

LEGISLATIVE BILL 626

Approved by the Governor April 7, 1993

Introduced by Beutler, 28

AN ACT relating to flood plain management; to amend sections 31-1001, 31-1002, 31-1015, 31-1017, 31-1018, 31-1020, and 31-1023, Reissue Revised Statutes of Nebraska, 1943; to eliminate duties of the Department of Water Resources; to harmonize provisions; and to repeal the original sections, and also sections 31-1004 and 31-1024 to 31-1031, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 31-1001, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-1001. (1) The Legislature finds that recurrent flooding in various areas of the state presents serious hazards to the health, safety, welfare, and property of the people of the state, both within and outside such areas. The hazards include loss of life, loss of and damage to private and public property, disruption of lives and of livelihoods, interruption of commerce, transportation, communication, and governmental services, and unsanitary and unhealthy living and environmental conditions. The wise use of land subject to flooding is a matter of state concern. The Legislature further finds that the establishment of improved flood plain management practices and the availability of financial assistance to citizens of the state whose property is damaged during times of flooding are essential to the health, safety, and general welfare of the people of Nebraska.

(2) The purposes of sections 31-1001 to ~~31-1031~~ 31-1023 shall be to:

- (a) Accelerate the mapping of flood-prone areas;
- (b) Assist local governments in the promulgation and implementation of effective flood plain management regulations and other flood plain management practices;
- (c) Assure that when state lands are used; and state-owned and state-financed facilities are located and constructed, flood hazards are prevented, flood losses are minimized, and the state's eligibility for flood insurance is maintained; and
- (d) Encourage local governments with flood-prone areas to qualify for participation in the national flood insurance program, ~~and~~
- ~~(e) Provide interim state regulation of certain flood plains until local flood plain management programs can be developed and implemented.~~

Sec. 2. That section 31-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-1002. ~~As used in~~ For purposes of sections 31-1001 to ~~31-1031~~ 31-1023, unless the context otherwise requires, the definitions in sections 31-1003 to 31-1016 shall apply.

Sec. 3. That section 31-1015, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-1015. Obstruction shall mean any wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, or other analogous structure or matter which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry such structure or matter downstream to the damage or detriment of either life or property. ~~Dams~~ Obstruction shall not include a dam designed to store or divert water ~~are not obstructions if for which~~ permission for the construction thereof ~~is has been~~ obtained from the department Department of Water Resources pursuant to section 46-257.

Sec. 4. That section 31-1017, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-1017. ~~Except for the powers granted to the department in sections 31-1023 to 31-1031, the~~ The commission shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the commission 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 ~~31-1031~~ 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) ~~Prepare, adopt, Adopt and promulgate, by rule or regulation, 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 commission 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 ~~31-1031~~ 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 commission to adequately accomplish the purposes of such sections, ~~31-1001 to 31-1031~~, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the commission 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, ~~31-1001 to 31-1031~~. Such right of entry shall extend to all employees, surveyors, or other agents of the commission 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; ~~31-1031~~; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections, ~~31-1001 to 31-1031~~.

Sec. 5. That section 31-1018, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-1018. In determining areas of the state for which state-prepared flood hazard data and maps are needed by local governments or by state or federal agencies; and the order in which such data and maps are to be prepared, the commission shall ~~consult with the~~

~~department and~~ consider the following factors in such areas:

- (1) Potential for future development;
- (2) Potential for flood damage or loss of life;
- (3) Probability that adequate data and maps will be prepared within a reasonable time by other sources;
- (4) Availability and adequacy of any existing maps;
- (5) Availability of flood data and other information necessary to produce adequate maps; and
- (6) Degree of interest shown by the local governments in the area in utilizing flood data and maps in an effective flood plain management program.

Flood area data and maps produced by the commission may be provided either directly to the local government which has jurisdiction over such area; or indirectly through the national flood insurance program if the commission and the federal agency responsible for administering the national flood insurance program agree to such an arrangement. Such maps shall delineate the flood plain of the base flood and, when information is available, the floodway and flood fringe of such flood plain. Such maps shall also contain or be accompanied by such other information as the commission deems appropriate.

Sec. 6. That section 31-1020, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-1020. If a local government does not adopt and implement flood plain management regulations in accordance with section 31-1019 within one year after flood hazard data and maps have been provided to it pursuant to such section, the commission shall, upon petition of at least ten percent of the owners of the land located within the flood plain of the base flood delineated in such maps, or upon the written request of ~~the department or~~ the board of directors of the natural resources district in which such land is located, conduct a public hearing after providing notice pursuant to section 31-1022. If the commission finds after such hearing that the data and maps available are sufficient to reasonably locate the boundaries of the base flood, the commission shall determine and fix by order the boundaries of the base flood and, where deemed appropriate, the boundaries of the floodway within the zoning jurisdiction of such local government. If within three months ~~of~~ after the date of such order, the local government still has not adopted and implemented flood plain management regulations for the area subject to such order in accordance with section 31-1019, the commission shall be vested with the power and authority to adopt flood plain management regulations for the area and shall adopt and promulgate such regulations for the identified base flood within the zoning jurisdiction of such local government. Such regulations shall be consistent with the minimum standards adopted by the commission pursuant to subdivision (5) of section 31-1017 and shall take effect on the date prescribed by the commission. All ordinances or other actions by the local government which are contrary to the commission's adopted regulations shall be null and void.

Sec. 7. That section 31-1023, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

31-1023. (1) All state agencies, boards, and commissions shall take preventive action to minimize flood hazards and losses in connection with state-owned and state-financed buildings, roads, and other facilities, and shall take such steps as are necessary to insure compliance with the minimum standards adopted by the commission in accordance with subdivision (5) of section 31-1017 when such facilities are being located or constructed in any area where no local government is enforcing flood plain management regulations pursuant to section 31-1019 or 31-1021. If a local government with jurisdiction over the land upon which any such facility is to be located or constructed is enforcing flood plain management regulations pursuant to section 31-1019 or 31-1021, the state agency, board, or commission locating or constructing such facility shall comply with such regulations unless such compliance is specifically waived by the ~~department~~ commission.

(2) The commission shall assist state agencies, boards, and commissions in determining and evaluating flood hazards and alternative flood protective measures; and shall establish by rule or regulation, standards and procedures to govern its review of proposed state-owned and state-financed facilities not subject to local flood plain management regulations. Such standards and procedures shall meet the minimum criteria necessary to maintain the state's eligibility for flood insurance under the national flood insurance program.

Sec. 8. That original sections 31-1001, 31-1002, 31-1015, 31-1017, 31-1018, 31-1020, and 31-1023, Reissue Revised Statutes of Nebraska, 1943, and also sections 31-1004 and 31-1024 to 31-1031, Reissue Revised Statutes of Nebraska, 1943, are repealed.