

LEGISLATIVE BILL 1368

Approved by the Governor April 16, 2024

Introduced by Ibach, 44; Bostar, 29; Conrad, 46; Dorn, 30; Halloran, 33; Jacobson, 42; Kauth, 31; Meyer, 41; Murman, 38; Sanders, 45; Holdcroft, 36; Hardin, 48.

A BILL FOR AN ACT relating to natural resources; to amend section 46-296, Reissue Revised Statutes of Nebraska, and section 61-218, Revised Statutes Supplement, 2023; to adopt the Nitrogen Reduction Incentive Act; to repeal certain administrative fees relating to the Department of Natural Resources; to provide for a transfer from the Water Resources Cash Fund; to harmonize provisions; to repeal the original sections; and to outright repeal section 33-105, Reissue Revised Statutes of Nebraska.

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

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Nitrogen Reduction Incentive Act.

Sec. 2. The Legislature finds and declares that:

(1) Agriculture is Nebraska's number one industry;

(2) Water is Nebraska's most precious natural resource;

(3) Nebraska farmers are leading the charge on sustainable agriculture initiatives that will make Nebraska a world-renowned leader and ensure protection of the land and water of Nebraska for generations to come; and

(4) The Nitrogen Reduction Incentive Act encourages farmers to adopt efficient and sustainable practices to help Nebraska protect these natural resources and positions Nebraska farmers to compete.

Sec. 3. For purposes of the Nitrogen Reduction Incentive Act, commercial fertilizer has the same meaning as in section 81-2,162.02.

Sec. 4. (1) The nitrogen reduction incentive program is created and shall be administered by the Department of Natural Resources. The department may collaborate with natural resources districts to administer the program.

(2) The purposes of the program are to:

(a) Provide incentive payments to farmers; and

(b) Encourage farmers to (i) reduce the use of commercial fertilizer and (ii) incorporate innovative technology into farming practices, including the proper use of biological nitrogen products.

(3) The program shall provide an annual per-acre incentive for any farmer who verifies through documentation that commercial fertilizer rates were reduced by the lesser of forty pounds per acre for nitrogen or fifteen percent by incorporating a qualifying product in the farmer's nutrient plans.

(4) A commercial fertilizer rate reduction from historic baseline use shall be completed to qualify for the program.

(5) The department shall review the required commercial fertilizer rate of reduction for the program on a biennial basis to determine if higher reduction targets are necessary.

(6) The department shall:

(a) Collaborate with natural resources districts to add any new technology to the program as it becomes available. Such technology shall replace nitrogen fertilizer use and maintain farm productivity;

(b) Identify geographically beneficial target areas while keeping the program open to all farmers in the state;

(c) Consult with farmers and commercial entities in the agriculture industry to determine a per-acre payment rate tied to the commercial fertilizer rate reduction but not less than ten dollars per acre; and

(d) Review the per-acre payment rate based on inflation or emerging technology in subsequent years.

(7)(a) The department shall not award an amount of incentive payments in total per year under the nitrogen reduction incentive program that is greater than the lesser of:

(i) Five million dollars; or

(ii) The amount appropriated for such purpose by the Legislature.

(b) It is the intent of the Legislature that any appropriation from the General Fund to carry out the Nitrogen Reduction Incentive Act be used only for operating expenses.

Sec. 5. The Department of Natural Resources may adopt and promulgate rules and regulations that adopt a standard for labeled commercial fertilizer products to qualify for the nitrogen reduction incentive program and may adopt and promulgate rules and regulations to carry out the Nitrogen Reduction Incentive Act.

Sec. 6. (1) The Nitrogen Reduction Incentive Cash Fund is created and shall be administered by the Department of Natural Resources for purposes of the Nitrogen Reduction Incentive Act. The Nitrogen Reduction Incentive Cash Fund may consist of transfers as directed by the Legislature and gifts, grants, bequests, and money from any public or private source.

(2) The Department of Natural Resources may apply for all grants from state, federal, and private sources that are applicable to the purposes of the Nitrogen Reduction Incentive Act.

(3) Any such grant applied for by the Department of Natural Resources that is awarded to the Department of Natural Resources or the State of Nebraska shall be credited to the Nitrogen Reduction Incentive Cash Fund.

(4) 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.

Sec. 7. The Nitrogen Reduction Incentive Act terminates on December 31, 2029.

Sec. 8. Section 46-296, Reissue Revised Statutes of Nebraska, is amended to read:

46-296 For purposes of sections ~~33-105~~, 46-202, and 46-295 to 46-2,106, unless the context otherwise requires:

(1) Department means the Department of Natural Resources;

(2) Director means the Director of Natural Resources;

(3) Person means a natural person, partnership, limited liability company, association, corporation, municipality, or agency or political subdivision of the state or of the federal government;

(4) Underground water storage means the act of storing or recharging water in underground strata. Such water shall be known as water stored underground but does not include ground water as defined in section 46-706 which occurs naturally;

(5) Intentional underground water storage means underground water storage which is an intended purpose or result of a water project or use. Such storage may be accomplished by any lawful means such as injection wells, infiltration basins, canals, reservoirs, and other reasonable methods; and

(6) Incidental underground water storage means underground water storage which occurs as an indirect result, rather than an intended or planned purpose, of a water project or use and includes, but is not limited to, seepage from reservoirs, canals, and laterals, and deep percolation from irrigated lands.

Sec. 9. Section 61-218, Revised Statutes Supplement, 2023, is amended to read:

61-218 (1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. 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 State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, (e) allocated pursuant to section 81-15,175, and (f) received by the state for settlement of claims regarding Colorado's past use of water under the Republican River Compact.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water or to enhance streamflows or ground water recharge in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement, (b) for purposes of projects or proposals described in the grant application as set forth in subdivision (2) (h) of section 81-15,175, and (c) to the extent funds are not expended pursuant to subdivisions (a) and (b) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that three million three hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2011-12 through FY2022-23, except that for FY2012-13 it is the intent of the Legislature that four million seven hundred thousand dollars be transferred from the General Fund to the Water Resources Cash Fund. It is the intent of the Legislature that the State Treasurer credit any money received from any Republican River Compact settlement to the Water Resources Cash Fund in the fiscal year in which it is received.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will achieve a sustainable balance of consumptive water uses or will assure compliance with an

interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components, including the local match as set forth in subdivision (5)(a) of this section.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit electronically an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

(a) Details regarding the use and cost of activities carried out by the department; and

(b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

(7)(a) Prior to the application deadline for fiscal year 2011-12, the Department of Natural Resources shall apply for a grant of nine million nine hundred thousand dollars from the Nebraska Environmental Trust Fund, to be paid out in three annual installments of three million three hundred thousand dollars. The purposes listed in the grant application shall be consistent with the uses of the Water Resources Cash Fund provided in this section and shall be used to aid management actions taken to reduce consumptive uses of water, to enhance streamflows, to recharge ground water, or to support wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(b) If the application is granted, funds received from such grant shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund for the purpose of supporting the projects set forth in the grant application. The department shall include in its grant application documentation that the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund into the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund for fiscal year 2013-14.

(c) It is the intent of the Legislature that the department apply for an additional three-year grant that would begin in fiscal year 2014-15, an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2017-18, and an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2020-21 if the criteria established in subsection (4) of section 81-15,175 are achieved.

(8) The department shall establish a subaccount within the Water Resources Cash Fund for the accounting of all money received as a grant from the Nebraska Environmental Trust Fund as the result of an application made pursuant to subsection (7) of this section. At the end of each calendar month, the department shall calculate the amount of interest earnings accruing to the subaccount and shall notify the State Treasurer who shall then transfer a like amount from the Water Resources Cash Fund to the Nebraska Environmental Trust Fund.

(9) Any funds transferred from the Nebraska Environmental Trust Fund to the Water Resources Cash Fund shall be expended in accordance with section 81-15,168.

(10) The State Treasurer shall transfer one million dollars from the Water Resources Cash Fund to the Nitrogen Reduction Incentive Cash Fund as soon as administratively possible after the effective date of this act, but before June 30, 2025, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Sec. 10. Original section 46-296, Reissue Revised Statutes of Nebraska, and section 61-218, Revised Statutes Supplement, 2023, are repealed.

Sec. 11. The following section is outright repealed: Section 33-105, Reissue Revised Statutes of Nebraska.