB 35, § 1; Laws 1993, LB 626, § 1.

31-1002. Definitions, where found.

For purposes of sections 31-1001 to 31-1023, unless the context otherwise requires, the definitions in sections 31-1003 to 31-1016 shall apply.

Source: Laws 1983, LB 35, § 2; Laws 1993, LB 626, § 2.

31-1003. Department, defined.

Department shall mean the Department of Natural Resources.

Source: Laws 1983, LB 35, § 3; Laws 2000, LB 900, § 75.

31-1004. Repealed. Laws 1993, LB 626, § 8.

31-1005. Base flood, defined.

Base flood shall mean the flood having a one percent chance of being equalled or exceeded in magnitude in any given year.

Source: Laws 1983, LB 35, § 5.

31-1006. Drainway, defined.

Drainway shall mean any depression two feet or more below the land which serves to give direction to a current of water less than nine months of the year, and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 6.

31-1007. Flood, defined.

Flood shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway.

Source: Laws 1983, LB 35, § 7.

31-1008. Floodway, defined.

Floodway shall mean the channel of a watercourse or drainway and the adjacent land areas that are necessary to be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a reasonable height, as designated by the department.

Source: Laws 1983, LB 35, § 8; Laws 2000, LB 900, § 76.

31-1009. Flood fringe, defined.

Flood fringe shall mean that portion of the flood plain of the base flood which is outside of the floodway.

Source: Laws 1983, LB 35, § 9.

31-1010. Flood plain, defined.

Flood plain shall mean the area adjoining a watercourse or drainway which has been or may be covered by flood waters.

Source: Laws 1983, LB 35, § 10.

31-1011. Flood plain management, defined.

Flood plain management shall mean the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, flood control works and flood plain management regulations.

Source: Laws 1983, LB 35, § 11.

31-1012. Flood plain management regulations, defined.

Flood plain management regulations shall mean and include zoning ordinances, subdivision regulations, building codes, and other applications of the police power which are authorized by law to secure safety from floods and provide for the reasonable and prudent use of flood plains.

Source: Laws 1983, LB 35, § 12.

31-1013. Local government, defined.

Local government shall mean a county, city, or village in the state.

Source: Laws 1983, LB 35, § 13.

31-1014. National flood insurance program, defined.

National flood insurance program shall mean the program authorized by the United States Congress under the National Flood Insurance Act of 1968, as amended, 42 U.S.C., 4001 to 4128.

Source: Laws 1983, LB 35, § 14.

31-1015. Obstruction, defined.

Obstruction shall mean any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry such structure or matter downstream to the damage or detriment of either life or property. Obstruction shall not include a dam designed to store or divert water for which permission for construction has been obtained from the Department of Natural Resources pursuant to the Safety of Dams and Reservoirs Act.

Source: Laws 1983, LB 35, § 15; Laws 1993, LB 626, § 3; Laws 2000, LB 900, § 77; Laws 2005, LB 335, § 72.

Cross Reference

Safety of Dams and Reservoirs Act, see section 46-1601.

31-1016. Watercourse, defined.

Watercourse shall mean any depression two feet or more below the surrounding land which serves to give direction to a current of water at least nine months of the year and which has a bed and well-defined banks.

Source: Laws 1983, LB 35, § 16.

31-1017. Department; flood plain management; powers and duties.

The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

- (1) Coordinate flood plain management activities of local, state, and federal agencies;
- (2) Receive federal funds intended to accomplish flood plain management objectives;
- (3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections 31-1001 to 31-1023;
- (4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;
- (5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections 31-1001 to 31-1023. Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and gradations in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the

national flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain management regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section 49-801 as necessary to carry out the purposes of sections 31-1001 to 31-1023; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; Laws 2000, LB 900, § 78; Laws 2019, LB 319, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

This section requires the Nebraska Natural Resources Commission to adopt, at a minimum, flood plain regulations promulgated by the Federal Emergency Management Agency.

Giger v. City of Omaha, 232 Neb. 676, 442 N.W.2d 182 (1989).

31-1018. Preparation of flood hazard data and maps; department; duties; considerations.

In determining areas of the state for which state-prepared flood hazard data and maps are needed by local governments or by state or federal agencies and the order in which such data and maps are to be prepared, the department shall consider the following factors in such areas:

(1) Potential for future development;

(2) Potential for flood damage or loss of life;

(3) Probability that adequate data and maps will be prepared within a reasonable time by other sources;

(4) Availability and adequacy of any existing maps;

(5) Availability of flood data and other information necessary to produce adequate maps; and

(6) Degree of interest shown by the local governments in the area in utilizing flood data and maps in an effective flood plain management program.

Flood area data and maps produced by the department may be provided either directly to the local government which has jurisdiction over such area or indirectly through the national flood insurance program if the department and the federal agency responsible for administering the national flood insurance program agree to such an arrangement. Such maps shall delineate the flood plain of the base flood and, when information is available, the floodway and flood fringe of such flood plain. Such maps shall also contain or be accompanied by such other information as the department deems appropriate.

Source: Laws 1983, LB 35, § 18; Laws 1993, LB 626, § 5; Laws 2000, LB 900, § 79.

31-1019. Local government; flood plain management; duties.

When the department, a federal agency, or any other entity has provided a local government with sufficient data and maps with which to reasonably locate within its zoning jurisdiction any portion of the flood plain for the base flood of any watercourse or drainway, it shall be the responsibility of such local government to adopt, administer, and enforce flood plain management regulations which meet or exceed the minimum standards adopted by the department pursuant to subdivision (5) of section 31-1017. The authority of a local government to adopt flood plain management regulations in accordance with this section shall not be conditional upon a prior appointment of a planning commission or the adoption of a comprehensive development plan pursuant to sections 14-403, 14-404, 14-407, 15-1101, 15-1102, 19-901, 19-929, 23-114.01 to 23-114.03, or 23-174.04 to 23-174.07.

Source: Laws 1983, LB 35, § 19; Laws 2000, LB 900, § 80.

This section does not create a duty giving rise to civil tort liability. *Stonacek v. City of Lincoln*, 279 Neb. 869, 782 N.W.2d 900 (2010).

31-1020. Local government; failure to implement flood plain management regulations; department; powers and duties.

If a local government does not adopt and implement flood plain management regulations in accordance with section 31-1019 within one year after flood hazard data and maps have been provided to it pursuant to such section, the department shall, upon petition of at least ten percent

of the owners of the land located within the flood plain of the base flood delineated in such maps, or upon the written request of the board of directors of the natural resources district in which such land is located, conduct a public hearing after providing notice pursuant to section 31-1022. If the department finds after such hearing that the data and maps available are sufficient to reasonably locate the boundaries of the base flood, the department shall determine and fix by order the boundaries of the base flood and, where deemed appropriate, the boundaries of the floodway within the zoning jurisdiction of such local government. If within three months after the date of such order the local government still has not adopted and implemented flood plain management regulations for the area subject to such order in accordance with section 31-1019, the department shall be vested with the power and authority to adopt flood plain management regulations for the area and shall adopt and promulgate such regulations for the identified base flood within the zoning jurisdiction of such local government. Such regulations shall be consistent with the minimum standards adopted by the department pursuant to subdivision (5) of section 31-1017 and shall take effect on the date prescribed by the department. All ordinances or other actions by the local government which are contrary to the rules and regulations of the department shall be null and void.

Source: Laws 1983, LB 35, § 20; Laws 1993, LB 626, § 6; Laws 2000, LB 900, § 81.

31-1021. Local government; enforce department regulations.

It shall be the duty of the local government to administer and enforce any regulations adopted by the department pursuant to section 31-1020 in the same manner as if the local government had enacted such regulations. Such duty may be enforced in a mandamus action brought against such local government by any resident or landowner within the jurisdiction of such local government. If such mandamus action is successful, the local government may be held responsible for all reasonable and actual costs of the plaintiff, including, but not limited to, attorney's fees. Neither the regulations enacted by the department nor the boundaries of the base flood or floodway adopted by the department may be modified by the local government without the written consent of the department, except that a local government may adopt a measure more restrictive than that adopted by the department.

Source: Laws 1983, LB 35, § 21; Laws 2000, LB 900, § 82.

31-1022. Adoption of regulations; notice; hearing; appeal.

Notice of any hearing to be conducted by the department pursuant to section 31-1020 shall be given to the clerk of the local government and to such other local officials as the department deems appropriate, at least thirty days prior to the hearing. Notice shall also be published in a newspaper of general circulation in the area involved at least once each week for three consecutive weeks, the last publication of which shall be not less than five days prior to the date set for the hearing. The rules and regulations of the department adopted and promulgated in accordance with section 31-1020 shall not be subject to the provisions of the Administrative Procedure Act. Appeals from

department determinations pursuant to section 31-1020 may be taken by any aggrieved party, and the appeals shall be in accordance with the Administrative Procedure Act.

Source: Laws 1983, LB 35, § 22; Laws 1988, LB 352, § 28; Laws 2000, LB 900, § 83.

Cross Reference

Administrative Procedure Act, see section 84-920.

31-1023. State agencies, boards, and commissions; flood plain management duties.

(1) All state agencies, boards, and commissions shall take preventive action to minimize flood hazards and losses in connection with state-owned and state-financed buildings, roads, and other facilities, and shall take such steps as are necessary to insure compliance with the minimum standards adopted by the department in accordance with subdivision (5) of section 31-1017 when such facilities are being located or constructed in any area where no local government is enforcing flood plain management regulations pursuant to section 31-1019 or 31-1021. If a local government with jurisdiction over the land upon which any such facility is to be located or constructed is enforcing flood plain management regulations pursuant to section 31-1019 or 31-1021, the state agency, board, or commission locating or constructing such facility shall comply with such regulations unless such compliance is specifically waived by the department.

(2) The department shall assist state agencies, boards, and commissions in determining and evaluating flood hazards and alternative flood protective measures and shall establish by rule or regulation, standards and procedures to govern its review of proposed state-owned and state-financed facilities not subject to local flood plain management regulations. Such standards and procedures shall meet the minimum criteria necessary to maintain the state's eligibility for flood insurance under the national flood insurance program.

Source: Laws 1983, LB 35, § 23; Laws 1993, LB 626, § 7; Laws 2000, LB 900, § 84.

CHAPTER 16

ARTICLE 6

CITIES OF THE FIRST CLASS

16-6,106. Powers.

Cities of the first class are hereby authorized and empowered to develop and implement and from time to time amend, change, and modify a general plan or program of flood and storm water control, drainage, and disposal for such city. If the plan or program requires works of improvement outside of the city limits, it shall be submitted for review to the boards of the county or counties affected and to the Department of Natural Resources. To accomplish such purposes, or any of them, the city may to the extent deemed needful or useful in the judgment of the city council:

(1) Procure and contract for professional and technical assistance of all kinds;

(2) Build, construct, alter, modify, and improve, using either its own employees, equipment, and facilities or by contract with others, dams, dikes, levees, drainways, channels, structures, devices, storm water sewers and systems, and works of all kinds and appurtenances thereto all without any limitation whatsoever, including extensions, additions, and improvements and alterations of any such existing facilities, for the control, management, drainage, and disposal of flood, storm, or surface waters, both within and without the city as in the discretion of the city council may be required for the protection, benefit, and welfare of the city and its inhabitants and their property; and

(3) Acquire by purchase, lease, gift, and contract and through the exercise of the right of eminent domain all lands, structures, easements, rights-of-way, or other property real or personal both within and without the city as may in the discretion of the city council be required or useful in connection with any such plan or program and the implementation thereof.

Source: Laws 1971, LB 57, § 1; Laws 2000, LB 900, § 64.

Cross Reference

For additional flood control powers of cities of the first class, see section 23-320.07.

CHAPTER 31

ARTICLE 5

DRAINAGE

31-508. Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; plan and estimate; duty of Department of Natural Resources.

If a sanitary drainage district has constructed one or more channels, drains, or ditches from a city having a population of more than one hundred thousand and less than three hundred thousand inhabitants to or beyond the boundaries of the district downstream and there remains from the lower terminus of such improvement a portion or continuation of the watercourse unimproved, the Department of Natural Resources shall investigate the conditions of such watercourse, and if the department determines that further improvement in such watercourse downstream is for the interest of lands adjacent to such watercourse below the point of the improvement, the department shall file a plan of such improvement in the office of the county clerk of each of the counties in which any of the lands to be benefited are situated and in which any portion of the watercourse to be improved is located. Such plan shall describe the boundaries of the district to be benefited and shall contain an estimate of the benefits that would accrue to the sanitary district by reason of such improvement as well as the cost thereof and an estimate of the special benefits that would accrue to lands adjacent to the watercourse by reason of improved drainage, such estimate being detailed as to the various tracts of land under separate ownership as shown by the records of the county in which such lands are situated.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-508; Laws 1949, c. 81, § 2, p. 214; Laws 1969, c. 248, § 1, p. 906; Laws 2000, LB 900, § 71.

31-509. Ditches constructed from cities of 100,000 to 300,000 population; improvement beyond the district; publication of notices; election; vote required; effect of negative vote.

Whenever the Department of Natural Resources files a report and estimate, the county clerk of such county shall publish a notice once each week for three weeks in a newspaper published in the county seat of each of the counties having land within the sanitary drainage district, which notice shall state the filing of the report and estimate, the boundaries of the district to be benefited, that an election will be held at the office of the county clerk between the hours of 8 a.m. and 6 p.m. on a day named in the notice, and that at the election the question of the formation of a sanitary drainage district to include the area described in the report will be determined. The election shall be held in accordance with sections 31-406 to 31-408, except that no directors shall be elected. If a majority vote for the creation of a district based on acreage represented, the sanitary drainage district shall have jurisdiction to make the improvements recommended by the Department of Natural Resources and to assess the special benefits thereof to the lands specially benefited. If a majority vote against the creation of a district, the work shall not be done.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-509; Laws 1961, c. 138, § 5, p. 399; Laws 2000, LB 900, § 72.

Under former law, that part of statute precluding recovery of claim for damages is unconstitutional. *Cooper v. Sanitary Dist. No. 1*, 146 Neb. 412, 19 N.W.2d 619 (1945).

31-515. Special assessments; levy; procedure; improvements recommended by Department of Natural Resources.

The proceedings for imposing of special assessment by the board of trustees shall be, as nearly as may be, according to those for special assessments by the mayor and council under the law governing cities of the first class. If improvements are recommended by the Department of Natural Resources and a sanitary drainage district is formed adjacent to a watercourse previously improved above such district pursuant to sections 31-508 and 31-509, the board of trustees shall advertise for bids for the construction of such improvements as are recommended by the department and in accordance with plans recommended by the department.

Source: Laws 1891, c. 36, § 10, p. 291; R.S.1913, § 1933; C.S.1922, § 1874; Laws 1927, c. 144, § 2, p. 391; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 538; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-515; Laws 2000, LB 900, § 73.

Cross Reference

Special assessments in cities of the first class, see section 16-666.

31-516. Improvements recommended by Department of Natural Resources; board of trustees as board of equalization; notice of meeting; appeal.

Upon the completion of the improvement, notice shall be given that the trustees will sit as a board of equalization, at a day and hour in such notice stated, for the purpose of equalizing the assessments of such portion of the cost of such improvement as the report of the Department of Natural Resources finds to represent the special benefits of the land the drainage of which such improvements would improve. At such hearing such board of equalization shall hear all complaints with reference to the assessments proposed under the findings of the department. The trustees sitting as a board of equalization shall have power to increase or decrease such special assessments to the end that the property shall be assessed its equitable portion of the cost of such improvement, but not exceeding in the aggregate the percentage of the total cost recommended by the department to be assessed against such property and not exceeding in any case the actual special benefits accruing to such land. Notice of such meeting of the board of equalization shall be given by publishing a notice thereof in a paper, published in the county seat in each of the counties where any of the lands to be assessed are situated, once each week for three consecutive weeks. Appeals from the findings of such board of equalization may be taken in the manner provided for appeals from assessments of drainage districts organized under sections 31-401 to 31-450.

Source: Laws 1927, c. 144, § 2, p. 392; C.S.1929, § 31-612; Laws 1933, c. 136, § 26, p. 539; C.S.Supp.,1941, § 31-612; R.S.1943, § 31-516; Laws 2000, LB 900, § 74.

Cross Reference

Appeals, see section 31-412.