

LEGISLATIVE BILL 510

Approved by the Governor May 6, 1977

Introduced by Public Works Committee, Kremer, 34, Chmn.; Merz, 1; Mills, 44; Swigart, 8; Moyian, 6; Boughn, 21

AN ACT to amend sections 2-1503, 2-1504, 2-1504.02, 2-1507, 23-320.08, 23-922, 72-222, and 85-163.04, Reissue Revised Statutes of Nebraska, 1943, and section 74-1305, Revised Statutes Supplement, 1976, relating to natural resources; to delete obsolete language; to harmonize provisions; and to repeal the original sections, and also sections 2-1508 to 2-1517.03, 2-1518 to 2-1528, 2-1530 to 2-1546, 2-1548 to 2-1567, 2-3261, 23-320.09, 31-801 to 31-816, 31-821, and 31-823 to 31-837, Reissue Revised Statutes of Nebraska, 1943, and section 31-822, Revised Statutes Supplement, 1976.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 2-1503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1503. As used in sections 2-1502 to ~~2-1567~~ 2-1570, unless the context otherwise requires:

~~(1) This act shall mean sections 2-1502 to 2-1567;~~

~~(2) District, soil conservation district, or soil and water conservation district shall mean a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act;~~

~~(3) Supervisor shall mean one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act;~~

(4) (1) Commission or Nebraska Natural Resources Commission shall mean the agency created in section 2-1504;

~~(5) Petition shall mean a petition filed under the provisions of section 2-1508 for the creation of a district;~~

~~{6} Nominating petition shall mean a petition filed under the provisions of section 2-1518 to nominate candidates for the office of supervisor of a soil conservation district;~~

{7} {2} State shall mean the State of Nebraska;

{8} {3} Agency of this state shall mean the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

{9} {4} United States or agencies of the United States shall mean the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

{10} {5} Government or governmental shall mean the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them;

~~{11} Landowner shall mean any person with a legal residence within the district, who shall hold title to any lands lying within a district organized under the provisions of this act;~~

~~{12} Land occupier or occupier of land shall mean any person who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as lessee, renter, tenant, or otherwise;~~

~~{13} Due notice shall mean legal notice;~~

{14} {6} Lands, easements, and rights-of-way shall mean lands and rights or interests in lands whereon channel improvements and channel rectifications, water retarding or gully stabilization structures are located, including those areas for flooding and flowage purposes, spoil areas, borrow pits, access roads, and for similar purposes;

~~{15} {7} Local organization shall mean any soil and water conservation natural resources district, watershed conservancy district, watershed district, drainage district, irrigation district, or other public district, county, city or state agency;~~

{16} {8} Subwatershed shall mean a portion of a watershed project as divided by the commission on a

complete hydrologic unit;

~~{17} Tenant shall mean any occupier or operator or a combination of occupier and operator of agricultural lands lying within a district which is owned by others and who, through the employment of his time, equipment and livestock, derives a majority of his income from a farming or ranching operation;~~

~~{18} Elector shall mean any person as defined in section 32-102;~~

~~{19} Watershed or watershed conservancy district shall mean a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act for the purposes specified in section 2-1500;~~

{20} (9) Rechanneling shall mean the channeling of water from one watercourse to another watercourse by means of open ditches; and

{21} (10) Watercourse shall mean any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well-defined banks; Provided, that it shall, upon order of the commission, also include any particular depression which would not otherwise be within the definition of watercourse.

Sec. 2. That section 2-1504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1504. (1) There is hereby established, to serve as the official agency of the state in connection with soil and water conservation, flood prevention, watershed protection, and flood control and to perform the functions conferred upon it in sections 2-1502 to 2-1567 2-1574 and sections 2-3204 to 2-3264 as otherwise provided by law, the Nebraska Natural Resources Commission.

~~{2} Until January 1, 1973, the commission shall consist of fourteen members, as follows: The dean or director of the Conservation and Survey Division of the University of Nebraska; the dean of the University of Nebraska College of Agriculture; the director of the state agricultural extension service; the Director of Water Resources; three members to be appointed by the Governor, one of whom shall represent the irrigation interests of the state, one of whom shall represent the chambers of commerce, and one of whom shall represent~~

municipal--and--industrial--users;---and---one---district supervisor-or-former-district-supervisor-from-the-state at-large-and-one-district-supervisor-or-former-district supervisor-from-each-of--the--following--districts:---(a) Cedar,-Dixon,-Bakota,-Wayne,-Thurston,-Stanton,-Cuming, Burt,-Colfax,-Bodge,---Washington,-Bougias,---Butler, Saunders,-Sarpy,-Seward,-Lancaster,-Cass,-Stoe,-Johnson, Nemaha,-Pawnee,-and--Richardson--counties;---(b)---Gage, Saline,-Jefferson,---Polk,---York,---Pike,---Thayer, Hamilton,-Clay,-Nuckolls,-Hall,-Adams,-Webster,---Buffalo, Kearney,-Franklin,-Dawson,-Pheips,-Gosper,-Harian,-and Furnas-counties;---(c)---Knox,-Antelope,-Pierce,-Wheeler, Boone,-Madison,-Platte,-Greeley,-Nance,-Sherman,-Howard, Merrick,-Cherry,-Keya,-Paha,-Brown,-Rock,-Boyd,-Hoit, Grant,-Hooker,-Thomas,-Blaine,-Loup,-Gartreid,-McPherson, Logan,-Custer,-and-Valley-counties;---and--(d)---Sioux,-Dawes, Sheridan,-Box,-Butte,-Scotts,-Bluff,-Morrill,-Garden, Banner,-Kimball,-Cheyenne,-Deuel,-Arthur,-Keith,-Lincoln, Perkins,-Chase,-Hayes,-Frontier,-Bundy,-Hitchcock,---and Red-Willow-counties;---one-member--of--the--Nebraska--state irrigation-association-to-be-elected-at-their-convention; and--a--director--or--former--director--of--a--watershed conservancy-district;---watershed--district--or--watershed planning-board-to-be-elected-at--the--convention--of--the Nebraska--association--of--soil--and--water--conservation districts;---The-district-supervisors-in-attendance-at-the annual-state-conference--of--district--supervisors--shall elect-by-secret--informal--written--ballot--the--district supervisors-or-former-district-supervisors-to-be--members of-the-commission;---The-district-supervisors-from-each-of-the-four-districts-provided-by-this-section-in-attendance at-the-annual-state-conference--of--district--supervisors shall-caucus-and-nominate-no-less-than-two--nominees--for each-position-to-be--filed--on--the--commission;---These nominees--shall--be--presented--to--the--supervisors--in attendance-at-the-annual-conference--for--election;---The nominee-from-each-of-the-districts-receiving-the-highest vote--shall-be-declared-elected-and--shall--serve--on--the commission;---The-term-of-all--elective--officers--on--the commission--shall--be--for--two--years--commencing--on--January-1 of-the-year-following--their--election;---Succeeding--the election-of-a-member-of-the-commission-from-each--of--the districts;---the-supervisors-in-attendance--at--the--annual conference-of-supervisors--shall-nominate--and--elect--one member-to-the-commission--at--large;---The--one--district supervisor-or-former-district--supervisor--nominated--and elected-at-large-receiving--the--highest--vote--shall--be declared-elected;

(j) Effective January 1, 1973, the commission shall consist of fourteen members, as follows: The dean or director of the Conservation and Survey Division of the University of Nebraska; the dean of the University of

Nebraska College of Agriculture; the director of the state agricultural extension service; the Director of Water Resources; four members to be appointed by the Governor, one of whom shall represent pump irrigation interests of the state, one of whom shall represent the chambers of commerce, and one of whom shall represent municipal industrial users, and one member to represent gravity irrigation interests of the state; one natural resources district director or former district director from each of the following river basins, with basin delineations being those on the Nebraska river basin map officially adopted by the commission and on file in the commission office: (a) The Niobrara, White River, and Hat Creek basin; (b) the North Platte, South Platte, and Middle Platte River basins; (c) the Loup and lower Platte River basins; (d) the Elkhorn and upper Missouri tributaries basins; and (e) the Republican, Little Blue, Big Blue, and Nemaha river basins; and one member to be elected at large. Notwithstanding the terms for which they were elected, the terms of members elected pursuant to subsection (2) of this section shall expire on January 17, 1973. Commission members representing natural resources districts shall be elected at the annual state conference of district directors in 1972 and shall take office on January 17, 1973. District directors from each river basin in attendance at the conference in 1972 shall caucus and nominate no less than two candidates for membership on the commission. All directors in attendance shall then elect the members of the commission. The nominee from each river basin receiving the most votes shall be elected. Of those members elected, the three receiving the most votes shall serve for four years, and the remaining two members for two years. Following election of the five members from each basin, the at-large member shall be elected for a term of four years. As terms of members elected in 1972 expire, their successors shall be elected in the same manner, for terms of four years.

(2) (4) Commencing the third Thursday after the first Tuesday in January, 1975, the The Nebraska Natural Resources Commission shall consist of fifteen members, as follows: One natural resources district director or former district director from each of the following river basins, with delineations being those on the Nebraska river basin map officially adopted by the commission and on file in the commission office: (a) The Niobrara, White River and Hat Creek basin, (b) the North Platte River basin, (c) the South Platte River basin, (d) the middle Platte River basin, (e) the lower Platte River basin, (f) the Loup River basin, (g) the Elkhorn River basin, (h) the Missouri tributaries basin, (i) the Republican River basin, (j) the Little Blue River basin,

(k) the Big Blue River basin, and (l) the Nemaha River basin, and three members to be appointed by the Governor subject to confirmation by the Legislature. Of the members appointed by the Governor, one shall represent municipal users of water, one shall represent surface water irrigators, and one shall represent ground water irrigators. ~~Notwithstanding the terms for which they were elected, the terms of members elected pursuant to subsection (3) of this section shall expire on the third Thursday after the first Tuesday in January, 1975. The~~ Successors to the members of the commission representing river basins shall be selected for four-year terms at individual caucuses of the natural resources district directors residing in the river basin from which the member is selected. Such caucuses shall be held by each basin on the second Thursday after the first Tuesday of the year the term of office of the commission member from that basin expires. ~~in 1975 a caucus shall be held by each basin to select~~ Terms of office shall follow the sequence originally determined by the river basin representatives to the commission ~~and those members shall~~ at their first meeting on the third Thursday after the first Tuesday in January, 1975, ~~by such method as they may choose, divide themselves into two groups of six each and designate one group to serve for a term of two years and one group to serve for a term of four years. Their successors shall thereafter be selected for a term of four years each.~~ Appointive members shall serve at the pleasure of the Governor. All river basin members shall take office on the third Thursday after the first Tuesday in January, 1975 following their selection. Any vacancy on the commission shall be filled for the unexpired term in the same manner as successors are named. Each member of the commission representing a river basin shall qualify by filing with the other members of the commission an acceptance in writing of his selection.

Sec. 3. That section 2-1504.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1504.02. The Nebraska Natural Resources Commission shall establish a technical advisory committee to assist it in the performance of its duties. The committee shall consist of the dean or director of the conservation and survey division Conservation and Survey Division of the University of Nebraska, the dean director of the Water Resources Research Institute of the University of Nebraska, College of Agriculture, the director of the state agricultural extension service, the Director of Water Resources, a representative of the office of the Governor, a representative of the Department of Health, a representative of the Department

of Environmental Control, a representative of the Department of Economic Development, a representative of the Department of Roads, a representative of the Game and Parks Commission, one representative each from the United States Army Corps of Engineers, Department of Agriculture, and Department of the Interior if named to so serve by their respective secretaries.

Sec. 4. That section 2-1507, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1507. In addition to the duties and powers otherwise conferred by law upon the Nebraska Natural Resources Commission, ~~by sections 2-1502--to--2-1567--and sections 1-to-64-of-this-act;~~ it shall have the following duties and powers: (1) To offer such assistance as may be 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; (2) to keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions, and to facilitate an interchange of advice and experience between such subdivisions, and cooperation between them; (3) to coordinate the programs of such subdivisions so far as this may be done by advice and consultation; (4) to secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such subdivisions; (5) to disseminate information throughout the state concerning the activities and programs of such subdivisions; ~~and to--assist--in--the--formation---of---natural---resources districts;~~ (6) ~~to assist and coordinate the programs of the various watershed organizations;~~ (6) to plan, develop, and encourage the implementing 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; (7) ~~when necessary for the proper administration of the functions of the department, to rent or lease space outside the State Capitol;~~ (7) to assist such local governmental organizations as villages, towns, cities, counties, watershed districts, and watershed conservancy 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; (8) (8) to hold hearings on all watershed or flood control programs as developed by responsible subdivisions of government; (9) (9) to acquire in the name of the State of Nebraska such lands,

rights-of-way and easements as it may determine are necessary to accomplish rechanneling measures authorized by section 2-1507.01 and which it finds are required by public health, safety, and welfare, by condemnation, if necessary, according to the procedure set forth in sections 76-704 to 76-724; and ~~(12)~~ (11) to contract with persons, firms, or corporations for assistance in planning, preparation of studies and right-of-way acquisition. Such hearings shall be held within sixty days from the date such programs are received by the commission. At such hearings, the commission shall review such programs and make such recommendations as to encourage the comprehensive resource development needs of the area and to assist in the development of a plan that is desirable, practicable, feasible and necessary in the interest of health, safety and public welfare.

Sec. 5. That section 23-320.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-320.08. In any county or counties of the State of Nebraska in which the United States, or any of its departments or agencies shall be authorized by Congress to construct works for flood control, watershed protection and flood prevention and drainage programs of the State of Nebraska or any of its agencies or in cooperation with the program of natural resources districts or similar public districts the county or counties, if in its or their opinion the construction is necessary for the public welfare, may: (1) Enter into an undertaking, in the name of the county, to hold the United States of America free from any damage to persons or property resulting during the construction or after the completion thereof; (2) contract with the federal government, in the name of the county, that when such work is completed the county will maintain, keep in repair, and operate such works of improvement; (3) furnish all necessary lands, rights-of-way, and easements as provided in section 23-320.10; (4) enter into agreements with other county governments on provisions for cooperative programs of resource development; (5) establish watershed boundary lines for taxation purposes so that property within the perimeter of the defined drainage-way will be assessed for the financing of the program for improvement; and (6) appropriate such funds as may be needed to carry out and finance the program as outlined in sections 23-320.08 to 23-320.12. ~~and (7) appoint an advisory watershed improvement board to assist the county in carrying out its responsibilities as outlined in sections 23-320.08 to 23-320.12.~~



Sec. 6. That section 23-922, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-922. As used in this act, unless the context otherwise requires:

(1) Governing body shall mean, in the case of a city, the council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, mosquito abatement district, road improvement district, sanitary and drainage district, or sanitary and improvement district, the board of trustees; in the case of a county, the county board; in the case of a township, the town board; in the case of a school district, the school board; in the case of a rural and suburban fire protection district, reclamation district, natural resources district, or hospital district, the board of directors; in the case of a health district, the board of health; in the case of a regional library, the regional library commission; in the case of an educational service unit, the board; in the case of an area vocational technical school, the school district board of education or the governing board of the area vocational technical school; in the case of a junior college district, the board of education of the junior college district; in the case of an airport authority, the airport authority board; and in the case of a ~~watershed-district; watershed conservancy-district; or~~ weed eradication and control district, the district supervisors;

(2) Levying board shall mean any governing body which has the power or duty to levy a tax;

(3) Fiscal year shall mean the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax shall mean any general or special tax levied against persons, property, or business, for public purposes, as provided by law, but shall not include any special assessment;

(5) Auditor shall mean the Auditor of Public Accounts;

(6) Cash reserve shall mean funds required for the period before revenue would become available for expenditure;

(7) Public funds shall mean all money, including nontax money, used in the operation and functions of governing bodies; and

(8) Adopted budget statement shall mean a proposed budget statement which has been adopted or amended and adopted as provided in section 23-925; and such term shall include additions, if any, to an adopted budget statement made by a supplemental budget which has been adopted as provided in section 23-929.

Sec. 7. That section 72-222, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

72-222. Any irrigation district, rural water district, public power district or public power and irrigation district, ~~watershed--conservancy--district~~ or watershed natural resources district may acquire from the state any educational land, portion thereof, or interest therein for the purpose for which such districts are authorized by law to condemn private lands in this state. In addition, a ~~watershed--conservancy~~ natural resources district ~~or a watershed-district~~ may acquire an easement or right-of-way for the purpose of constructing, replacing, operating, and maintaining structures which are a part of the program of work of the district.

Sec. 8. That section 74-1305, Revised Statutes Supplement, 1976, be amended to read as follows:

74-1305. Such district shall have the power, right and authority after notice and public hearing (1) to purchase within or without such county railroad rights-of-way including the improvements thereon, (2) to purchase land not presently owned or used by any railroad company for additional right-of-way or additional switch or yard space where changes of routes or construction of interconnections or of new railroad yards is necessary or desirable, and (3) to acquire through the exercise of the power of eminent domain, but only upon the vote of five-sixths of the directors of such district and the written approval by each railroad involved in the contemplated relocation project, such land as set forth in subdivision (2) of this section for the purposes set forth therein, which acquisition shall follow the procedures set forth in sections 76-704 to 76-724.

Such land and improvements as may be acquired for the purpose of the removal of railroad trackage may be disposed of by conveying the same for reasonable consideration to a governmental entity for public purposes or by sale of the same as set forth in this section. Such new railroad rights-of-way, switches, and yards as may be obtained and constructed may be leased for use to railroads or may be sold to such railroads or may be traded to such railroads for other property

belonging to such railroads.

Such property, real or personal, shall be sold in such manner and under such terms and conditions as the board shall deem in the best interests of the district; except that where the fair market value exceeds five thousand dollars it may only be sold after due notice and hearing by such board at a regular meeting upon the vote of a majority of such board.

The board of directors of such district shall also have the right and authority to enter into contracts or other arrangements with the United States government or any department thereof, with persons, railroads, or other corporations, with political subdivisions, public and municipal corporations, and the state government of this state, making full use of the Interlocal Cooperation Act, for (1) cooperation or assistance in the design, construction, maintenance, sale, or lease of the works of the district, (2) making surveys and investigations or reports in relation to the objectives of the district, (3) cooperation or assistance in obtaining the construction, maintenance, or operation of a work or works of public improvement within the district for any of the purposes described in section 74-1302, (4) receiving the title or possession, or both, of any property and funds whatsoever that are connected directly or indirectly with the purposes described in section 74-1302, (5) assuming, and becoming bound by, any obligations, promises, or covenants whatsoever which are so connected, or (6) holding and saving the United States or others free from damages resulting from any construction works that may be undertaken.

Prior to implementing any plans affecting matters of planning by or the interests of any planning commission located within such district, the interests of any municipality, county or state educational institution or school district a portion of which lies within such district, any agricultural society, any airport authority, any watershed--conservancy natural resources district or soil-and-water-conservation-district, or any other similar political entity, and any railroads, shippers and affected property owners, the board shall consult with and submit such plans to such entities as may be concerned for study, review, comment, and suggestion. Approval of any state or federal regulatory agency shall be secured, when necessary, prior to implementing any of the provisions contained in sections 74-1301 to 74-1309 and the district shall comply with the requirements of any such agency.

In developing plans for specific projects, to determine the feasibility of implementing the purposes of sections 74-1301 to 74-1309, the district shall examine the costs and benefits to the community, the railroads, and the highway users, and shall calculate the costs and benefits by consideration being given but not limited to loss of revenue, increased operating costs, costs of installation, acquisition of real and personal property, relocation, signalization, communication, utilities, avoidance of hazards, creation of transportation efficiencies, resolving conflicts of land use, and any other ancillary or peripheral costs or benefits.

Sec. 9. That section 85-163.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

85-163.04. In carrying out the provisions of this act the State Forester shall cooperate with (1) any agency or bureau of the United States, including but not limited to the Forest Service, the Soil Conservation Service, the Agricultural Stabilization and Conservation Service, the Bureau of Reclamation, the Corps of Engineers and the Bureau of Outdoor Recreation, (2) any agency or bureau of the State of Nebraska or its political subdivisions, including but not limited to the Game and Parks Commission, the Nebraska ~~Soil--and--Water Conservation~~ Natural Resources Commission, the State Fire Marshal, the Department of Agriculture, the Adjutant General, the Department of Economic Development, and the Conservation and Survey Division, and (3) any incorporated municipality of the state or any political subdivision of the state, including but not limited to rural fire districts, ~~soil-and-water-conservation~~ natural resources districts and weed control districts.

Sec. 10. That original sections 2-1503, 2-1504, 2-1504.02, 2-1507, 23-320.08, 23-922, 72-222, and 85-163.04, Reissue Revised Statutes of Nebraska, 1943, and section 74-1305, Revised Statutes Supplement, 1976, and also sections 2-1508 to 2-1517.03, 2-1518 to 2-1528, 2-1530 to 2-1546, 2-1548 to 2-1567, 2-3261, 23-320.09, 31-801 to 31-816, 31-821, and 31-823 to 31-837, Reissue Revised Statutes of Nebraska, 1943, and section 31-822, Revised Statutes Supplement, 1976, are repealed.