

LEGISLATIVE BILL 546

Approved by the Governor May 8, 1979

Introduced by Public Works Committee, Kremer, 34, Chmn.;
Cullan, 49; Clark, 47; Goodrich, 20; Kennedy,
21

AN ACT to amend sections 2-3254 and 46-1011, Reissue Revised Statutes of Nebraska, 1943, relating to water; to change provisions for filing of information and approval of projects and improvements relating to domestic water supplies; to change duties; and to repeal the original sections.

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

Section 1. That section 2-3254, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3254. (1) The board shall hold a hearing upon the question of the desirability and necessity, in the interest of the public health, safety and welfare, of the establishment of an improvement project area and the undertaking of such a project, upon the question of the appropriate boundaries describing affected land, upon the propriety of the petition and upon all relevant questions regarding such inquiries. When a hearing has been initiated by petition, such hearing shall be held within one hundred twenty days of the filing of such petition. Notice of such hearing shall be published prior thereto once each week for three consecutive weeks in a legal newspaper published or of general circulation in the district. Landowners within the limits of the territory described in the petition and all other interested parties, including any appropriate agencies of state or federal government, shall have the right to be heard. If the board finds, after consultation with such appropriate agencies of state and federal government, and after the hearing that the project conforms with the goals, criteria, and policies of the state water plan and to the purposes and requirements of sections 2-3201 to 2-3262, it shall enter its findings in the board's official records and shall, with the aid of such engineers, surveyors, and other assistants as it may have chosen, establish an improvement project area, proceed to make detailed plans and cost estimates, determine the total benefits, and carry out the project as provided in subsections (2) and (3) of this section. If the board finds that the project does not conform with sections 2-3201 to 2-3262, the findings shall be entered in the board's records, and copies of such findings shall be

furnished to the petitioners and the commission.

(2) When any such special project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of construction of such project, determine, by circulation of petitions or by some other appropriate method, if such project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the project cannot be reasonably expected to generate sufficient revenue, the project and all work in connection therewith shall be suspended. If it is determined that the project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the project as provided in sections 2-3252 to 2-3254. If the proposed project involves the supply of water for any beneficial use, all plans, and specifications, ~~proposed operating budgets, schedules of unit fees and benefit units, rules and regulations and estimates of cost~~ for the project shall be filed with the secretary of the district and the Director of Water Resources, ~~except that and the Department of Health~~ if such project involves ~~the supply of water for domestic use a public water supply system as defined in section 71-5301, Reissue Revised Statutes of Nebraska, 1943, the filing of the information shall be with the Department of Health rather than the Director of Water Resources.~~ No construction of any such special project shall begin until the plans and specifications for such improvement have been approved by the Director of Water Resources and the Department of Health, if applicable, ~~except that if such special project involves a public water supply system as defined in section 71-5301, Reissue Revised Statutes of Nebraska, 1943, only the Department of Health shall be required to review such plans and specifications and approve the same if in compliance with Chapter 71, article 53, and departmental regulations adopted thereunder.~~ All prescribed conditions having been complied with, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the special project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such unit. The unit fees made and charged pursuant to this section shall be levied and fixed by rules and regulations of the district. The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld

until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.

(3) When the special project would not result in the provision of revenue-producing continuing services, the board shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained herein shall prevent the district from establishing separate areas within the project improvement area so as to permit future allocation of costs for particular portions of the work to specific subareas. This subarea method of allocation shall not be used in any project improvement area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(4) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the project improvement area, stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement, at which time and place such parties may appear in person, or by counsel, or may file written objections thereto. The directors shall then proceed to hear and consider the same, and shall make the apportionments fair and just according to benefits received from the improvement. The directors, having completed the apportionment of benefits, shall make a detailed report of same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the proposed project and the

actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the project improvement area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal interest in such apportionment, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the project assessable to such lands upon completion thereof, as provided by sections 25-520.01 to 25-520.03. If the owners of record title representing more than fifty per cent of the estimated total assessments shall file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such project in accordance with the apportionment of benefits determined and procedures established in this section. Upon completing the establishment of an improvement project area as provided in this subsection and upon determining the reimbursable cost of the project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area, and shall apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such project. The chairman and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for

the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments.

Sec. 2. That section 46-1011, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1011. Plans, and specifications, ~~proposed operating budgets, schedules of unit fees and benefit units, rules and regulations, estimates of cost~~ for any proposed improvement authorized by sections 46-1001 to 46-1020 shall be filed with the Director of Water Resources, the Department of Health, and with the secretary of the district. No construction of any such improvement shall begin until the plans and specifications for such improvement have been approved by the Director of Water Resources and the Department of Health, except if the improvement involves a public water supply system as defined in section 71-5301, Reissue Revised Statutes of Nebraska, 1943, only the Department of Health shall be required to review the plans and specifications for such improvement and approve the same if in compliance with Chapter 71, article 53, and departmental regulations adopted thereunder. The total benefits of any such improvement shall be divided into a suitable number of benefit units. Each landowner within the district shall subscribe to a number of such units in proportion to the extent he desires to participate in the benefits of the improvements. As long as the capacity of the district's facilities permits, participating members of the district may subscribe to additional units upon payment of a unit fee for each such unit. Owners of land located within the district who are not participating members may subscribe to such units as the board in its discretion may grant, and upon payment of the unit fee for each such unit shall be entitled to the same rights as original participating members. If the capacity of the district's facilities permits, the district may sell water to persons engaged in hauling water and to any political subdivision organized under the laws of the State of Nebraska.

Sec. 3. That original sections 2-3254 and 46-1011, Reissue Revised Statutes of Nebraska, 1943, are repealed.