

LEGISLATIVE BILL 975

Approved by the Governor March 13, 1974

Introduced by Public Works Committee and Agriculture and Environment Committee, Kremer, 34; Rasrussen, 41; R. Maresh, 32; Kime, 43; Schmit, 23; Hasebroock, 18; C. Carsten, 2; R. Lewis, 38; Warner, 25; Stromer, 36; Epke, 24; Moylan, 6; Kennedy, 21; Dickinson, 31; Wiltse, 1

AN ACT relating to natural resources; to state legislative intent; to create the Nebraska Resources Development Fund and prescribe its source and use; to create an advisory board; and to provide severability.
Be it enacted by the people of the State of Nebraska,

Section 1. It is hereby recognized that it is the public purpose of this state to properly develop the water and related land resources of the state and that it is in the public interest of this state to financially assist in programs and projects necessary to the development, preservation, and maintenance of Nebraska's water and related land resources, including programs and projects for the abatement of pollution, potential reduction of flood damages, reservation of lands for resource development projects, provision of public irrigation facilities, preservation and development of fish and wildlife resources, protection and improvement of public lands, provision of public outdoor recreation lands and facilities, provision and preservation of the waters of this state for all beneficial uses, including domestic, agricultural, and manufacturing uses, conservation of land resources, and protection of the health, safety and general welfare of the people of the State of Nebraska.

Sec. 2. There is hereby created the Nebraska Resources Development Fund to be administered by the Nebraska Natural Resources Commission and to which the State Treasurer shall credit to such fund to carry out the provisions of this act such money as shall be appropriated to the fund by the Legislature, be paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and be donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency. The money in the Nebraska Resources Development Fund shall not be subject to any

fiscal year limitation requiring reappropriation of the unexpended balance at the end of the fiscal year. Any money in the Nebraska Resources Development Fund available for investment shall be invested by the state investment officer pursuant to the provisions of the Nebraska State Funds Investment Act.

Sec. 3. Any money in the Nebraska Resources Development Fund may be allocated by the Nebraska Natural Resources Commission in accordance with the provisions of this act for utilization by the commission, by any state office, agency, board, or commission, or by any political subdivision of the State of Nebraska to which has been granted the authority to develop the state's water and related land resources. Such money may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Prior to September 1 of each year, an annual report shall be made to the Governor and the Legislature describing the work accomplished by the use of such development fund, which report shall include a complete financial statement.

Sec. 4. Allocations from the Nebraska Resources Development Fund may be made as grants to agencies or political subdivisions when it is determined that such an allocation will not be reimbursed from revenue or receipts and when the program or project appears to be of general public benefit, thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant.

Allocations may be made from the fund by the commission as loans to agencies or political subdivisions for any program or project or any part thereof consistent with the purposes of this act which will directly generate revenue or receipts or which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds appropriate.

Sec. 5. In order to develop Nebraska's land and water resources, the Nebraska Natural Resources Commission may acquire interests in water and related land resources projects in the name of the state

utilizing the Nebraska Resources Development Fund. Such use of the fund shall be made when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the commission that such acquisition is appropriate under the provisions of this act and may be initiated upon a request filed in accordance with the provisions of section 8 of this act or by the commission itself without such a request. The commission may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such resource projects may include but not be limited to the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals the commission is authorized to contract with the federal government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Sec. 6. In order to assist the Nebraska Natural Resources Commission in administering the Nebraska Resources Development Fund, an advisory board to the commission is hereby created. The board shall consist of a representative of the following state agencies: The Department of Economic Development, the State Office of Planning and Programming, the Department of Environmental Control, the Department of Water Resources, the Department of Agriculture, the Game and Parks Commission, the Conservation and Survey Division of the University of Nebraska, and the Nebraska Natural Resources Commission. The advisory board may (1) adopt in accordance with the provisions of Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, rules and regulations establishing criteria for determining eligibility of programs and projects, for funding, and for carrying out any of its other responsibilities under this act, (2) conduct special studies necessary to the administration of the fund, (3) conduct any public hearings necessary to perform its duties, and (4) utilize the staffs of any of the member agencies to assist in the performance of its duties.

Sec. 7. Any organization qualified to apply for and receive funds from the Nebraska Resources Development Fund may file an application with the commission for a grant or loan from such fund. Applications for grants to the commission itself shall be filed by the commission directly with the advisory board. Each application shall be filed in such manner and form, and be accompanied by

such information, as may be prescribed by the advisory board and the commission; Provided, that any such application filed under the provisions of this act shall: (1) Describe the nature and purpose of the proposed program or project; (2) set forth or be accompanied by a plan for development of the proposed program or project, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the advisory board and the commission; (3) state whether money other than that for which the application is made will be used to help in meeting program or project costs and whether such money is available or has been sought for this purpose; (4) when appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands, and has or may acquire all water rights necessary for the proposed project; (5) show that the applicant possesses all necessary authority to undertake or participate in the proposed program or project; and (6) demonstrate the probable environmental and ecological consequences that may result from such proposed program or project. Upon receipt of an application, the commission shall refer it to the advisory board which shall evaluate and investigate all aspects of the proposed program or project and the proposed schedule for development and completion of such program or project, determine the eligibility of the program or project for funding, and make appropriate recommendations to the commission pursuant to the provisions of this act. As a part of its investigation, the advisory board shall consider whether the plan for development of the program or project is satisfactory. If the board determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make its determinations, it shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

Requests for utilization of the Nebraska Resources Development Fund for state participation in any water and related land-water resources projects through acquisition of a state interest therein shall also be filed with the commission and directed by it to the advisory board for their evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the advisory board and the commission.

Sec. 8. Each program or project for which funding is requested, whether such request has as its origin an application or the action of the commission itself, shall be reviewed as provided in this act by the advisory board prior to the approval of any allocation for such program or project by the commission. The advisory board shall within a reasonable time, not to exceed six months, after receipt of such request, report to the commission the results of its review and shall recommend approval or rejection of the program or project for funding eligibility. The advisory board shall indicate what form of allocation it deems to be appropriate. In the case of an approved application recommended for a loan, the board shall also recommend the appropriate repayment period and the rate of interest. The commission shall act in accordance with such recommendations unless action to the contrary is approved by each commission member eligible to vote on the specific recommendation under consideration. No member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The advisory board may also upon request advise the commission on any other matter regarding the administration of the fund and may, by the commission, be delegated additional responsibilities consistent with the purposes of this act. It shall be the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs and projects under this act.

Sec. 9. The advisory board may recommend approval of and the commission may approve grants or loans for program or project costs or acquisition of interests in projects if after investigation and evaluation the board and the commission find that: (1) The plan does not conflict with any existing Nebraska state land or water plan; (2) the proposed program or project is economically and financially feasible based upon standards adopted by the advisory board pursuant to the provisions of this act; (3) the plan for development of the proposed program or project is satisfactory; (4) the plan of development minimizes any adverse impacts on the natural environment; (5) the applicant is qualified, responsible, and legally capable of carrying out the program or project; (6) in the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the project; (7) the plan considers other plans and programs of the state in accordance with the provisions of section 84-135, Reissue Revised Statutes of Nebraska, 1943, and resources development plans of the political

subdivisions of the state; and (8) the money required from the development fund is available.

Sec. 10. If after review of the recommendation by the advisory board the commission determines that an application for a grant, loan, acquisition of an interest or combination thereof pursuant to the provisions of this act is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the commission shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program or project to which funds shall be applied. The commission shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of interest in any qualified project when such acquisition is initiated by the commission itself pursuant to the provisions of section 5 of this act. All agreements entered into pursuant to this section shall include but not be limited to a specification of the amount of funds involved, whether the funds are considered as a grant, loan, or for the acquisition of an interest in the name of the state and if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

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

With the express approval of the commission, an applicant may convey its interest in a project to a successor. The commission shall contract with the qualified successor in interest of the original obligor

for repayment of the loan, together with any interest thereon, and for succession to its rights and obligations in any contract with the commission.

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

Sec. 11. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.