

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 319

FINAL READING

Introduced by Moser, 22.

Read first time January 16, 2019

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to the Department of Natural Resources; to
- 2 amend sections 31-1017 and 61-206, Reissue Revised Statutes of
- 3 Nebraska, and section 46-753, Revised Statutes Cumulative
- 4 Supplement, 2018; to change provisions relating to notice and rules
- 5 and regulations; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 31-1017, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 31-1017 The department shall be the official state agency for all
4 matters pertaining to flood plain management. In carrying out that
5 function, the department shall have the power and authority to:

6 (1) Coordinate flood plain management activities of local, state,
7 and federal agencies;

8 (2) Receive federal funds intended to accomplish flood plain
9 management objectives;

10 (3) Prepare and distribute information and conduct educational
11 activities which will aid the public and local units of government in
12 complying with the purposes of sections 31-1001 to 31-1023;

13 (4) Provide local governments having jurisdiction over flood-prone
14 lands with technical data and maps adequate to develop or support
15 reasonable flood plain management regulation;

16 (5) Adopt and promulgate rules and regulations establishing minimum
17 standards for local flood plain management regulation. In addition to the
18 public notice requirement in the Administrative Procedure Act, the
19 department shall, at least twenty days in advance, notify ~~by mail~~ the
20 clerks of all cities, villages, and counties which might be affected of
21 any hearing to consider the adoption, amendment, or repeal of such
22 minimum standards. Such minimum standards shall be designed to protect
23 human life, health, and property and to preserve the capacity of the
24 flood plain to discharge the waters of the base flood and shall take into
25 consideration (a) the danger to life and property by water which may be
26 backed up or diverted by proposed obstructions and land uses, (b) the
27 danger that proposed obstructions or land uses will be swept downstream
28 to the injury of others, (c) the availability of alternate locations for
29 proposed obstructions and land uses, (d) the opportunities for
30 construction or alteration of proposed obstructions in such a manner as
31 to lessen the danger, (e) the permanence of proposed obstructions or land

1 uses, (f) the anticipated development in the foreseeable future of areas
2 which may be affected by proposed obstructions or land uses, (g) hardship
3 factors which may result from approval or denial of proposed obstructions
4 or land uses, and (h) such other factors as are in harmony with the
5 purposes of sections 31-1001 to 31-1023. Such minimum standards may, when
6 required by law, distinguish between farm and nonfarm activities and
7 shall provide for anticipated developments and gradations in flood
8 hazards. If deemed necessary by the department to adequately accomplish
9 the purposes of such sections, such standards may be more restrictive
10 than those contained in the national flood insurance program standards,
11 except that the department shall not adopt standards which conflict with
12 those of the national flood insurance program in such a way that
13 compliance with both sets of standards is not possible;

14 (6) Provide local governments and other state and local agencies
15 with technical assistance, engineering assistance, model ordinances,
16 assistance in evaluating permit applications and possible violations of
17 flood plain management regulations, assistance in personnel training, and
18 assistance in monitoring administration and enforcement activities;

19 (7) Serve as a repository for all known flood data within the state;

20 (8) Assist federal, state, or local agencies in the planning and
21 implementation of flood plain management activities, such as flood
22 warning systems, land acquisition programs, and relocation programs;

23 (9) Enter upon any lands and waters in the state for the purpose of
24 making any investigation or survey or as otherwise necessary to carry out
25 the purposes of such sections. Such right of entry shall extend to all
26 employees, surveyors, or other agents of the department in the official
27 performance of their duties, and such persons shall not be liable to
28 prosecution for trespass when performing their official duties;

29 (10) Enter into contracts or other arrangements with any state or
30 federal agency or person as defined in section 49-801 as necessary to
31 carry out the purposes of sections 31-1001 to 31-1023; and

1 (11) Adopt and enforce such rules and regulations as are necessary
2 to carry out the duties and responsibilities of such sections.

3 Sec. 2. Section 46-753, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 46-753 (1) The Water Resources Trust Fund is created. The State
6 Treasurer shall credit to the fund such money as is specifically
7 appropriated thereto by the Legislature, transfers authorized by the
8 Legislature, and such funds, fees, donations, gifts, or bequests received
9 by the Department of Natural Resources from any federal, state, public,
10 or private source for expenditure for the purposes described in the
11 Nebraska Ground Water Management and Protection Act. Money in the fund
12 shall not be subject to any fiscal-year limitation or lapse provision of
13 unexpended balance at the end of any fiscal year or biennium. Any money
14 in the fund available for investment shall be invested by the state
15 investment officer pursuant to the Nebraska Capital Expansion Act and the
16 Nebraska State Funds Investment Act.

17 (2) The fund shall be administered by the department. The department
18 ~~may shall~~ adopt and promulgate rules and regulations regarding the
19 allocation and expenditure of money from the fund.

20 (3) Money in the fund may be expended by the department for costs
21 incurred by the department, by natural resources districts, or by other
22 political subdivisions in (a) determining whether river basins,
23 subbasins, or reaches are fully appropriated in accordance with section
24 46-713, (b) developing or implementing integrated management plans for
25 such fully appropriated river basins, subbasins, or reaches or for river
26 basins, subbasins, or reaches designated as overappropriated in
27 accordance with section 46-713, (c) developing or implementing integrated
28 management plans in river basins, subbasins, or reaches which have not
29 yet become either fully appropriated or overappropriated, or (d)
30 attaining state compliance with an interstate water compact or decree or
31 other formal state contract or agreement.

1 (4) Except for funds paid to a political subdivision for forgoing or
2 reducing its own water use or for implementing projects or programs
3 intended to aid the state in complying with an interstate water compact
4 or decree or other formal state contract or agreement, a political
5 subdivision that receives funds from the fund shall provide, or cause to
6 be provided, matching funds in an amount at least equal to twenty percent
7 of the amount received from the fund by that natural resources district
8 or political subdivision. The department shall monitor programs and
9 activities funded by the fund to ensure that the required match is being
10 provided.

11 Sec. 3. Section 61-206, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 61-206 (1) The Department of Natural Resources is given jurisdiction
14 over all matters pertaining to water rights for irrigation, power, or
15 other useful purposes except as such jurisdiction is specifically limited
16 by statute. ~~The Such~~ department ~~may shall~~ adopt and promulgate rules and
17 regulations governing matters coming before it. It may refuse to allow
18 any water to be used by claimants until their rights have been determined
19 and made of record. It may request information relative to irrigation and
20 water power works from any county, irrigation, or power officers and from
21 any other persons. It may have hearings on complaints, petitions, or
22 applications in connection with any of such matters. Such hearings shall
23 be had at the time and place designated by the department. The department
24 shall have power to certify official acts, compel attendance of
25 witnesses, take testimony by deposition as in suits at law, and examine
26 books, papers, documents, and records of any county, party, or parties
27 interested in any of the matters mentioned in this section or have such
28 examinations made by its qualified representative and shall make and
29 preserve a true and complete transcript of its proceedings and hearings.
30 If a final decision is made without a hearing, a hearing shall be held at
31 the request of any party to the proceeding if the request is made within

1 thirty days after the decision is rendered. If a hearing is held at the
2 request of one or more parties, the department may require each such
3 requesting party and each person who requests to be made a party to such
4 hearing to pay the proportional share of the cost of such transcript.
5 Upon any hearing, the department shall receive any evidence relevant to
6 the matter under investigation and the burden of proof shall be upon the
7 person making the complaint, petition, and application. After such
8 hearing and investigation, the department shall render a decision in the
9 premises in writing and shall issue such order or orders duly certified
10 as it may deem necessary.

11 (2) The department shall serve as the official agency of the state
12 in connection with water resources development, soil and water
13 conservation, flood prevention, watershed protection, and flood control.

14 (3) The department shall:

15 (a) Offer assistance as appropriate to the supervisors or directors
16 of any subdivision of government with responsibilities in the area of
17 natural resources conservation, development, and use in the carrying out
18 of any of their powers and programs;

19 (b) Keep the supervisors or directors of each such subdivision
20 informed of the activities and experience of all other such subdivisions
21 and facilitate cooperation and an interchange of advice and experience
22 between such subdivisions;

23 (c) Coordinate the programs of such subdivisions so far as this may
24 be done by advice and consultation;

25 (d) Secure the cooperation and assistance of the United States, any
26 of its agencies, and agencies of this state in the work of such
27 subdivisions;

28 (e) Disseminate information throughout the state concerning the
29 activities and programs of such subdivisions;

30 (f) Plan, develop, and promote the implementation of a comprehensive
31 program of resource development, conservation, and utilization for the

1 soil and water resources of this state in cooperation with other local,
2 state, and federal agencies and organizations;

3 (g) When necessary for the proper administration of the functions of
4 the department, rent or lease space outside the State Capitol; and

5 (h) Assist such local governmental organizations as villages,
6 cities, counties, and natural resources districts in securing, planning,
7 and developing information on flood plains to be used in developing
8 regulations and ordinances on proper use of these flood plains.

9 Sec. 4. Original sections 31-1017 and 61-206, Reissue Revised
10 Statutes of Nebraska, and section 46-753, Revised Statutes Cumulative
11 Supplement, 2018, are repealed.