

## LEGISLATIVE BILL 413

Approved by the Governor April 5, 1971

Introduced by Ramey C. Whitney, 44th District

AN ACT to amend section 72-240.07, Reissue Revised Statutes of Nebraska, 1943, and sections 72-240.10, 72-240.11, 72-240.12, 72-240.13, 72-240.14, 72-240.16, 72-240.17, 72-240.18, 72-240.19, 72-240.21, 72-240.22, and 72-240.23, Revised Statutes Supplement, 1969, relating to school lands; to distinguish between permitted and nonpermitted improvements as prescribed; to provide for removal of improvements as prescribed; to provide for sale of improvements; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 72-240.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

72-240.07. Before any buildings, wells, irrigation improvements, dams, or drainage ditches are placed upon school lands by a lessee, written approval must be obtained from the Board of Educational Lands and Funds, except necessary improvements for the temporary handling and sheltering of livestock and such improvements where approval is secured shall be called permitted improvements and belong to the lessee and the lessee has the right to be paid a sum of money equal to the value which the improvements add to the value of the land by the buyer of the land or the new lessee in accordance with procedures as given in 72-240.11 to 72-240.24 and 72-258. Any such improvements placed upon school lands before September 14, 1953, and any improvements which were bought by new lessees during an involvement by the state in the transferring of leases after September 14, 1953, shall be considered as authorized or permitted improvements whether or not approval has been secured from the board and shall belong to the lessee unless there has been a provision in the lease to the contrary or unless there has been some written agreement between the lessee and the board to the contrary. Any improvements placed upon school lands after September 14, 1953, where written approval for such improvements was not obtained from the board shall-be-considered-improvements-of--the--land--and--the

lessee shall not be entitled to reimbursement therefor and where there was no involvement by the state in the transferring of leases or other written agreement with such lessees to the contrary, shall be called nonpermitted improvements and considered as owned by the lessee, whether or not the nonpermitted improvements are attached to the land, unless there has been a provision in the lease to the contrary, and, the lessee shall have the right either (1) to remove such improvements from the land any time during the term of the lease or within six months after the land is sold or leased to a new lessee; Provided, that when the nonpermitted improvements are removed the old lessee shall clean up the debris caused thereby or bury it at least three feet below the surface of the land and any basements or holes caused by the nonpermitted improvements shall be filled such that cultivated crops can be grown on the land or (2) to sell the nonpermitted improvements to the buyer of the land, or the new lessee at prices agreed upon by the old lessee and the buyer or new lessee; and provided further, that if the parties cannot agree upon the prices of the nonpermitted improvements, or if the improvements are not removed from the land within six months after the land is sold or leased to a new lessee other than the old lessee, the improvements shall become the property of the state. The board shall notify the old lessee by certified letter of the name and address of the purchaser of the land or the new lessee within ten days after the land has been sold or leased to a party other than the old lessee. The board shall, at the same time, notify the old lessee how much money the old lessee shall have to place in escrow with the county treasurer of the county in which the land is located for each nonpermitted improvement if the old lessee takes the option to remove any or all nonpermitted improvements to guarantee removal of debris and to do other things required by the board so as not to damage the land. The old lessee shall within thirty days after receipt of such certified letter notify the board which improvements he intends to remove from the land and which shall be left on the land and show proof of deposit of escrow money. If the debris is not removed and if other things required by the board are not done within the six-month period after the land is sold or leased, the old lessee shall forfeit the money placed in escrow to the state, and the board shall hire a contractor to do the things required of the old lessee in order that there not be damage to the land. Any money left in the escrow fund after being depleted by making payment to the contractor for the work done shall be remitted to the old lessee. The board shall have authority to sell any improvement left on the land.

Sec. 2. That section 72-240.10, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.10. The Board of Educational Lands and Funds shall have the authority and duty, as specified in sections 72-240.10 to 72-240.24 and 72-258, to determine the value to the land of permitted improvements and growing crops, owned by the lessee of record, on educational lands of the State of Nebraska, prior to the sale or lease of such lands. In making such determinations, the board shall notify the lessee that it intends to inspect the premises and shall attempt to so inspect at the convenience of the lessee.

Sec. 3. That section 72-240.11, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.11. The board shall determine what improvements and growing crops are on the land and develop a specific listing and detailed description of permitted and nonpermitted improvements owned by the lessee and by the State of Nebraska. Only those permitted improvements owned by the lessee shall be considered in determining the value of the lessee's interest therein. The listing of permitted improvements and growing crops shall be acknowledged and agreed upon in writing by both parties. In the event of a dispute regarding ownership of any improvements, either the board or the lessee may file an action in district court for a declaratory judgment.

Sec. 4. That section 72-240.12, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.12. The board shall make an appraisal of the lessee's permitted improvements and growing crops and attempt to arrive at an agreement with the lessee as to the value of the permitted improvements owned by such lessee.

Sec. 5. That section 72-240.13, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.13. If the value to the land of any permitted improvements or growing crops cannot be agreed upon, either the board or the lessee may file a petition in the county court of the county wherein the land is situated to have the value to the land of the permitted

improvements and growing crops determined. Prior to the filing of such petition the lessee shall have the right, by filing written notice with the board, to elect to remove prior to the expiration of the lease any permitted structural improvements, owned by him, which can be removed without damage to the land or other permitted improvements located on the land. The lessee shall also have the right, by filing written notice with the board, to elect to harvest any fall-seeded growing grain crops in lieu of compensation for the same.

Sec. 6. That section 72-240.14, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.14. (1) Upon the filing of a petition under section 72-240.13, the county judge, within three days by order entered of record, shall appoint three disinterested freeholders of the county, not holders of leases of school lands, to serve as appraisers. The county judge shall direct the sheriff to summon the appraisers so selected to convene in the office of the county judge at a time specified in the summons for the purpose of qualifying as appraisers, and thereafter proceed to appraise the value of the permitted improvements to the land and growing crops owned by the lessee at the time of termination of the occupying tenant's lease.

(2) Notice of the appointment of the appraisers, and of the time and place of the meeting of the board of appraisers to have the value of the permitted improvements to the land and growing crops assessed, shall be served upon both the board and the lessee by registered or certified mail at their last-known mailing address at least ten days prior to the meeting of the board of appraisers.

Sec. 7. That section 72-240.16, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.16. The appraisers shall carefully inspect and view the permitted improvements and growing crops to be valued and shall hear any party interested therein in reference to the value of the permitted improvements to the land and growing crops.

Sec. 8. That section 72-240.17, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.17. After the inspection, view and hearing provided for in section 72-240.16 the appraisers shall assess the value to the land of the permitted improvements and growing crops as of the date of expiration of the lease on the land and shall make and file a report of such value in writing with the county judge and shall include in such report a list of the value to the land for each permitted improvement individually. Such report shall be filed with the county judge within ten days from the date of the hearing held by the appraisers.

Sec. 9. That section 72-240.18, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.18. (1) The appraisers shall consider in determining the value of the permitted improvements the cost of the permitted improvement less any depreciation, obsolescence and any want of benefit to the land.

(2) In the case of growing crops the appraisers shall assess the value of the crop as of the date of expiration of the lease. The appraisers shall consider in the case of fall-seeded grain crops the cost of seed-bed preparation, fertilization, seed and seeding.

(3) In the case of perennial crops such as alfalfa the appraisers shall consider the costs of establishing such crop, its condition as of the expiration of the lease and normal expected remaining life.

Sec. 10. That section 72-240.19, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.19. (1) Appeals from the valuation set by the board of appraisers may be made by either party in the same manner as appeals from the award of a board of appraisers in condemnation proceedings as governed by sections 76-715 to 76-721. Those provisions shall apply as if the board is the condemner and the lessee is the condemnee.

(2) No bond shall be required of the board to cover the value to the land of the permitted improvements and growing crops found by the appraisers during the appeal.

Sec. 11. That section 72-240.21, Revised Statutes Supplement, 1969, be amended to read as

follows:

72-240.21. (1) When the land is put up for sale, the minimum sale price shall be determined as in section 72-258.

(2) At the time of sale or lease, but prior to the commencement of bidding, a representative of the board shall announce to all present the value to the land of the permitted improvements and growing crops for which the purchaser of the land or lease must pay the lessee as determined under sections 72-240.10 to 72-240.24 and 72-258 or by agreement, and shall clearly state that the payment for these permitted improvements and growing crops shall be in addition to the price paid for the land or the lease.

(3) In making the publications required by section 72-233 or 72-258, the board shall include in those publications the determined value to the land of the permitted improvements and growing crops owned by the lessee of the land and shall clearly indicate that this amount is to be paid in addition to the price paid for the land or the lease.

(4) When the land is sold, the purchaser shall be instructed by the board that he must, within thirty days of the date of the sale, deposit the amount of value of the permitted improvements with the county treasurer of the county wherein the land is situated with instructions to the treasurer that the money be paid to the lessee upon notification of issuance of the deed or lease. The state shall have a lien upon the funds so paid to the amount of any unpaid rent and interest on such lands due and owing to the state from the former lessee.

Sec. 12. That section 72-240.22, Revised Statutes Supplement, 1969, be amended to read as follows:

72-240.22. The permitted improvements and growing crops covered by sections 72-240.10 to 72-240.24 and 72-258 shall be deemed to be separate permitted improvements and if the board and the lessee agree as to the value of some permitted improvements but disagree as to the value of others, only those on which they do not agree need be appraised under the appraisal provisions of sections 72-240.10 to 72-240.24 and 72-258.

Sec. 13. That section 72-240.23, Revised Statutes Supplement, 1969, be amended to read as

follows:

72-240.23. If land is not sold under the provisions of sections 72-240.10 to 72-240.24, 72-257 and 72-258 and is leased according to section 72-258.01, the new lessee shall pay to the old lessee the value of his permitted improvements as determined for sale purposes.

Sec. 14. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Sec. 15. That original section 72-240.07, Reissue Revised Statutes of Nebraska, 1943, and sections 72-240.10, 72-240.11, 72-240.12, 72-240.13, 72-240.14, 72-240.16, 72-240.17, 72-240.18, 72-240.19, 72-240.21, 72-240.22, and 72-240.23, Revised Statutes Supplement, 1969, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.