

LEGISLATIVE BILL 436

Approved by the Governor March 17, 1999

Introduced by Natural Resources Committee: Schrock, 38, Chairperson;
Bohlke, 33; Bromm, 23; Bruning, 3; Hudkins, 21; Jones, 43;
Preister, 5; Stuhr, 24

AN ACT relating to natural resources; to amend sections 2-3232, 2-3235, and 2-3254, Reissue Revised Statutes of Nebraska, and sections 2-3212.01, 2-3219, 2-3222, 2-3226, 2-3228, 2-3233, and 2-3234, Revised Statutes Supplement, 1998; to delete references to certain sections; to eliminate provisions relating to rules and regulations and appeals; to harmonize provisions; to repeal the original sections; and to outright repeal section 2-3204, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 2-3212.01, Revised Statutes Supplement, 1998, is amended to read:

2-3212.01. Mergers and transfers of existing districts or boards into natural resources districts pursuant to sections ~~2-1502 to 2-1504, 2-1507, 2-3201 to 2-3257, 2-32,109 to 2-32,114, 31-101.01, 31-301.01, 31-401.01, 46-613.01, and 46-1001.01~~ 2-3207 to 2-3212 shall not be construed as being discontinuances or dissolutions of those districts or boards as may be provided for by statute outside such sections.

Sec. 2. Section 2-3219, Revised Statutes Supplement, 1998, is amended to read:

2-3219. (1) The board shall hold regularly scheduled monthly meetings. ~~at which meetings the board shall take such action and make such determinations as are required by sections 2-1502 to 2-1504, 2-1507, 2-3201 to 2-3257, 2-32,109 to 2-32,114, 31-101.01, 31-301.01, 31-401.01, 46-613.01, and 46-1001.01.~~ A majority of the voting members of the board shall constitute a quorum, and the concurrence of a majority of a quorum shall be sufficient to take action and make determinations. Within ninety days ~~of~~ after the creation of any natural resources district, the board thereof shall, by appropriate rules and regulations, designate the regular time and place such meetings are to be held. At the first meeting of each year, the board shall review its program for the preceding year and outline its plans for the following year. At the first regularly scheduled meeting after the completion of the yearly audit required by section 2-3223, it shall present a report of the financial condition of the district and open discussion relevant to the same. Notice shall be given of all board meetings pursuant to section 84-1411.

(2) The boards of directors of the natural resources districts within each river basin shall meet jointly at least twice a year at such times and places as may be mutually agreed upon for the purpose of receiving and coordinating their efforts for the maximum benefit of the basin.

Sec. 3. Section 2-3222, Revised Statutes Supplement, 1998, is amended to read:

2-3222. The board shall furnish to the commission copies of ~~such its rules, regulations, orders, contracts, forms, plans, audits, agreements, minutes of their meetings~~ meeting minutes, and other documents as they shall plan to adopt or employ and such other information concerning their activities as the commission may require in the performance of its duties. ~~under sections 2-1502 to 2-1504, 2-1507, 2-3201 to 2-3257, 2-32,109 to 2-32,114, 31-101.01, 31-301.01, 31-401.01, 46-613.01, and 46-1001.01.~~

Sec. 4. Section 2-3226, Revised Statutes Supplement, 1998, is amended to read:

2-3226. Each district shall have the power and authority to issue revenue bonds for the purpose of financing construction of facilities authorized by ~~sections 2-1502 to 2-1504, 2-1507, 2-3201 to 2-3257, 2-32,109 to 2-32,114, 31-101.01, 31-301.01, 31-401.01, 46-613.01, and 46-1001.01~~ law. Issuance of revenue bonds must be approved by two-thirds of the members of the board of directors of the district. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on such bonds and shall establish rates for such facilities at a sufficient level to provide for the operation of such facilities and for the bond payments.

Sec. 5. Section 2-3228, Revised Statutes Supplement, 1998, is amended to read:

2-3228. (1) Each district shall have the power and authority to:

(a) 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;

(b) 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;

(c) Employ such persons as are necessary to carry out ~~the purposes of sections 2-3201 to 2-3257 and 2-32,109 to 2-32,114~~ its authorized purposes 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~~ contributions shall be required to fund at least fifty percent 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' 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;

(d) Purchase liability, property damage, workers' compensation, and other types of insurance as in the judgment of the board are necessary to protect the assets of the district;

(e) Borrow money to carry out such sections;

(f) Adopt and promulgate rules and regulations to carry out the purposes of such sections; and

(g) 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.

(2)(a) Beginning December 31, 1998, and each December 31 thereafter, the Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act shall file an annual report on each retirement plan established pursuant to this section with the Public Employees Retirement Board and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates and levels of benefits of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan established pursuant to this section, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan established pursuant to this section, the number of members who are eligible for a benefit and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits. ~~+~~ and

~~(ix)~~ If a plan established pursuant to this section contains no current active participants, the association may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(b) Beginning December 31, 1998, and every four years thereafter, the association shall cause to be prepared one of the following quadrennial reports for each retirement plan, and shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of each report as follows:

(i) For each defined benefit plan, a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the

retirement plan; or

(ii) For each defined contribution plan, a financial audit and analysis of the investment return that has been achieved on the assets of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization which has demonstrated expertise to perform this type of analysis and which is unrelated to any organization offering investment advice or providing investment management services to the retirement plan, and the audit portion of the report shall be prepared by a certified public accountant.

Sec. 6. Section 2-3232, Reissue Revised Statutes of Nebraska, is amended to read:

2-3232. Each district shall have the power and authority to:

(1) Make studies, investigations, or surveys and do research as may be necessary to carry out ~~the its authorized purposes, of sections 2-3201 to 2-3257 and 2-32,109 to 2-32,114,~~ to enter upon any land, after notifying the owner or occupier, for the purpose of conducting such studies, investigations, surveys, and research, and ~~to~~ publish and disseminate the results. Entry upon any property pursuant to this section shall not be considered ~~to be legal trespass, and no damage shall be~~ damages are not recoverable on that account alone. In case of any actual or demonstrable damage to premises, the district shall pay the owner of the premises the amount of the damages. Upon failure of the landowner and the district to agree upon the amount of ~~damage~~ damages, the landowner, in addition to any other available remedy, may file a petition as provided in section 76-705. To avoid duplication of effort, any such studies, investigations, surveys, research, or dissemination shall be in cooperation and coordination with the programs of the University of Nebraska, or any department thereof, and any other appropriate state agencies; and

(2) Conduct demonstration projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owners of such land or the necessary rights and interest in such lands, in order to demonstrate by example the means, methods, and measures by which soil and water resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled. Demonstration projects shall be coordinated with the programs of the Agricultural Research Division of the University of Nebraska Institute of Agriculture and Natural Resources.

Sec. 7. Section 2-3233, Revised Statutes Supplement, 1998, is amended to read:

2-3233. Each district shall have the power and authority to acquire and dispose of water rights in accordance with Chapter 46, article 2, ~~and~~ to acquire by grant, purchase, bequest, devise, or lease and to hold and use waterworks, personal property, and interests ~~or title in~~ in or title to real property, and to sell, lease, encumber, or otherwise dispose of such waterworks and property. Each district shall also have the power and authority to acquire, construct, own, operate, control, maintain, and use any and all such works and facilities, both within and without the district, necessary to carry out ~~the provisions of sections 2-1502 to 2-1504, 2-1507, 2-3201 to 2-3257, 2-32,109 to 2-32,114, 31-101.01, 31-301.01, 31-401.01, 46-613.01, and 46-1001.01~~ its authorized purposes and furnish water service for domestic, irrigation, power, manufacturing, and other beneficial purposes.

Sec. 8. Section 2-3234, Revised Statutes Supplement, 1998, is amended to read:

2-3234. Each district shall have the power and authority to exercise the power of eminent domain when necessary to carry out ~~the its~~ authorized purposes ~~of sections 2-1502 to 2-1504, 2-1507, 2-3201 to 2-3257, 2-32,109 to 2-32,114, 31-101.01, 31-301.01, 31-401.01, 46-613.01, and 46-1001.01~~ within the limits of the district or outside its boundaries. Exercise of eminent domain shall be governed by the provisions of sections 76-704 to 76-724, except that whenever any district seeks to acquire the right to interfere with the use of any water being used for power purposes in accordance with sections 46-204, 70-668, 70-669, and 70-672 and is unable to agree with the user of such water upon the compensation to be paid for such interference, the procedure to condemn property shall be followed in the manner set forth in sections 76-704 to 76-724 and no other property shall be included in such condemnation. No district shall contract for delivery of water to persons within the corporate limits of any village, city, or metropolitan utilities district, nor in competition therewith outside such corporate limits, except by consent of and written agreement with the governing body of such political subdivision. A village, city, or metropolitan utilities district may negotiate and, if necessary, exercise the power of eminent domain for the acquisition of water supply facilities of the

district which are within its boundaries.

Sec. 9. Section 2-3235, Reissue Revised Statutes of Nebraska, is amended to read:

2-3235. (1) Each district shall have the power and authority to cooperate with or to enter into ~~agreement~~ agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by ~~sections 2-3201 to 2-3257 and 2-32,109 to 2-32,114~~ law, subject to such conditions as the board may deem necessary to advance the purposes of such sections.

(2) As a condition to the extending of any benefits under such sections to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require landowners to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(3) Each district may make available, on such terms as it shall prescribe, to landowners within the district specialized equipment, materials, and services which are not readily available from other sources and which will assist such landowners to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion. Whenever reasonably possible, purchases or contracts for such equipment shall be made from retail establishments.

Sec. 10. Section 2-3254, Reissue Revised Statutes of Nebraska, is amended to read:

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 all applicable law and with the district's goals, criteria, and policies, of sections 2-3201 to 2-3257 and 2-32,109 to 2-32,114, 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 so conform, ~~with such sections~~, 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 for the project shall be filed with the secretary of the district and the Director of Water Resources, except that if such project involves a public water supply system as defined in section 71-5301, the filing of the information shall be with the Department of Health and Human Services Regulation and Licensure 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 and Human Services Regulation and Licensure, if applicable, except that if such special project involves a public water supply system as defined in section 71-5301, only the Department

of Health and Human Services Regulation and Licensure shall be required to review such plans and specifications and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. 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 in this section 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 the 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 percent of the estimated total assessments 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 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 chairperson 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. 11. Original sections 2-3232, 2-3235, and 2-3254, Reissue Revised Statutes of Nebraska, and sections 2-3212.01, 2-3219, 2-3222, 2-3226, 2-3228, 2-3233, and 2-3234, Revised Statutes Supplement, 1998, are repealed.

Sec. 12. The following section is outright repealed: Section 2-3204, Reissue Revised Statutes of Nebraska.