

AMENDMENTS TO LB40

Introduced by Blood, 3.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 11 of this act shall be known and may be
4 cited as the Riparian Protection and Water Quality Practices Act.

5 Sec. 2. For the purposes of the Riparian Protection and Water
6 Quality Practices Act:

7 (1) Buffer means an area consisting of perennial vegetation,
8 excluding invasive plants and noxious weeds, adjacent to all bodies of
9 water within the state that protects the water resources of the state
10 from runoff pollution, stabilizes soils, shores, and banks, and protects
11 or provides riparian corridors;

12 (2) Buffer-protection map means buffer maps established and
13 maintained by the department;

14 (3) Department means the Department of Natural Resources;

15 (4) Director means the Director of Natural Resources;

16 (5) Local water management authority means a natural resources
17 district, metropolitan utilities district, county, city, or village
18 operating separately or jointly in its role as a local water management
19 authority; and

20 (6) Normal water level means the level evidenced by the long-term
21 presence of surface water as indicated directly by hydrophytic plants or
22 hydric soils or indirectly determined via hydrological models or
23 analysis.

24 Sec. 3. (1) The Legislature hereby declares it is the policy of
25 this state to establish riparian buffers and water quality practices to
26 (a) protect state water resources from erosion and runoff pollution, (b)
27 stabilize soils, shores, and banks, and (c) protect or provide riparian

1 corridors.

2 (2) It is the purpose of the Riparian Protection and Water Quality
3 Practices Act to utilize riparian buffers and water quality practices to
4 help purify the public waters and ground water of this state from
5 nitrates, pesticides, and other chemical contaminants. The department
6 shall have the authority and responsibility to implement and administer
7 the act.

8 Sec. 4. (1) This section does not apply to a landowner in any
9 county that falls in the bottom third tier of nitrate levels in ground
10 water as measured by the Department of Environment and Energy.

11 (2) Except as otherwise provided in subsection (3) of this section,
12 a landowner owning property adjacent to a water body identified and
13 mapped on a buffer-protection map created by the department may apply for
14 available grant funding as provided under section 5 of this act to plant
15 and maintain a buffer to protect the state's water resources as follows:

16 (a) For all public waters of this state, the more restrictive of:

17 (i) A fifty-foot-average width, a thirty-foot-minimum width, with a
18 continuous buffer of perennially rooted vegetation; or

19 (ii) State standards and criteria set by the department pursuant to
20 rules and regulations adopted and promulgated pursuant to the Riparian
21 Protection and Water Quality Practices Act; or

22 (b) For public drainage systems, a sixteen and one-half-foot-minimum
23 width continuous buffer. The buffer vegetation shall not impede future
24 maintenance of the ditch.

25 (3) A landowner owning property adjacent to a water body identified
26 on a buffer-protection map created by the department and whose property
27 is used for cultivation farming may qualify for grant funding provided
28 under section 5 of this act by adopting an alternative riparian water
29 quality practice, or a combination of structural, vegetative, and
30 management practices, based on common alternative practices or other
31 practices approved by the department, or practices based on local

1 conditions approved by the local water management authority consistent
2 with the practices approved by the department, and that provide riparian
3 water quality protection comparable to the buffer protection for the
4 water body that the property abuts. Such practices include retention
5 ponds and alternative measures that prevent overland flow to the water
6 resource.

7 (4) The width of a buffer on any public waters of this state shall
8 be measured from the top or crown of the bank. For public waters where
9 there is no defined bank, measurement shall be from the edge of the
10 normal water level. The width of the buffer on public drainage systems
11 shall be measured outward from the top edge of the constructed channel or
12 to the crown of the leveled spoil bank, whichever is greater.

13 (5) Nothing in this section limits the eligibility of a landowner or
14 the authorized agent or operator of a landowner to participate in federal
15 or other state conservation programs, including enrolling or reenrolling
16 in federal conservation programs.

17 (6) Only seed mixes verified by the department to prevent
18 contamination with Palmer amaranth or other noxious weed seeds shall be
19 used to plant buffers pursuant to this section.

20 Sec. 5. The department shall establish and administer the Riparian
21 Protection and Water Quality Practices Grant Program which is hereby
22 created. The purpose of the program is to provide grants to plant buffers
23 pursuant to section 4 of this act. A landowner may apply for grant
24 funding on a form prescribed by the department. No applicant may receive
25 more than one grant per year, and no single grant shall exceed XX
26 dollars. Grants may be awarded until grant funds are no longer available.

27 Sec. 6. Land adjacent to waters described in section 4 of this act
28 is not eligible for grant funding under the Riparian Protection and Water
29 Quality Practices Act if it is:

30 (1) Utilized for grazing, pasture, or grassland;

31 (2) Enrolled in the federal Conservation Reserve Program;

1 (3) Used as a public or private water access or recreational use
2 area including stairways, landings, picnic areas, access paths, or beach
3 and watercraft access areas;

4 (4) Covered by a road, trail, building, or other structure; or

5 (5) Regulated by a national pollutant discharge elimination system
6 in any of the following categories:

7 (a) A municipal separate storm sewer system;

8 (b) Construction stormwater; or

9 (c) Industrial stormwater;

10 (6) Part of a water-inundation cropping system; or

11 (7) Located in a temporary non-vegetated condition due to drainage
12 tile installation and maintenance, alfalfa or other perennial crop or
13 plant seeding, or construction or conservation projects authorized by a
14 federal, state, or local government unit.

15 Sec. 7. (1) Local water management authorities may, by agreement
16 with the department, assist landowners receiving grant funding under
17 section 5 of this act with implementation of the riparian water quality
18 protection standards established under the Riparian Protection and Water
19 Quality Practices Act. Such assistance may include planning, technical
20 assistance, implementation of approved alternative practices, and
21 tracking progress toward compliance with such standards.

22 (2) Upon request by a landowner or the authorized agent or operator
23 of a landowner, a technical professional employee or contractor of the
24 local water management authority authorized by agreement with the
25 department may issue a validation of compliance certifying compliance
26 with the requirements of section 4 of this act. Denial of such validation
27 may be appealed as provided in section 9 of this act.

28 (3) The department shall provide sufficient resources, dependent on
29 available funding, to local water management authorities to assist in
30 implementing this section.

31 Sec. 8. (1) A local water management authority may notify the

1 department if it determines that a landowner who has received grant
2 funding under section 5 of this act is not in compliance with the
3 Riparian Protection and Water Quality Practices Act. Upon such
4 notification, the department shall provide the landowner with a list of
5 corrective actions needed to come into compliance and a reasonable
6 timeline to meet the standards under the act. A corrective action is not
7 required for conditions resulting from a flood or other act of nature. If
8 such landowner does not comply with the list of actions and timeline
9 provided, the department may, following notice and hearing, enforce the
10 act by issuing an order imposing an administrative penalty. Such penalty
11 shall not exceed one thousand dollars for any single violation. Any
12 penalty collected pursuant to this subsection shall be remitted to the
13 State Treasurer for distribution in accordance with Article VII, section
14 5, of the Constitution of Nebraska. Any grant recipient who fails to
15 comply with this subsection shall repay any grant funds received under
16 section 5 of this act upon order of the department.

17 (2) An order issued under subsection (1) of this section may be
18 appealed to the department as provided under section 9 of this act.

19 (3) A landowner, landowner agent, or operator of a landowner shall
20 not remove or willfully degrade a riparian buffer, wholly or partially,
21 unless the landowner, agent, or operator has obtained a signed statement
22 from the department stating that permission for the work has been granted
23 by the department. A buffer planted using grant funds obtained pursuant
24 to section 5 of this act shall not be removed or degraded except as
25 permitted pursuant to rules and regulations adopted and promulgated
26 pursuant to the Riparian Protection and Water Quality Practices Act.

27 Sec. 9. A landowner or an agent or operator of such landowner may
28 appeal the denial of a validation by a local water management authority
29 as described in section 7 of this act or an administrative order of the
30 department issued pursuant to section 8 of this act within thirty days of
31 receipt of notice of denial of such validation or such order. The request

1 for an appeal shall be in writing. If a written request for appeal is not
2 submitted within thirty days, the validation denial or order shall be
3 final. The director shall review the request and supporting evidence and
4 issue a decision within sixty days of receipt of the appeal request. The
5 director's decision is appealable pursuant to the Administrative
6 Procedure Act.

7 Sec. 10. A landowner may contact the department for information on
8 how to apply for local, state, or federal cost-sharing grants, contracts,
9 or loans that are available to establish buffers or other water resource
10 protection measures in addition to grant funding available under the
11 Riparian Protection and Water Quality Practices Act.

12 Sec. 11. The department shall adopt and promulgate rules and
13 regulations to carry out the Riparian Protection and Water Quality
14 Practices Act.

15 Sec. 12. Section 2-15,122, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 2-15,122 (1) There is hereby created the Natural Resources Water
18 Quality Fund. The State Treasurer shall credit to the fund for the uses
19 and purposes of section 2-15,123 such money as is specifically
20 appropriated or transferred by the Legislature, such funds, fees,
21 donations, gifts, services, or devises or bequests of real or personal
22 property received by the department from any source, federal, state,
23 public, or private, to be used by the department for the purpose of
24 funding programs listed in subsection (2) of section 2-15,123 and for
25 purposes of section 5 of this act, and such money credited under sections
26 2-2634, 2-2638, and 2-2641. The department shall allocate money from the
27 fund pursuant to section 2-15,123 and section 5 of this act. The fund
28 shall be exempt from provisions relating to lapsing of appropriations,
29 and the unexpended and unencumbered balance existing in the fund on June
30 30 each year shall be reappropriated, except that transfers may be made
31 from the fund to the General Fund at the direction of the Legislature.

1 Any money in the Natural Resources Water Quality Fund available for
2 investment shall be invested by the state investment officer pursuant to
3 the Nebraska Capital Expansion Act and the Nebraska State Funds
4 Investment Act.

5 (2) It is the intent of the Legislature to transfer XX million
6 dollars from the General Fund to the Natural Resources Water Quality Fund
7 for fiscal year 2023-24 for the purpose of providing grants under the
8 Riparian Protection and Water Quality Practices Grant Program.

9 Sec. 13. This act becomes operative on January 1, 2024.

10 Sec. 14. Original section 2-15,122, Reissue Revised Statutes of
11 Nebraska, is repealed.