

LEGISLATIVE BILL 387

Approved by the Governor April 15, 1985

Introduced by Schmit, 23

AN ACT relating to natural resources; to amend sections 2-3228, 2-4202 to 2-4204, 2-4206, 2-4209, 2-4211, 2-4213, 2-4214, 2-4216 to 2-4220, 2-4226, 2-4227, 2-4233, and 2-4242, Reissue Revised Statutes of Nebraska, 1943; to change the powers and duties of the Nebraska Conservation Corporation to include assisting political subdivisions in resource development; to define and redefine terms; to change provisions relating to bonds; to harmonize provisions; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. That section 2-3228, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3228. Each district shall have the power and authority to:

(1) Receive and accept donations, gifts, grants, bequests, appropriations, or other contributions in money, services, materials, or otherwise, from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any person, as defined in section 49-801, and use or expend all such contributions in carrying on its operations;

(2) Establish advisory groups by appointing persons within the district, pay necessary and proper expenses of such groups as the board shall determine, and dissolve such groups;

(3) Employ such persons as are necessary to carry out the purposes of this act and, in addition to other compensation provided, establish and fund a pension plan designed and intended for the benefit of all permanent full-time employees of the district. Any recognized method of funding a pension plan may be employed. Employee contribution shall be required to fund at least fifty per cent of the benefits, and past service benefits may be included. The district shall pay all costs of any such past service benefits, which may be retroactive to July 1, 1972, and the plan may be integrated with old age and ~~survivors~~ survivors' insurance, generally known as social security. A uniform pension plan, including the method for jointly funding such plan, shall be established for all districts in the state. A district may elect not to participate in such a plan but shall not establish an independent plan;

(4) Purchase liability, property damage, worker's ~~workmen's~~ compensation, and other types of insurance as in the judgment of the board are necessary to protect the assets of the district;

(5) Borrow money to carry out the provisions of this act;

(6) Adopt and promulgate rules and regulations to carry out the purposes of this act; and

(7) Invite the local governing body of any municipality or county to designate a representative to advise and counsel with the board on programs and policies that may affect the property, water supply, or other interests of such municipality or county.

Sec. 2. That section 2-4202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4202. It is hereby declared to be the policy of the Legislature to provide for the conservation and protection of the natural resources of this state through control and prevention of soil erosion, reduction of sediment damage, control of flood waters, enhancement of domestic water supply, improvement of water quality, and collection and containment of water. Within the rural areas of this state, the landowners involved in farm and ranch operations and the political subdivisions must be provided with financial assistance to encourage conservation of the state's water and related land resources. Without such conservation incentives, the control, containment, and utilization of our water resources and the productivity of our soil will be greatly threatened.

Assistance provided to landowners under the Conservation Corporation Act sections 2-4201 to 2-4246 will enhance farm and ranch operations, one of the chief industries of this state, by protecting or enhancing agricultural productivity, and will protect, preserve, and promote the source of food supplies to the citizens of this state. Assistance provided to political subdivisions under the Conservation Corporation Act will promote the general welfare of the citizens of such political subdivisions and further promote the productivity of business enterprises and the general health, welfare, and safety. The necessity for the Conservation Corporation Act provisions of sections 2-4201 to 2-4246 to protect the health, safety, and general welfare of all people of this state is hereby declared as a matter of legislative determination.

Sec. 3. That section 2-4203, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4203. The purpose of the Nebraska Conservation Corporation created in section 2-4205 shall be to provide conservation assistance to Nebraska landowners involved in farm and ranch operations in the form of low-cost conservation loans to facilitate the

implementation of land treatment and water conservation practices and to assist the political subdivisions of the State of Nebraska by financing arrangements in connection with natural resource development practices.

Sec. 4. That section 2-4204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4204. As used in ~~sections 2-4201 to 2-4246~~ the Conservation Corporation Act, unless the context otherwise requires:

(1) Conservation practice shall mean any work of improvement to farm and ranch land made by a landowner to protect or enhance agricultural productivity by controlling soil erosion or reducing sediment damage;

(2) Conservation loan shall mean a loan made by the corporation or a lender to a landowner to assist the landowner in the implementation of land treatment and water conservation practices;

(3) Corporation shall mean the Nebraska Conservation Corporation created by section 2-4205;

(4) Bond shall mean any bonds, notes, debentures, interim certificates, bond anticipation notes, or other evidences of financial indebtedness issued by the corporation;

(5) Landowner shall mean any resident of the state, any partnership of which eighty per cent or more of the partnership interest is owned by residents of the state, or any corporation of which more than eighty per cent of the shares are owned by residents of the state, which resident, partnership, or corporation owns real estate in Nebraska which is utilized in the production of crops or raising of livestock;

(6) Mortgage shall mean a mortgage deed, deed of trust, or other instrument securing a conservation loan and constituting a lien on the real property or on the leasehold interest under a lease having a remaining term, at the time such mortgage is acquired, of not less than a term for repayment of the conservation loan secured by such mortgage, which is improved by conservation practices;

(7) Insurer shall mean an agency, department, administration, or instrumentality, corporate or otherwise, of or in any government agency in general, any private insurance company, or any other public or private agency which insures or guarantees payment of debt service on loans or bonds;

(8) Lender or lending institution shall mean any bank, trust company, savings and loan association, mortgage banker, insurance company, federal agency, or other financial institutions authorized to transact business in the State of Nebraska;

(9) Loan shall mean an interest-bearing obligation ~~executed by a lender~~ evidencing the money borrowed from the corporation; ~~and~~

(10) Board of directors shall mean the Board of

Directors of the Nebraska Association of Resources Districts as organized under the Nebraska Interlocal Cooperation Act which shall serve as the board of directors for the corporation. Such board shall consist of one representative director from each natural resources district in Nebraska. Selection and terms of office of such board of directors shall be governed by the ~~interlocal Cooperation Agreement~~ interlocal cooperation agreement and by the articles and bylaws of such organization;

(11) Administrator shall mean the person appointed by the board of directors pursuant to section 2-4208;

(12) Natural resource development practice shall mean any work or program of improvement undertaken by a political subdivision, within its authorized powers, relating to soil erosion prevention and control; prevention and control of damage from storm water, flood water, and sediment; soil conservation; water supply for beneficial uses; management and conservation of ground water and surface water; pollution control; sanitary and solid waste disposal; drainage improvement and channel rectification; development and management of fish and wildlife habitat; development and management of recreational and park facilities; and forestry and range management;

(13) Natural resource development loan shall mean a loan made by the corporation to a political subdivision to assist the political subdivision with any natural resource development practice; and

(14) Political subdivision shall mean any natural resource district, drainage district, rural water district, irrigation district, public power and irrigation district, county, city, or village of the State of Nebraska.

Sec. 5. That section 2-4206, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4206. The powers of the corporation shall be vested in the board of directors. Thirteen members of the board shall constitute a quorum for the transaction of business. The affirmative vote of at least thirteen members shall be necessary for any action to be taken by the board pursuant to ~~sections 2-4203 to 2-4246~~ the Conservation Corporation Act. The board of directors in a bylaw or other written procedure shall establish an executive committee composed of the administrator and three members of the board of directors, one of whom shall be a director from a natural resources district in which is located a city of the primary class or a city of the metropolitan class, for purposes of conducting hearings and reviewing and approving applications for conservation loans and natural resource development loans.

Sec. 6. That section 2-4209, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4209. The administrator shall attend the meetings of the board of directors members of the corporation, shall keep a record of the proceedings of the corporation, and shall maintain and be custodian of all books, documents, and papers filed with the corporation, the minutes book or journal of the corporation, and its official seal. He or she may cause copies to be made of all minutes and other records and documents of the corporation and may give certificates under seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.

Sec. 7. That section 2-4211, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4211. Any board member or employee of the corporation who has, will have, or later acquires an interest, direct or indirect, in any transaction with the corporation shall immediately disclose the nature and extent of such interest in writing to the corporation as soon as he or she has knowledge of such actual or prospective interest. Such disclosure shall be entered upon the minutes of the corporation. Upon such disclosure, such member or employee shall not participate in any action by the corporation authorizing such transactions.

Notwithstanding the provisions of any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of office as a director of membership in the corporation or by reason of providing services to such corporation. The fact that a member of the board of directors is a director of a natural resource district which is to receive a natural resource development loan or which may participate with the corporation in identifying and approving owners of real estate in such natural resources district who qualify for assistance from the corporation shall not be deemed an interest, direct or indirect, that would disqualify such board member from participating in transactions affecting such natural resources district or such landowners.

Sec. 8. That section 2-4213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4213. The corporation is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes, including, but not limited to, the following:

(1) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(2) To adopt, amend, and repeal bylaws, rules, and regulations, ~~not inconsistent~~ consistent with ~~sections 2-4201 to 2-4246~~ the Conservation Corporation Act, to regulate its affairs and carry into effect the powers and purposes of the corporation and conduct its business;

- (3) To sue and be sued in its own name;
- (4) To have an official seal and alter it at will;
- (5) To maintain an office at such place or places within the state as it may designate;
- (6) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under sections 2-4201 to 2-4246 the Conservation Corporation Act;
- (7) To contract with any additional contractor, engineer, attorney, inspector, and financial expert, and such advisors, consultants, and agents, other than the corporation staff, as may be necessary in its judgment, and to fix their compensation;
- (8) To procure insurance against any loss in connection with its property and other assets, including mortgages, and conservation loans, and natural resource development loans, in such amounts and from such insurers as it may deem advisable;
- (9) To borrow money;
- (10) To issue bonds as provided by sections 2-4201 to 2-4246 the Conservation Corporation Act;
- (11) To procure insurance or guarantees from any insurer for payment of any bonds issued by the corporation, including the power to pay premiums on any such insurance;
- (12) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of sections 2-4201 to 2-4246 the Conservation Corporation Act subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States of America, or the State of Nebraska or subdivisions thereof, for any purposes consistent with sections 2-4201 to 2-4246 the Conservation Corporation Act;
- (13) To enter into agreements with any department, agency, or instrumentality of the United States of America or the State of Nebraska or subdivisions thereof, including political subdivisions, and with lending institutions for the purpose of planning, regulating, and providing for the financing and refinancing of any conservation practice for a landowner or for any natural resource development practice of a political subdivision undertaken with the assistance of the corporation under sections 2-4201 to 2-4246 the Conservation Corporation Act;
- (14) To enter into contracts or agreements with lending institutions for the servicing and processing of mortgages, and conservation loans, and natural resource development loans pursuant to sections 2-4201 to 2-4246 the Conservation Corporation Act;

(15) To provide technical assistance to local public bodies and to profit and nonprofit entities in the development of conservation practices for landowners and natural resource development practices for political subdivisions, based on current soil and conservation guidelines, and distribute data and information concerning the conservation and natural resource needs of such landowners and political subdivisions within the State of Nebraska;

(16) To the extent permitted under its contract with the holders of bonds of the corporation, to consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest, or any other term of any contract, mortgage, conservation loan, natural resource development loan, loan commitment, contract, or agreement of any kind to which the corporation is a party; and

(17) To the extent permitted under its contract with the holders of bonds of the corporation, to enter into contracts with any lending institution containing provisions enabling it to reduce the carrying charges to landowners unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of the State of Nebraska, the reduction can be made without jeopardizing the economic stability of the farmland or range area being financed.

Sec. 9. That section 2-4214, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4214. The corporation shall have the following duties:

(1) To invest any funds not needed for immediate disbursement, including any funds held in reserve, in direct and general obligations of or obligations fully and unconditionally guaranteed by the United States of America; 7 obligations issued by agencies of the United States of America; 7 obligations of this state or of any political subdivision, except obligations of sanitary and improvement districts organized under Chapter 31, article 7; certificates of deposit of banks whose deposits are insured by the Federal Deposit Insurance Corporation or collateralized by deposit of securities with the secretary-treasurer of the corporation, as, and to the extent not covered by insurance, with securities which are eligible for securing the deposits of the state or counties, school districts, cities, or villages of the state; repurchase agreements which are fully secured by any of such securities or obligations which may be unsecured and unrated, including investment agreements, of any corporation, national bank, bankholding company, insurance company, or trust company which has outstanding debt obligations which are rated by a nationally recognized rating agency in one of the three highest rating

categories established by such rating agency; or any obligations or securities which may from time to time be legally purchased by governmental subdivisions of this state pursuant to section 77-2341;

(2) To collect fees and charges, as the corporation determines to be reasonable, in connection with its loans, advances, insurance commitments, and servicing;

(3) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agencies;

(4) To sell, assign, or otherwise dispose of at public or private sale, with or without public bidding, any mortgage or other obligations held by the corporation; and

(5) To do any act necessary or convenient to the exercise of the powers granted by the Conservation Corporation Act sections 2-4201 to 2-4246 or reasonably implied from it.

Sec. 10. That section 2-4216, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4216. The corporation may make and undertake commitments to make loans to or deposits with lenders under terms and conditions requiring the lenders to make conservation loans to landowners or natural resource development loans to political subdivisions in an aggregate amount equal to the amount of the loan or deposit made by the corporation with the lenders. The conservation loans or natural resource development loans may be originated through and serviced by any lender authorized to transact business in the State of Nebraska. Any lender making conservation loans or natural resource development loans to landowners pursuant to this section with funds borrowed from or deposited by the corporation may secure such loans in any manner such lender deems advisable.

Sec. 11. That section 2-4217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4217. The corporation may invest in, purchase, or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of, conservation loans made to landowners for the construction or implementation of conservation practices by such landowners. No conservation loans shall be eligible for investment in, purchase, or assignment by the corporation if the conservation loan was made more than three years prior to the date of investment, purchase, or assignment by the corporation. A conservation loan invested in, purchased, or assigned by the corporation under this section may be secured by a mortgage or such other security device as the corporation deems necessary to secure the payment of principal and interest on such conservation loan.

The corporation may make, invest in, purchase, or make a commitment to make, invest in, or purchase

natural resource development loans to any political subdivision. Such loans may be evidenced by any debt obligation which the political subdivision is authorized to issue in connection with any natural resource development practice and may be secured by such general or special revenue sources as the political subdivision is authorized to pledge or commit.

Sec. 12. That section 2-4218, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4218. Prior to exercising any of the powers authorized in sections 2-4216 and 2-4217 in connection with any conservation loan, the corporation shall require the lender to certify and agree that:

(1) Any conservation loan made by the lender to the landowner under section 2-4216, or originated by the lender for sale or assignment to the corporation under section 2-4217, is, or if the same has not been made will at the time of making be, in all respects a prudent investment;

(2) The lender will, within a reasonable period of time after receipt of a loan amount or deposit from the corporation under section 2-4216, make conservation loans or purchase mortgages made to secure conservation loans in an aggregate amount equal to the amount of the loan or deposit made by the corporation to the lender or, if such lender has made a commitment to make conservation loans to landowners on the basis of a commitment from the corporation to purchase such conservation loans under section 2-4217, the lender will make such conservation loans and sell the same to the corporation within a reasonable period of time.

Sec. 13. That section 2-4219, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4219. Prior to exercising any of the powers conferred by sections 2-4216 and 2-4217, the corporation may:

(1) Require that the conservation loan or natural resource development loan involved be insured by an insurer; **and**

(2) Require any other type of security that it deems reasonable and necessary and which, in the case of a political subdivision, such political subdivision is authorized by law to grant; and

(3) Require appropriate evidence in the form of an opinion of counsel that any natural resource development loan is duly authorized and valid under the statutes governing the powers and procedures of such political subdivision.

Sec. 14. That section 2-4220, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4220. Prior to carrying out any of the powers granted under sections 2-4216 and 2-4217, the corporation shall adopt and promulgate rules and regulations governing

its activities authorized under ~~sections 2-4201 to 2-4246~~ the Conservation Corporation Act, including rules and regulations relating to any or all of the following:

(1) The number and location of the conservation practices and natural resource development practices, including, to the extent reasonably possible, assurance that the conservation practices or natural resource development practices to be financed by an issue of bonds or series of issues will be adequate, as determined by the corporation, to be financed directly or indirectly by the lenders or by an issue of bonds of the corporation;

(2) Rates, fees, charges, and other terms and conditions of making, originating, or servicing conservation loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;

(3) The type and the amount of collateral or security to be provided to assure repayment of conservation loans or natural resource development loans or of deposits made to lenders under section 2-4216;

(4) The type of collateral, payment bond, performance bond, or other security to be provided by the lending institutions making conservation loans under section 2-4216 or originating and servicing conservation loans under section 2-4217;

(5) The nature and amount of fees to be charged by the corporation to provide for expenses and reserves of the corporation;

(6) Standards and requirements for the allocation of available money and the determination of the maturities, terms, conditions, and interest rates for conservation loans or natural resource development loans made, purchased, sold, assigned, or committed;

(7) Commitment requirements for conservation practices and financing for landowners by lending institutions involving money provided directly or indirectly by the lender; or

(8) Any other matters related to the duties or exercise of the corporation's powers or duties under ~~sections 2-4201 to 2-4246~~ the Conservation Corporation Act.

Sec. 15. That section 2-4226, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4226. The bonds shall be authorized by resolution of the corporation, shall bear such date or dates, and shall mature at such time or times as such resolution may provide, except that no bond shall mature more than fifty years from the date of its issue, as the resolution shall provide. The bonds shall bear interest at such rates, or rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject

to such terms of redemption, including redemption prior to maturity, as such resolution may provide. ~~Section The provisions of section 10-126 shall not apply to bonds issued by the corporation. Bonds of the corporation may be sold by the corporation at public or private sale, and at such price or prices as the corporation shall determine. Such bonds shall be executed in the name and on behalf of the corporation and signed by the manual or facsimile signatures of the chairperson and secretary-treasurer signature of the chairperson with the seal of the corporation affixed thereto, and attested by the facsimile of signature by the secretary-treasurer, coupons~~ Coupons attached to the bonds may bear facsimile or lithographic signatures of the chairperson and secretary-treasurer of the corporation.

Sec. 16. That section 2-4227, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4227. Any resolution authorizing the issuance of bonds may contain provisions, which shall be a part of the contract or contracts with the holders of such bonds, as to:

(1) Pledging all or any part of the revenue of the corporation to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(2) Pledging all or any part of the assets of the corporation, including conservation loans or natural resource development loans, to secure the principal of and the interest on such bonds, subject to such agreement with bondholders as may then exist;

(3) The use and disposition of the gross income from conservation loans or natural resource development loans owned by the corporation and payment of the principal of conservation loans or natural resource development loans owned by the corporation;

(4) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(5) Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which may consent thereto, and the manner in which the consent may be given;

(8) Limitations on the amount of money to be expended by the corporation for operating expenses of the corporation;

(9) Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the corporation may determine, and limiting or abrogating the

right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee;

(10) Defining the acts or omissions to act which shall constitute a default and the obligations or duties of the corporation to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; but the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of ~~sections 2-4201 to 2-4246~~ the Conservation Corporation Act; and

(11) Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

Sec. 17. That section 2-4233, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4233. Neither the members of the board of directors of the corporation nor any other person executing the bonds issued under the Conservation Corporation Act ~~sections 2-4201 to 2-4246~~ shall be subject to personal liability or accountability by reason of the issuance thereof.

Sec. 18. That section 2-4242, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-4242. All expenses incurred by the corporation in carrying out the Conservation Corporation Act ~~sections 2-4201 to 2-4246~~ shall be payable solely from funds provided under ~~sections 2-4201 to 2-4246~~ such act, and nothing in such act ~~sections 2-4201 to 2-4246~~ shall be construed to authorize the corporation to incur debts, indebtedness, or liability on behalf of or payable by this state. ~~or any political subdivision of it.~~

Sec. 19. That original sections 2-3228, 2-4202 to 2-4204, 2-4206, 2-4209, 2-4211, 2-4213, 2-4214, 2-4216 to 2-4220, 2-4226, 2-4227, 2-4233, and 2-4242, Reissue Revised Statutes of Nebraska, 1943, are repealed.