

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1381

Introduced by Beutler, 28

Read first time January 20, 2000

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to natural resources; to amend sections 23-373
2 and 76-2,112, Reissue Revised Statutes of Nebraska,
3 section 19-902, Revised Statutes Supplement, 1998, and
4 section 23-114, Revised Statutes Supplement, 1999; to
5 define a term; to create the Niobrara Council; to provide
6 powers and duties; to create a fund; to harmonize
7 provisions; to eliminate the Niobrara Scenic River Local
8 Management Council; to repeal the original sections; and
9 to outright repeal sections 72-2001 to 72-2004, Revised
10 Statutes Supplement, 1998.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. As a result of the recent federal court
2 ruling in National Parks and Conservation Association v. National
3 Park Service and in order to maintain an aspect of local control
4 over the Niobrara scenic river corridor, the Legislature finds that
5 there is a need to reconstitute the existing Niobrara Council as a
6 state agency with the responsibility and authority to manage the
7 Niobrara scenic river corridor in conjunction with the National
8 Park Service. The purpose of sections 1 to 7 of this act is to
9 effectuate changes in the council necessary to ensure the
10 continuation of the cooperative management relationship between the
11 Niobrara Council and the National Park Service so that local
12 participation and control over this valuable natural resource can
13 be maintained.

14 Sec. 2. For purposes of sections 1 to 7 of this act,
15 Niobrara scenic river corridor means the area designated as a
16 national scenic river and a part of the national wild and scenic
17 rivers system under 16 U.S.C. 1274(a)(117).

18 Sec. 3. (1) The Niobrara Council is created. The
19 council membership shall include one representative of each of the
20 county boards of Brown, Cherry, Keya Paha, and Rock counties, the
21 Middle Niobrara Natural Resources District, the Lower Niobrara
22 Natural Resources District, the Game and Parks Commission, the
23 United States Fish and Wildlife Service, and the National Parks
24 Service, each selected by their respective group. The council
25 membership shall also include one landowner representative from
26 each of the four Niobrara scenic river corridor counties: Brown,
27 Cherry, Keya Paha, and Rock counties. Each landowner
28 representative shall be appointed by their respective county board.

1 The following council members shall be appointed by the four county
2 board representatives on the council: One representative from a
3 recreational business operating within the Niobrara scenic river
4 corridor; one timber industry representative operating within the
5 Niobrara scenic river corridor, and one representative of a
6 recognized, nonprofit, environmental, conservation or wildlife
7 organization. All council members shall be selected within ninety
8 days after the effective date of this act. Representatives shall
9 serve at the pleasure of the group from which they were chosen, and
10 such groups shall select a replacement if their representative is
11 unable to serve. The council shall elect a chairperson, a
12 vice-chairperson, a secretary, and a treasurer who shall jointly
13 serve as the executive committee for the council. The county board
14 members and natural resources district members of the council shall
15 be reimbursed for expenses incurred in carrying out their duties on
16 the council as provided in sections 81-1174 to 81-1177. The
17 council shall meet on a regular basis, preferably once a month,
18 with a minimum of six meetings per year. Special meetings may be
19 called by any member of the executive committee or at the request
20 of a simple majority of the members of the council. A majority of
21 the council members shall be present at a meeting before any action
22 may be taken by the council. The majority shall be determined from
23 the number of council members who are selected and are serving
24 rather than the number of possible members. All actions of the
25 council require a majority vote of all members present at any
26 meeting.

27 Sec. 4. The Niobrara Council shall perform management
28 functions related to the Niobrara scenic river corridor, including,

1 but not limited to, those authorized and delegated to it by the
2 National Park Service. The Game and Parks Commission shall provide
3 administrative support when requested by the council to carry out
4 its duties. This support shall not exceed fifty thousand dollars
5 in any calendar year. In the Niobrara scenic river corridor, the
6 council may hold title to real estate in the name of the council.
7 The council may purchase or trade such property and may obtain
8 conservation easements as provided in the Conservation and
9 Preservation Easements Act.

10 Sec. 5. The Niobrara Council Fund is created. The fund
11 shall be administered by the Niobrara Council. The council may
12 accept any private or public funds to carry out its work and such
13 funds shall be remitted to the State Treasurer for credit to the
14 fund. The fund shall consist of such funds and legislative
15 appropriations made to the council. Any money in the fund
16 available for investment shall be invested by the state investment
17 officer pursuant to the Nebraska Capital Expansion Act and the
18 Nebraska State Funds Investment Act.

19 Sec. 6. The Niobrara Council shall review and approve or
20 reject all zoning regulations, including existing regulations, new
21 regulations, proposed regulations, and variances granted for
22 nonconforming uses, which affect land in the Niobrara scenic river
23 corridor that is not incorporated within the boundaries of a
24 municipality. If the council rejects a zoning regulation or
25 variance, the governing body enacting the regulation or variance
26 has six months to present an alternative to the council. If no
27 alternative is proposed or if the alternative is also rejected, the
28 council may adopt zoning regulations for such area. In counties

1 without zoning the Niobrara Council may develop and enforce zoning
2 regulations within the Niobrara scenic river corridor under the
3 guidance of the federal Wild and Scenic Rivers Act or under the
4 guidance of the general management plan as written by the National
5 Park Service. The council shall follow the requirements for zoning
6 regulations in sections 23-114 to 23-114.05 and 23-164 to 23-174.10
7 except that no separate planning commission is required and the
8 council shall fulfill the duties of both the county board and the
9 planning commission in such sections.

10 Sec. 7. (1) Any state or state-assisted activity or
11 undertaking proposed within the Niobrara scenic river corridor
12 shall be consistent with the purpose of the scenic river
13 designation, including the scenic river's free-flowing condition
14 and scenic, geological, biological, agricultural, historic, and
15 prehistoric resources.

16 (2) The head of any state or local agency having direct
17 or indirect jurisdiction over a proposed state or state-assisted
18 undertaking within the Niobrara scenic river corridor and the head
19 of any agency having authority to license or permit any undertaking
20 in such area shall prepare a detailed proposal and submit it to the
21 council for its review.

22 (3) The Niobrara Council shall review the proposal and
23 consult with the agency. If, within thirty days after such review
24 and consultation, the council finds that the proposed action is not
25 consistent with the purposes of this section, the agency shall not
26 proceed with the action until after a justification for the action
27 has been submitted to the Governor and approved by the Governor in
28 writing. The justification shall include the following elements:

1 The anticipated current, future, and cumulative effects on the
2 scenic and natural resources of the designated scenic river
3 corridor; the social and economic necessity for the proposed
4 action; all possible alternatives to the proposed action including
5 a no-action alternative; the comparative benefits of proposed
6 alternative actions; and the mitigation measures outlined in the
7 proposed action.

8 Sec. 8. Section 19-902, Revised Statutes Supplement,
9 1998, is amended to read:

10 19-902. (1) For any or all of the purposes designated in
11 section 19-901, the city council or village board may divide the
12 municipality into districts of such number, shape, and area as may
13 be deemed best suited to carry out the purposes of sections 19-901
14 to 19-914 and may regulate and restrict the erection, construction,
15 reconstruction, alteration, repair, or use of buildings,
16 structures, or land within the districts. All such regulations
17 shall be uniform for each class or kind of buildings throughout
18 each district, but the regulations applicable to one district may
19 differ from those applicable to other districts. If a regulation
20 affects Niobrara scenic river corridor as defined in section 1 of
21 this act and is not incorporated within the boundaries of the
22 municipality, the Niobrara Council shall act on the regulation as
23 provided in section 5 of this act.

24 (2)(a) The city council or village board shall not adopt
25 or enforce any zoning ordinance or regulation which prohibits the
26 use of land for a proposed residential structure for the sole
27 reason that the proposed structure is a manufactured home if such
28 manufactured home bears an appropriate seal which indicates that it

1 was constructed in accordance with the standards of the Uniform
2 Standard Code for Manufactured Homes and Recreational Vehicles, the
3 Nebraska Uniform Standards for Modular Housing Units Act, or the
4 United States Department of Housing and Urban Development. The
5 city council or village board may require that a manufactured home
6 be located and installed according to the same standards for
7 foundation system, permanent utility connections, setback, and
8 minimum square footage which would apply to a site-built,
9 single-family dwelling on the same lot. The city council or
10 village board may also require that manufactured homes meet the
11 following standards:

12 (i) The home shall have no less than nine hundred square
13 feet of floor area;

14 (ii) The home shall have no less than an eighteen-foot
15 exterior width;

16 (iii) The roof shall be pitched with a minimum vertical
17 rise of two and one-half inches for each twelve inches of
18 horizontal run;

19 (iv) The exterior material shall be of a color, material,
20 and scale comparable with those existing in residential site-built,
21 single-family construction;

22 (v) The home shall have a nonreflective roof material
23 which is or simulates asphalt or wood shingles, tile, or rock; and

24 (vi) The home shall have wheels, axles, transporting
25 lights, and removable towing apparatus removed.

26 (b) The city council or village board may not require
27 additional standards unless such standards are uniformly applied to
28 all single-family dwellings in the zoning district.

1 (c) Nothing in this subsection shall be deemed to
2 supersede any valid restrictive covenants of record.

3 (3) For purposes of this section, manufactured home shall
4 mean (a) a factory-built structure which is to be used as a place
5 for human habitation, which is not constructed or equipped with a
6 permanent hitch or other device allowing it to be moved other than
7 to a permanent site, which does not have permanently attached to
8 its body or frame any wheels or axles, and which bears a label
9 certifying that it was built in compliance with National
10 Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280
11 et seq., promulgated by the United States Department of Housing and
12 Urban Development, or (b) a modular housing unit as defined in
13 section 71-1557 bearing a seal in accordance with the Nebraska
14 Uniform Standards for Modular Housing Units Act.

15 (4) Subdivision regulations and building, plumbing,
16 electrical, housing, fire, or health codes or similar regulations
17 and the adoption thereof shall not be subject to sections 19-901 to
18 19-915.

19 Sec. 9. Section 23-114, Revised Statutes Supplement,
20 1999, is amended to read:

21 23-114. (1) The county board shall have power: (a) To
22 provide for temporary zoning as provided in sections 23-115 to
23 23-115.02; (b) to create a planning commission with the powers and
24 duties set forth in sections 23-114 to 23-114.05, 23-168.01 to
25 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376; (c) to
26 make, adopt, amend, extend, and implement a county comprehensive
27 development plan; and (d) to adopt a zoning resolution, which shall
28 have the force and effect of law.

1 (2) The zoning resolution may regulate and restrict: (a)
2 The location, height, bulk, number of stories, and size of
3 buildings and other structures, including tents, cabins, house
4 trailers, and automobile trailers; (b) the percentage of lot areas
5 which may be occupied; (c) building setback lines; (d) sizes of
6 yards, courts, and other open spaces; (e) the density of
7 population; (f) the uses of buildings; and (g) the uses of land for
8 agriculture, forestry, recreation, residence, industry, and trade,
9 after considering factors relating to soil conservation, water
10 supply conservation, surface water drainage and removal, or other
11 uses in the unincorporated area of the county. If a zoning
12 resolution or regulation affects Niobrara scenic river corridor as
13 defined in section 1 of this act, the Niobrara Council shall act on
14 the measure as provided in section 5 of this act.

15 (3)(a) The county board shall not adopt or enforce any
16 zoning resolution or regulation which prohibits the use of land for
17 a proposed residential structure for the sole reason that the
18 proposed structure is a manufactured home if such manufactured home
19 bears an appropriate seal which indicates that it was constructed
20 in accordance with the standards of the Uniform Standard Code for
21 Manufactured Homes and Recreational Vehicles, the Nebraska Uniform
22 Standards for Modular Housing Units Act, or the United States
23 Department of Housing and Urban Development. The county board may
24 require that a manufactured home be located and installed according
25 to the same standards for foundation system, permanent utility
26 connections, setback, and minimum square footage which would apply
27 to a site-built, single-family dwelling on the same lot. The
28 county board may also require that manufactured homes meet the

1 following standards:

2 (i) The home shall have no less than nine hundred square
3 feet of floor area;

4 (ii) The home shall have no less than an eighteen-foot
5 exterior width;

6 (iii) The roof shall be pitched with a minimum vertical
7 rise of two and one-half inches for each twelve inches of
8 horizontal run;

9 (iv) The exterior material shall be of a color, material,
10 and scale comparable with those existing in residential site-built,
11 single-family construction;

12 (v) The home shall have a nonreflective roof material
13 which is or simulates asphalt or wood shingles, tile, or rock; and

14 (vi) The home shall have wheels, axles, transporting
15 lights, and removable towing apparatus removed.

16 (b) The county board may not require additional standards
17 unless such standards are uniformly applied to all single-family
18 dwellings in the zoning district.

19 (c) Nothing in this subsection shall be deemed to
20 supersede any valid restrictive covenants of record.

21 (4) For purposes of this section, manufactured home shall
22 mean (a) a factory-built structure which is to be used as a place
23 for human habitation, which is not constructed or equipped with a
24 permanent hitch or other device allowing it to be moved other than
25 to a permanent site, which does not have permanently attached to
26 its body or frame any wheels or axles, and which bears a label
27 certifying that it was built in compliance with National
28 Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280

1 et seq., promulgated by the United States Department of Housing and
2 Urban Development, or (b) a modular housing unit as defined in
3 section 71-1557 bearing a seal in accordance with the Nebraska
4 Uniform Standards for Modular Housing Units Act.

5 (5) Special districts or zones may be established in
6 those areas subject to seasonal or periodic flooding, and such
7 regulations may be applied as will minimize danger to life and
8 property.

9 (6) The powers conferred by this section shall not be
10 exercised within the limits of any incorporated city or village nor
11 within the area over which a city or village has been granted
12 zoning jurisdiction and is exercising such jurisdiction. At such
13 time as a city or village exercises control over an unincorporated
14 area by the adoption or amendment of a zoning ordinance, the
15 ordinance or amendment shall supersede any resolution or regulation
16 of the county.

17 Sec. 10. Section 23-373, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 23-373. ~~No~~ Before an owner of any real property, located
20 in an unincorporated area, ~~except in an area in which any city or~~
21 ~~village is exercising subdivision control,~~ shall be permitted to
22 may subdivide, plat, or lay out ~~said~~ the real property in building
23 lots, streets, or other portions of the same intended to be
24 ~~dedicated for public use,~~ or for the use of the purchasers or
25 owners of lots fronting thereon or adjacent thereto, the approval
26 of the county board is required, except:

27 (1) If the property is within the Niobrara scenic river
28 corridor as defined in section 1 of this act, the approval of the

1 Niobrara Council is required; and

2 (2) If the property is located in an area where ~~without~~
3 first having obtained the approval thereof of the county board of
4 such county. At such time as a city or village a municipality
5 exercises such controls over an unincorporated area by adopting or
6 amending subdivision regulations, its regulations shall supersede
7 those of the county zoning control and does not require approval of
8 the Niobrara Council, the approval of the municipality is required.

9 Sec. 11. Section 76-2,112, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 76-2,112. (1) A conservation or preservation easement
12 shall be an interest in real property, created by an instrument in
13 which the purpose for the easement is clearly stated. The
14 instrument shall be filed, duly recorded, and indexed in the office
15 of the register of deeds of the county in which the real property
16 subject to the conservation or preservation easement is located.

17 (2) No conveyance of a conservation or preservation
18 easement shall be effective until accepted by the holder.

19 (3) In order to minimize conflicts with land-use
20 planning, each conservation or preservation easement shall be
21 approved by the appropriate governing body. Such approving body
22 shall first refer the proposed acquisition to and receive comments
23 from the local planning commission with jurisdiction over such
24 property, which shall within sixty days of the referral provide
25 such comments regarding the conformity of the proposed acquisition
26 to comprehensive planning for the area. If such comments are not
27 received within sixty days, the proposed acquisition shall be
28 deemed approved by the local planning commission. If the property

1 is located partially or entirely within the boundaries or zoning
2 jurisdiction of a city or village, approval of the governing body
3 of such city or village shall be required. If such property is
4 located entirely outside the boundaries and zoning jurisdiction of
5 any city or village, approval of the county board shall be
6 required. If the property is located in the Niobrara scenic river
7 corridor as defined in section 1 of this act and is not
8 incorporated within the boundaries of a city or village, the
9 Niobrara Council approval rather than city, village, or county
10 approval shall be required. Approval of a proposed acquisition may
11 be denied upon a finding by the appropriate governing body that the
12 acquisition is not in the public interest when the easement is
13 inconsistent with (a) a comprehensive plan for the area which had
14 been officially adopted and was in force at the time of the
15 conveyance, (b) any national, state, regional, or local program
16 furthering conservation or preservation, or (c) any known proposal
17 by a governmental body for use of the land.

18 (4) Notwithstanding the provisions of subsection (3) of
19 this section, the state, or any state agency or political
20 subdivision other than a city, village, or county, may accept an
21 easement after first referring the proposed acquisition to and
22 receiving comments from the local planning commission with
23 jurisdiction over the property, which shall within sixty days of
24 the referral provide such comments regarding the conformity of the
25 proposed acquisition to comprehensive planning for the area. If
26 such comments are not received within sixty days, the proposed
27 acquisition shall be deemed approved by the local planning
28 commission.

1 Sec. 12. Original sections 23-373 and 76-2,112, Reissue
2 Revised Statutes of Nebraska, section 19-902, Revised Statutes
3 Supplement, 1998, and section 23-114, Revised Statutes Supplement,
4 1999, are repealed.

5 Sec. 13. The following sections are outright repealed:
6 Sections 72-2001 to 72-2004, Revised Statutes Supplement, 1998.