

LEGISLATIVE BILL 20

Approved by the Governor March 2, 1983

Introduced by Agriculture & Environment Committee,
 R. Peterson, 21; Chronister, 18; Eret, 32;
 Pappas, 42; Wiitala, 31; Pirsch, 10;
 Schmit, 23; Lamb, 43

AN ACT to amend sections 2-4202, 2-4203, 2-4204, 2-4211, 2-4213, 2-4216, 2-4217, 2-4218, 2-4219, 2-4220, 2-4221, 2-4225, 2-4227, and 2-4235, Revised Statutes Supplement, 1982, relating to natural resources; to change provisions relating to legislative policy; to define and redefine terms; to change provisions relating to the powers, duties, and requirements of a corporation as prescribed; to change provisions relating to the rules and regulations of the corporation; to change provisions relating to the issuance and payment of bonds; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 2-4202, Revised Statutes Supplement, 1982, 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 floods, preservation of wildlife, and the promotion of the welfare of the people of this state by aiding in the preservation of this state's natural resources flood waters, and collection and containment of water. Within the rural areas of this state, the farmers and ranchers landowners involved in farm and ranch operations must be provided with financial assistance to encourage conservation of the state's water and related land resources. Without such conservation incentives, the quality control, containment, and utilization of our water resources and the productivity of our soil will be greatly threatened.

Assistance provided to landowners under 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. The necessity for the 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. 2. That section 2-4203, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4203. There is hereby created The purpose of the Nebraska Conservation Corporation for the purpose of providing created in section 2-4205 shall be to provide conservation assistance to Nebraska farmers and ranchers 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.

Sec. 3. That section 2-4204, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4204. As used in sections 2-4201 to 2-4246, 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; Capital reserve fund shall mean any fund created and established by the corporation pursuant to section 2-4234;

(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; Capital reserve fund requirement shall mean, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the current or any future fiscal year of the fund, of annual debt service with respect to the bonds relating to such capital reserve fund requirement; such annual debt service for any fiscal year being the amount of money equal to the aggregate of (a) all interest payable during the fiscal year on all of the related outstanding bonds on such date of computation; (b) the principal amount of all such bonds outstanding on such date of computation which mature during the fiscal year; and (c) all amounts specified in any resolution of the corporation authorizing any of such bonds as payable during the fiscal year as a sinking fund payment with respect to any of such bonds which mature after the fiscal year; all calculated on the assumption that such bonds will after such date of computation cease to be outstanding by reason of the payment of such bonds when due and the payment when due and applicable in accordance with the resolution authorizing such bonds of all of the sinking fund payments payable at or after such date of computation;

(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;

(5) Landowner shall mean a person in whom is vested the ownership, dominion, or title of property or the deed to land 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 mortgage conservation loan and constituting a first lien on the real property held in fee simple or on a 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 mortgage conservation loan secured by such mortgage, which is improved by conservation practices;

(7) Mortgager shall mean any individual who applies land treatment practices for the purposes of conservation through the loan program of the corporation and who places land in security;

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

(9) (8) Lender Mortgage 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 this state the State of Nebraska;

(10) (9) Loan Mortgage loan shall mean an interest-bearing obligation secured by a mortgage, executed by a lender evidencing the money borrowed from the corporation; and

(11) Conservation practices shall mean a specific work for improvement within the state undertaken primarily to provide protection for this state's water and related land resources;

(12) Person shall mean any individual farm, corporate farm, or ranch;

(13) A second mortgage shall mean a lien which takes rank immediately after a first lien on the same property and is next entitled to satisfaction out of the

proceeds upon agreement with the mortgagor, the first mortgage lender, and the corporation;

(14) Subrogation agreement shall mean the contractual agreement between the first mortgage insurer, the lending institution, and the corporation; and

(15) (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 and by the articles and bylaws of such organization.

Sec. 4. That section 2-4211, Revised Statutes Supplement, 1982, 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 members or employees 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 membership in the corporation or by reason of providing services to such corporation. The fact that a member of the board is a director of a natural resources district 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. 5. That section 2-4213, Revised Statutes Supplement, 1982, 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 with sections 2-4201 to

2-4246, 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;

(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 mortgage 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;

(11) To procure insurance or guarantees from any public or private entities, including any department, agency, or instrumentality of the United States of America, 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 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, this state or the State of Nebraska or subdivisions thereof, for any purposes consistent with sections 2-4201 to 2-4246;

(13) To enter into agreements with any department, agency, or instrumentality of the United States of America or this state the State of Nebraska or subdivisions thereof and with lending institutions for the purpose of planning, regulating, and providing for the financing and refinancing of any conservation practice for the farmer and rancher a landowner undertaken with the assistance of the corporation under sections 2-4201 to 2-4246;

(14) To enter into contracts or agreements with lending institutions for the servicing and processing of mortgages and mortgage conservation loans pursuant to sections 2-4201 to 2-4246;

(15) To provide technical assistance to local

public bodies and to profit and nonprofit entities in the development of conservation practices for landowners, based on current soil and conservation guidelines, and distribute data and information concerning the conservation needs of such landowners within the state 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, mortgage conservation loan, mortgage 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 persons 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 this state the State of Nebraska, the reduction can be made without jeopardizing the economic stability of the farmland or range area being financed.

Sec. 6. That section 2-4216, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4216. The corporation may make and undertake commitments to make loans to mortgage or deposits with lenders under terms and conditions requiring the proceeds thereof to be used by such mortgage lenders to make mortgage conservation loans for the purpose of implementing conservation practices by the landowners of this state. Mortgage commitments for actual mortgages shall to landowners in an aggregate amount equal to the amount of the loan or deposit made by the corporation with the lenders. The conservation loans may be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, federal agency, or other financial institutions lender authorized to transact business in this state the State of Nebraska. The corporation may make and undertake commitments to enter into a subrogation agreement with mortgage lenders under terms and conditions required by the landowner, the lending institution, and the corporation. Any lender making conservation 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. 7. That section 2-4217, Revised Statutes Supplement, 1982, 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, mortgage conservation loans made to landowners for the construction or implementation of conservation practices by the landowner such landowners. Prior to such investment, purchase, assignment, or commitment, the mortgage lender shall certify that the proceeds therefrom or its equivalent will be reinvested in mortgages or used to make mortgage loans to provide conservation practices or pending reinvestment in such mortgages or the making of such mortgage loans, invested in short-term obligations. No mortgage or mortgage conservation loans shall be eligible for investment in, purchase, or assignment by the corporation if the mortgage or mortgage conservation loan was made more than three years prior to the date of investment, purchase, or assignment by the corporation. The corporation shall purchase mortgages or mortgage loans at a purchase price equal to the outstanding principal balance, but the corporation may require a discount from the principal balance or make a payment of a premium to effect a fair rate of return for the mortgage lender, as determined by the rate of return on comparable investments under market conditions existing at the time of the purchase. In addition to such payment of outstanding principal balance, the corporation shall pay the accrued interest due thereon, on the date the mortgage or mortgage loan is delivered against payment therefor or on such other date as may be established by agreement between the corporation and the selling mortgage lender. 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.

Sec. 8. That section 2-4218, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4218. Prior to exercising any of the powers authorized in sections 2-4201 to 2-4246 2-4216 and 2-4217, the corporation shall require the mortgage lender to certify and agree that:

(1) The mortgage or mortgage 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) Such mortgage lender will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make mortgage loans, loans, or purchase mortgages to enable landowners to construct or implement conservation practices, or, if such mortgage lender has made a commitment to make mortgage loans to the landowner for conservation practices on the basis of a commitment from the corporation to purchase such mortgage

loans, such mortgage lender will make such mortgage loans and sell the same to the corporation within a reasonable period of time. 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. 9. That section 2-4219, Revised Statutes Supplement, 1982, be amended to read as follows:

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

(1) Require that the mortgage or mortgage conservation loan involved be insured by a mortgage an insurer; and

(2) Require any other type of security that it deems reasonable and necessary. ;

(3) Allow for the farmer or rancher, with the first mortgage holder agreement, to subordinate parts of his or her land for the necessary security; and

(4) Allow corporate farms or ranches to borrow.

Sec. 10. That section 2-4220, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4220. Prior to carrying out any of the powers granted under section 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, including rules and regulations relating to any or all of the following:

(1) The number and location of the conservation practices, including, to the extent reasonably possible, assurance that the conservation 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 mortgage lenders;

(2) Rates, fees, charges, and other terms and conditions of originating or servicing conservation loans, mortgages, or mortgage 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 loans or deposits made by lending institutions to lenders under section 2-4216;

(4) The type of collateral, payment bond, performance bond, or other security to be provided for any

mortgage loan may be made by the lending institution for the purposes of implementing conservation practices 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, mortgages, or mortgage loans made, purchased, sold, assigned, or committed;

(7) Commitment requirements for conservation practices and financing for farmers and ranchers landowners by lending institutions involving money provided directly or indirectly by the mortgage 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.

Sec. 11. That section 2-4221, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4221. The corporation shall have the power to borrow money and to issue from time to time its bonds in such principal amounts as the corporation determines shall be necessary to provide sufficient funds to carry out its purposes to include as provided in sections 2-4201 to 2-4246, including:

(1) The carrying To carry out of the additional powers provided in section 2-4220 sections 2-4216 and 2-4217;

(2) The payment of interest on bonds of the corporation;

(3) The establishment of reserves to secure the bonds; and

(4) All other expenditures of the corporation incident to or necessary and convenient to carrying out its purposes and powers.

Sec. 12. That section 2-4225, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4225. The corporation shall have the authority to accept money from any the county, the or any natural resources districts district, and any other funds, including private funds, solely for the purpose of reducing the interest on certain conservation practice loans or in specific geographic areas wherein lies a designated critical need for conservation practices.

Sec. 13. That section 2-4227, Revised Statutes Supplement, 1982, 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 mortgages and obligations securing the same conservation loans, to secure the principal of and the interest thereon on such bonds, subject to such agreement with bondholders as may then exist;

(3) The use and disposition of the gross income from mortgages and mortgage conservation loans owned by the corporation and payment of the principal of mortgages or mortgage conservation 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; 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. 14. That section 2-4235, Revised Statutes Supplement, 1982, be amended to read as follows:

2-4235. Money in any capital reserve fund, if such fund is created, shall not be withdrawn therefrom at any time in an amount that would reduce the level of money in such fund to less than the applicable capital reserve fund requirement, as such requirement is defined in the trust indenture creating the same, except for the purposes

of paying the principal and the redemption price of or interest on the bonds and the sinking fund payment with respect to the bonds, as the same become due, and for the payment of which other money of the corporation is not available. Any income or interest earned by the investment of money held in any such capital reserve fund may be transferred by the corporation to other funds or accounts of the corporation to the extent that the transfer does not reduce the amount of such capital reserve fund to below the capital reserve fund requirement applicable thereto.

Sec. 15. That original sections 2-4202, 2-4203, 2-4204, 2-4211, 2-4213, 2-4216, 2-4217, 2-4218, 2-4219, 2-4220, 2-4221, 2-4225, 2-4227, and 2-4235, Revised Statutes Supplement, 1982, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.