

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 529**

Introduced by Carlson, 38.

Read first time January 18, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to real estate; to amend sections 76-2,112,  
2 76-2,114, 81-15,173, and 81-15,176, Reissue Revised  
3 Statutes of Nebraska; to change provisions relating to  
4 conservation and preservation easements and the Nebraska  
5 Environmental Trust Act; and to repeal the original  
6 sections.

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

1           Section 1. Section 76-2,112, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           76-2,112 (1) A conservation or preservation easement  
4 shall be an interest in real property, created by an instrument in  
5 which the purpose for the easement is clearly stated. The instrument  
6 shall be filed, duly recorded, and indexed in the office of the  
7 register of deeds of the county in which the real property subject to  
8 the conservation or preservation easement is located.

9           (2) No conveyance of a conservation or preservation  
10 easement shall be effective until accepted by the holder. At the same  
11 time notice of the proposed conservation or preservation easement is  
12 given to the governing body, the proposed holder shall provide  
13 written notice of the proposed easement to the governing bodies of  
14 all entities levying taxes on the property. Such notice shall be  
15 delivered by first-class mail and shall include a statement of the  
16 fiscal impact of changing the classification of the property or  
17 removing it from the tax rolls.

18           (3) In order to minimize conflicts with land-use  
19 planning, each conservation or preservation easement shall be  
20 approved by the appropriate governing body. Such approving body shall  
21 first refer the proposed acquisition to and receive comments from the  
22 local planning commission with jurisdiction over such property, which  
23 shall within sixty days of the referral provide such comments  
24 regarding the conformity of the proposed acquisition to comprehensive  
25 planning for the area. If such comments are not received within sixty

1 days, the proposed acquisition shall be deemed approved by the local  
2 planning commission. If the property is located partially or entirely  
3 within the boundaries or zoning jurisdiction of a city or village,  
4 approval of the governing body of such city or village shall be  
5 required. If such property is located entirely outside the boundaries  
6 and zoning jurisdiction of any city or village, approval of the  
7 county board shall be required. If the property is located in the  
8 Niobrara scenic river corridor as defined in section 72-2006 and is  
9 not incorporated within the boundaries of a city or village, the  
10 Niobrara Council approval rather than city, village, or county  
11 approval shall be required. Approval of a proposed acquisition may be  
12 denied upon a finding by the appropriate governing body that the  
13 acquisition is not in the public interest when the easement is  
14 inconsistent with (a) a comprehensive plan for the area which had  
15 been officially adopted and was in force at the time of the  
16 conveyance, (b) any national, state, regional, or local program  
17 furthering conservation or preservation, ~~or~~ (c) any known proposal by  
18 a governmental body for use of the land, or (d) the best interest of  
19 the county.

20 (4) Notwithstanding the provisions of subsection (3) of  
21 this section, the state, or any state agency or political subdivision  
22 other than a city, village, or county, may accept an easement after  
23 first referring the proposed acquisition to and receiving comments  
24 from the local planning commission with jurisdiction over the  
25 property, which shall within sixty days of the referral provide such

1 comments regarding the conformity of the proposed acquisition to  
2 comprehensive planning for the area. If such comments are not  
3 received within sixty days, the proposed acquisition shall be deemed  
4 approved by the local planning commission.

5 Sec. 2. Section 76-2,114, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 76-2,114 (1) Unless a conservation or preservation  
8 easement is otherwise modified or terminated according to the terms  
9 of the easement or the provisions of sections 76-2,111 to 76-2,118,  
10 the owner of the subject real property or the holder of the easement  
11 may petition the district court in which the greater part of the  
12 servient estate is located for modification or termination of the  
13 easement. The court may modify or terminate the easement pursuant to  
14 this section only if the petitioner establishes that it is no longer  
15 in the public interest to hold the easement or that the easement no  
16 longer substantially achieves the conservation or preservation  
17 purpose for which it was created. No comparative economic test shall  
18 be used to determine whether the public interest or the conservation  
19 or preservation purpose of the easement is still being served. No  
20 modification shall be permitted which is in excess of that reasonably  
21 necessary to remedy the deficiency of the easement.

22 (2) A conservation or preservation easement held by a  
23 charitable corporation or trust as defined in section 76-2,111 shall  
24 be limited in duration to ten years. At least ninety days prior to  
25 the expiration of ten years, the charitable corporation or trust

1 shall notify the county board in writing of the date of expiration  
2 and whether it desires to continue the easement. Failure to provide  
3 such notice shall result in termination of the easement at the end of  
4 the ten-year period. Within sixty days after receipt of the notice,  
5 the county board shall hold a public hearing and determine whether to  
6 continue or deny the easement.

7           Sec. 3. Section 81-15,173, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           81-15,173 The board shall have and may exercise the  
10 following powers and duties:

11           (1) Adopt bylaws to govern the proceedings of the board;

12           (2) Keep records, conduct hearings, and adopt and  
13 promulgate rules and regulations to carry out its duties and  
14 implement the Nebraska Environmental Trust Act;

15           (3) Contract with the Game and Parks Commission for  
16 administrative support;

17           (4) Contract with governmental and private agencies to  
18 receive services and technical assistance;

19           (5) Contract with governmental and private agencies to  
20 provide services and technical assistance;

21           (6) Establish environmental categories for use of the  
22 funds and develop an appropriate rating system for each category;

23           (7) Establish ad hoc advisory boards and subcommittees;

24           (8) Sponsor or assist environmental proposals pertaining  
25 to the environmental categories of the board, including issuing

1 grants to agencies, organizations, and persons engaged in the  
2 purposes of the trust;

3 (9) Cooperate with or assist any unit of the state, any  
4 political subdivision, or any private, public, or federal agency,  
5 foundation, or person in furtherance of the purposes of the trust;

6 (10) Acquire and dispose of personal property in  
7 furtherance of the purposes of the trust; and

8 (11) Apply for or accept any gift, grant, bequest,  
9 royalty, or donation, designate the fund to which it will be  
10 credited, and expend the proceeds in furtherance of the purposes of  
11 the trust.

12 The board shall not hold property in fee nor shall it  
13 obtain easements.

14 Sec. 4. Section 81-15,176, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 81-15,176 (1) Subject to subsection (3) of this section,  
17 the board shall establish environmental categories of projects  
18 eligible for funding by the trust. The board, after allowing  
19 opportunity for public comment, shall designate as categories those  
20 environmental goals which most affect the natural physical and  
21 biological environment in Nebraska, including the air, land, ground  
22 water and surface water, flora and fauna, prairies and forests,  
23 wildlife and wildlife habitat, and areas of aesthetic or scenic  
24 values. In designating environmental categories, the board shall  
25 attempt to focus on the areas which promise the greatest

1 opportunities for effective action to achieve and preserve the future  
2 environmental quality in the state. The board shall establish  
3 categories for five-year periods beginning July 1, 1995. The board  
4 may establish annual priorities within the five-year categories. The  
5 board shall provide for public involvement in developing the  
6 categories for such five-year periods and any priorities within these  
7 categories, including, but not limited to, public meetings in each of  
8 the three congressional districts.

9 (2) The board shall establish criteria for determining  
10 the eligibility of projects for grant assistance, which criteria  
11 shall include the following:

12 (a) The grants shall not provide direct assistance to  
13 regulatory programs or to implement actions mandated by regulations  
14 except remediation;

15 (b) No more than sixty percent of grant allocations in  
16 any year shall assist remediation of soils or ground water, and no  
17 grants for this purpose shall occur unless all other available  
18 sources of funding are, in the opinion of the board, being  
19 substantially utilized;

20 (c) No more than ten percent of the grant allocations in  
21 any year shall be used by the recipients for land purchases and  
22 easements;

23 (d) Only political subdivisions shall use grant  
24 allocations for land acquisition;

25 ~~(e)~~-(e) The grants shall not pay for projects which

1 provide primarily private benefits or relieve private liability for  
2 environmental damage;

3 ~~(d)~~ (f) The grants shall not pay for projects which have  
4 direct beneficiaries who could afford the costs of the benefits  
5 without experiencing serious financial hardship;

6 ~~(e)~~ (g) The grants should assist those projects which  
7 offer the greatest environmental benefits relative to cost;

8 ~~(f)~~ (h) The grants should assist those projects which  
9 provide clear and direct environmental benefits;

10 ~~(g)~~ (i) The grants should assist those projects which  
11 will make a real contribution to achieving the board's environmental  
12 categories;

13 ~~(h)~~ (j) The grants should assist those projects which  
14 offer the greatest public benefits; and

15 ~~(i)~~ (k) The grants shall not pay for land or easements  
16 acquired without the full and express consent of the landowner.

17 (3) Until the first five-year categories become effective  
18 on July 1, 1995, the board shall observe the following categories for  
19 allocating grants:

20 (a) Critical habitat areas, including wetlands  
21 acquisition, preservation, and restoration and acquisition and  
22 easements of areas critical to rare or endangered species;

23 (b) Surface water quality, including actions to preserve  
24 lakes and streams from degradation;

25 (c) Ground water quality, including fostering best

1 management practices as defined in section 46-706, actions to  
2 preserve ground water from degradation, and remediation of soils or  
3 ground water; and

4 (d) Development of recycling markets and reduction of  
5 solid waste volume and toxicity.

6 (4) The board may refine and clarify these initial  
7 categories.

8 Sec. 5. Original sections 76-2,112, 76-2,114, 81-15,173,  
9 and 81-15,176, Reissue Revised Statutes of Nebraska, are repealed.