LEGISLATIVE BILL 1023

Introduced by Hilgers, 21; Brandt, 32; Flood, 19; Gragert, 40; Hughes, 44; McCollister, 20; McDonnell, 5; Wishart, 27.

Read first time January 13, 2022

Committee: Natural Resources

A BILL FOR AN ACT relating to water; to adopt the Lake Development Act and the Water Recreation Enhancement Act; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Lake Development Act.

Sec. 2. The Legislature finds and declares as follows:

(1) The future vibrancy of the people, communities, and businesses of Nebraska depends on reliable sources of water;

(2) While it is in the state's best interest to retain control over its water supplies, much of the state's water resources are currently underutilized;

(3) In 2019, the state experienced historic flooding along the Platte River which caused loss of life and over one billion dollars in damage to private and public property and infrastructure;

(4) Well-planned flood control is critical to the future of the people, communities, and businesses of Nebraska;

(5) In light of the disruption from the COVID-19 pandemic and the trend toward a remote workforce around the country, people around the country are rethinking where they want to work, live, and raise a family. As people consider where to live, access to sustainable water resources and outdoor recreational opportunities will be important considerations in making Nebraska a competitive choice for the future;

(6) The state's lakes and rivers help Nebraskans enjoy the water resources in our state and make Nebraska an even more attractive place to live and raise a family;

(7) The state's water resources provide economic benefits to the people, communities, and businesses of Nebraska by helping to attract visitors from other states and boosting local economies;

(8) In 2021, the Legislature passed LB406, which established the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature. The committee was tasked with conducting studies on:

(a) The need to protect public and private property, including use of levee systems, enhance economic development, and promote private
investment and the creation of jobs along the Platte River and its tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

(b) The need to provide for public safety, public infrastructure, land-use planning, recreation, and economic development in the Lake McConaughy region of Keith County, Nebraska; and

(c) The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park;

(9) After considerable study, the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee identified potential opportunities within the floodway near the Platte River that could be used to build a combined reservoir of approximately three thousand six hundred surface acres, or greater, in or near Sarpy County, the creation of which can be built without a dam of the Platte River, and which will not negatively impact the city of Ashland, the surrounding communities, or the economic development already occurring in such area;

(10) It is in the public interest to construct a lake at or near this location. Such a lake would provide water quality, flood control, and public recreational opportunities that would benefit generations of Nebraskans, similar to the recreational opportunities provided by Lake McConaughy, Lewis and Clark Lake, and Eugene T. Mahoney State Park;

(11) In addition to the primary purposes of providing flood control and public recreational opportunities that will benefit the public, building a lake will provide the collateral benefit of economic development opportunities;

(12) It is in the public interest, and the purpose of the Lake Development Act, that private parties contribute to the cost of constructing and developing the lake and that the state seek out
donations and investments from private parties to fund such construction and development;

(13) It is in the public interest, and the purpose of the act, that the state manage the construction and development of the lake in a manner that encourages private donations and investments, including through the use of public-private partnerships, while also maintaining sufficient oversight to protect the state's investment in the lake; and

(14) It is in the public interest, and the purpose of the act, that the lake, and the land near or adjacent thereto, be developed in a thoughtful and planned manner by the state and be free from control of political subdivisions or municipalities to further the act's purposes of providing flood control, recreational opportunities, and orderly development of the project.

Sec. 3. (1) The Department of Natural Resources is granted all power necessary to carry out the purposes of the Lake Development Act, including, but not limited to, the power to:

(a) Purchase, sell, or lease land;

(b) Enter into contracts, including, but not limited to, contracts relating to the provision of construction services, management services, legal services, auditor services, and other consulting services or advice as the department may require in the performance of its duties; and

(c) Enter into agreements with natural resources districts to accomplish the purposes of the act. In any such agreement, a natural resources district may use the full powers granted to it by law.

(2) It is the intent of the Legislature that the department engage private parties and entities to construct and develop the lake and to enter into contracts or public-private partnerships that the department deems advantageous to the construction and development of the lake, and land adjacent thereto, and to advance the purposes of the act.

(3) Notwithstanding any other provision of law, the department shall give preference to (a) contract proposals relating to the development or
management of the lake from Nebraska nonprofit corporations whose
directors are appointed by the state or its officers and which agree to
be bound by the Open Meetings Act and sections 84-712 to 84-712.09 and to
publicly let contracts valued in excess of twenty-five thousand dollars
or (b) contract proposals which provide for a public-private partnership
with the state in constructing, developing, or managing the lake.

(4) The department is granted authority to select the land upon
which the lake will be built. In making such selection, the following
shall apply:

(a) The land shall be located in or near Sarpy County and within the
flood plain or floodway of the Platte River;

(b) Preference shall be given to locations that were materially
underwater when the Platte River flooded in 2019;

(c) It is the intent of the Legislature that the lake be at least
three thousand six hundred surface acres in size;

(d) No dam shall be constructed on the main channel of the Platte
River in order to construct the lake; and

(e) No city or village, or any part thereof, shall be flooded in
order to construct the lake.

(5) The department is granted authority to designate the land
selected for the lake under subsection (6) of this section, and land near
or adjacent thereto, as the Lake Development District.

(6) The department may, in the performance of its duties, seek input
and advice from any natural resources district that encompasses any of
the area included in the Lake Development District.

Sec. 4. Notwithstanding any other provision of law, no land within
the Lake Development District, as designated by the Department of Natural
Resources pursuant to section 3 of this act, shall be annexed.

Sec. 5. (1) There is hereby created the Lake Development Fund to be
administered by the Department of Natural Resources.

(2) The State Treasurer shall credit to the fund such money as is
(a) transferred to the fund by the Legislature and (b) donated as gifts, bequests, or other contributions to such fund from public or private entities.

(3) It is the intent of the Legislature that the State Treasurer shall transfer to the Lake Development Fund an amount not to exceed XX million dollars. Other than the initial transfer of XX million dollars, no other money shall be transferred to the fund until a total of XX million dollars from private donations or federal dollars have been, through legally binding commitments, secured for the lake development project.

(4) Other than the initial transfer described in subsection (3) of this section, total distributions from the fund shall only be made in amounts equal to, or less than, the total amount of private donations or federal dollars received by the fund for the lake development project.

(5) The 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. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(6) Any money in the Lake Development 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.

Sec. 6. The Department of Natural Resources shall, no later than November 1 of each year, provide an annual report to the Governor and the Legislature regarding the use of the Lake Development Fund. The report submitted to the Legislature shall be submitted electronically. The report shall include (1) a detailed listing of how the proceeds of the fund were expended in the prior fiscal year and (2) any distributions from the fund that remain unexpended and on deposit as of the end of the prior fiscal year.

Sec. 7. Sections 7 to 11 of this act shall be known and may be
cited as the Water Recreation Enhancement Act.

Sec. 8. The Legislature finds and declares as follows:

(1) The future vibrancy of the people, communities, and businesses of Nebraska depends on reliable sources of water;

(2) While it is in the state's best interest to retain control over its water supplies, much of the state's water resources are currently underutilized;

(3) In 2019, the state experienced historic flooding along the Platte River which caused loss of life and over one billion dollars in damage to private and public property and infrastructure;

(4) Well-planned flood control is critical to the future of the people, communities, and businesses of Nebraska;

(5) In light of the disruption from the COVID-19 pandemic and the trend toward a remote workforce around the country, people around the country are rethinking where they want to work, live, and raise a family. As people consider where to live, access to sustainable water resources and outdoor recreational opportunities will be important considerations in making Nebraska a competitive choice for the future;

(6) The state's lakes and rivers help Nebraskans enjoy the water resources in our state and make Nebraska an even more attractive place to live and raise a family;

(7) The state's water resources provide economic benefits to the people, communities, and businesses of Nebraska by helping to attract visitors from other states and boosting local economies;

(8) In 2021, the Legislature passed LB406, which established the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature. The committee was tasked with conducting studies on:

(a) The need to protect public and private property, including use of levee systems, enhance economic development, and promote private investment and the creation of jobs along the Platte River and its
tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

(b) The need to provide for public safety, public infrastructure, land-use planning, recreation, and economic development in the Lake McConaughy region of Keith County, Nebraska; and

(c) The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park;

(9) After considerable study, the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee identified the following potential opportunities:

(a) Marina construction projects to expand water access and recreational opportunities at the Lake McConaughy State Recreation Area and the Lewis and Clark State Recreation Area; and

(b) A project to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge;

(10) It is in the public interest to expand water access and recreational opportunities at the Lake McConaughy State Recreation Area and the Lewis and Clark State Recreation Area through the construction of new marinas; and

(11) It is in the public interest to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge.

Sec. 9. (1) The purposes of the Water Recreation Enhancement Act are to administer and carry out the following projects:

(a) Marina construction projects to expand water access and recreational opportunities at the Lake McConaughy State Recreation Area and the Lewis and Clark State Recreation Area; and

(b) A project to increase access to and the enjoyment of Niobrara
State Park through the construction of an event center and lodge.

(2) The Game and Parks Commission is granted all power necessary to carry out the purposes of the Water Recreation Enhancement Act, including, but not limited to, the power to:

(a) Enter into contracts, including, but not limited to, contracts relating to the provision of construction services, management services, legal services, auditor services, and other consulting services or advice as the commission may require in the performance of its duties; and

(b) Enter into public-private partnerships to carry out the purposes of the act.

Sec. 10. (1) There is hereby created the Water Recreation Enhancement Fund to be administered by the Game and Parks Commission.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature and (b) donated as gifts, bequests, or other contributions to such fund from public or private entities.

(3) It is the intent of the Legislature that the State Treasurer shall transfer to the Water Recreation Enhancement Fund an amount not to exceed XX million dollars.

(4) The 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. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(5) Any money in the Water Recreation Enhancement 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.

Sec. 11. The Game and Parks Commission shall, no later than November 1 of each year, provide an annual report to the Governor and the Legislature regarding the use of the Water Recreation Enhancement Fund. The report submitted to the Legislature shall be submitted
electronically. The report shall include (1) a detailed listing of how
the proceeds of the fund were expended in the prior fiscal year and (2)
any distributions from the fund that remain unexpended and on deposit as
of the end of the prior fiscal year.

Sec. 12. Since an emergency exists, this act takes effect when
passed and approved according to law.