

## LEGISLATIVE BILL 319

Approved by the Governor March 21, 2019

Introduced by Moser, 22.

A BILL FOR AN ACT relating to the Department of Natural Resources; to amend sections 31-1017 and 61-206, Reissue Revised Statutes of Nebraska, and section 46-753, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to notice and rules and regulations; and to repeal the original sections.

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

Section 1. Section 31-1017, Reissue Revised Statutes of Nebraska, is amended to read:

31-1017 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 ~~by mail~~ 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.

Sec. 2. Section 46-753, Revised Statutes Cumulative Supplement, 2018, is amended to read:

46-753 (1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by

the Legislature, transfers authorized by the Legislature, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. 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 fund shall be administered by the department. The department ~~shall~~ may adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Sec. 3. Section 61-206, Reissue Revised Statutes of Nebraska, is amended to read:

61-206 (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~~ The department ~~may~~ shall 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.

Sec. 4. Original sections 31-1017 and 61-206, Reissue Revised Statutes of Nebraska, and section 46-753, Revised Statutes Cumulative Supplement, 2018, are repealed.