

LEGISLATIVE BILL 474

Approved by the Governor April 19, 1986

Introduced by Public Works Committee, Schmit, 23,
Chairperson, Beyer, 3, Lamb, 43, Lynch, 13,
Nelson, 35; Beutler, 28; Sieck, 24

AN ACT relating to natural resources; to amend sections 2-1576 and 2-1579, Reissue Revised Statutes of Nebraska, 1943; to adopt the Erosion and Sediment Control Act; to change legislative intent; to change provisions relating to conservation grants; to eliminate certain provisions relating to natural resources districts' rules and regulations and a referendum; and to repeal the original sections, and also sections 2-3244 to 2-3250, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. Sections 1 to 13 of this act shall be known and may be cited as the Erosion and Sediment Control Act.

Sec. 2. The Legislature recognizes that erosion and sedimentation are serious problems throughout the state. Changes in farm and ranch enterprises, operations, and ownership, demands made upon farm and ranch enterprises which do not encourage sound resource utilization, rapid shifts in land use from agricultural and rural to nonagricultural and urban uses, construction of streets, highways, pipelines, recreation areas, schools and universities, public utilities and facilities, conversion of grasslands to croplands, and other land-disturbing activities have caused excessive wind erosion and water runoff and accelerated the process of soil erosion and sediment deposition. This has resulted in the pollution of the waters of the state and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resources. It is declared to be the policy of the state to strengthen and extend the present erosion and sediment control activities and programs of the state for both rural and urban lands, to improve water quality, and to establish and implement, through the Director of Natural Resources and the Nebraska Natural Resources Commission, a statewide, comprehensive, and coordinated erosion and sediment

control program to reduce damage from wind erosion and storm water runoff, to retard nonpoint pollution from sediment and related pollutants, and to conserve and protect land, air, and other resources of the state. This program shall be carried out by the natural resources districts in cooperation with the counties, municipalities, and other local governments and political subdivisions of the state and other public and private entities.

Sec. 3. As used in the Erosion and Sediment Control Act, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Natural Resources Commission;

(2) Conservation agreement shall mean an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the furnishing by the district or other public entity of technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;

(3) Director shall mean the Director of Natural Resources;

(4) District shall mean a natural resources district;

(5) Erosion or sediment control practice shall mean:

(a) The construction or installation and maintenance of permanent structures or devices necessary to carry to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss limit and which does not carry or constitute sewage or industrial or other waste;

(b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss limit or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or

(c) The establishment and maintenance of

vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss limit.

(6) Farm unit conservation plan shall mean a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the natural resources district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss limit. The plan may also, if practicable, identify alternative practices by which such objective may be attained.

(7) Nonagricultural land-disturbing activity shall mean a land change including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but shall not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fenceposts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property; and

(d) Activities related to the construction of housing, industrial, and commercial developments;

(8) Person shall mean any individual; partnership; firm; association; joint venture; public or private corporation; trust; estate; commission; board; institution; utility; or cooperative; municipality or other political subdivision of this state; any interstate body; or any other legal entity;

(9) Soil and water conservation practice shall mean a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss limit from land used only for agricultural or horticultural purposes. Soil and water conservation practice shall include, but not be limited to:

(a) Permanent soil and water conservation practice including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(10) Soil-loss limit shall mean the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act.

Sec. 4. (1) The director shall, in cooperation with the commission, the Department of Environmental Control, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

(a) The soil-loss limits for the various types of soils in the state;

(b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss limit;

(c) Guidelines for establishing priorities for implementation of the program at the state and local levels;

(d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and

(e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program shall be subject to the approval of the commission. It shall be presented to the Governor and the Legislature no later than January 1, 1987. Before approving the final program, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

(3) The state erosion and sediment control program may be revised by the director and the commission at any time, except that such revisions shall be made according to the procedures required for approval of the original program.

Sec. 5. (1) Each district shall, with the approval of the director and on or before July 1, 1987, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss limits for the various types of soils in the district. The soil-loss limits shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss limit that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Program procedures and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Sec. 6. Any municipality or county may adopt and promulgate rules and regulations governing erosion and sediment control within their respective jurisdictions. Any such municipal or county rules and regulations shall be in substantial conformance with the state erosion and sediment control program. If a municipality or county adopts and promulgates rules and regulations, it shall enforce such rules and regulations within the regulatory jurisdiction of such municipality or county. Whenever the rules and regulations of any municipality or county are deemed by the director not to be in substantial conformance with the state erosion and sediment control program, the municipality or county may either amend such rules and regulations to conform, adopt rules and regulations which are in conformance, or defer responsibility to adopt, administer, and enforce

such rules and regulations to the appropriate district.

Sec. 7. Before adopting or revising its rules and regulations, each district shall, after publishing notice once each week for three consecutive weeks in a newspaper or newspapers having general circulation within the district, conduct a public hearing on the proposed rules and regulations or changes. The rules and regulations of the district shall be made available for public inspection at the principal office of the district.

Sec. 8. (1) Except to the extent jurisdiction has been assumed by a municipality or county, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss limit. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excessive erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that such excess soil erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator, describing the land and stating as nearly as possible the extent to which the soil erosion exceeds

the applicable soil-loss limit. When the complained of erosion is the result of agricultural or horticultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss limit.

(3) When the complained of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if appropriate, the operator to either bring such land into conformance with the soil-loss limit or to prevent sediment resulting from excessive erosion from leaving such land. The district may specify, as applicable, two or more approved soil and water conservation practices or erosion or sediment control practices, one of which shall be employed when an administrative order is issued to the owner. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state the time, which shall be not less than five days nor more than fifteen days after service or mailing of the order, the work necessary to establish or maintain erosion or sediment control practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, the work shall be satisfactorily completed; and

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 10 of this act.

(4) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Sec. 9. The filing of a complaint shall not preclude the complainant from pursuing any other remedy available to the complainant under the Erosion and Sediment Control Act, other law, or equity.

Sec. 10. (1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the

plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss limit shall be deemed to be in compliance with the requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) If there is not available to any owner or operator at least ninety per cent cost-sharing assistance for the installation of permanent soil and water conservation practices which are required in an approved farm unit conservation plan or are required to conform agricultural, horticultural, and silvicultural practices to the applicable soil-loss limit, any such owner or operator shall not be required to install such practices pursuant to the Erosion and Sediment Control Act until such cost-sharing assistance is made available. The owner or operator may be required to utilize temporary soil and water conservation practices in the interim to minimize soil erosion and sediment damage.

Sec. 11. Any owner or operator served with an administrative order of a district may, within thirty days after service of the administrative order, appeal to the district court in the county in which a majority of the land is located. The appeal shall be de novo and shall be conducted in accordance with section 13 of this act.

Sec. 12. The district shall petition the district court for a court order requiring immediate compliance with the administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order;

(3) The work is not of a type or quality specified by the district and when completed, it will not or does not reduce soil erosion from such land below the soil-loss limit or, to the extent excessive erosion

is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excessive erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Sec. 13. In the district court action the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss limit and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Supreme Court. Any person who fails to comply with the court order issued within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Sec. 14. That section 2-1576, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1576. The Legislature recognizes and hereby declares that it is the public policy of this state to properly conserve and utilize the water and related land resources of the state, to better utilize surface waters, and available precipitation, to encourage ground water recharge to protect the state's dwindling ground water supply, and to reduce soil erosion and sediment damages. The Legislature further declares that it is in the public interest of this state to financially assist in encouraging water and related land resource conservation measures on privately owned agricultural, horticultural, or silvicultural land and that this will produce long-term benefits for the general public.

Sec. 15. That section 2-1579, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1579. (1) Except as provided in subsection (2) of this section, expenditures Expenditures may be

made from the Nebraska Soil and Water Conservation Fund as grants to individual landowners of not to exceed seventy-five per cent of the actual cost of eligible soil and water conservation projects and practices with priority being given to those projects and practices providing the greatest number of public benefits.

(2) The Nebraska Natural Resources Commission shall reserve at least five per cent of the funds credited to the Nebraska Soil and Water Conservation Fund for grants to landowners ordered by a natural resources district pursuant to the Erosion and Sediment Control Act to install permanent soil and water conservation practices. Such funds shall be made available for ninety per cent of the actual cost of the required practices and shall be granted on a first-come first-serve basis until exhausted. Applications not served shall receive priority in ensuing fiscal years.

{2} (3) The Nebraska Natural Resources Commission shall determine which specific projects and practices are eligible for the funding assistance authorized by this section and shall adopt, by reference or otherwise, appropriate standards and specifications for carrying out such projects and practices. A natural resources district assisting the commission in the administration of the program may, with commission approval, further limit the types of projects and practices eligible for funding assistance in that district.

{3} (4) As a condition for receiving any cost-share funds for soil and water conservation practices, the landowner shall be required to enter into an agreement that if a conservation practice is terminated or a project is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the commission or its delegated agent, for a period of ten years after the date of receiving payment, the landowner shall refund to the Nebraska Soil and Water Conservation Fund any public funds used for the practice or project. When deemed necessary by the commission or its delegated agent, the landowner may as a further condition for receiving such funds be required to grant a right of access for the operation and maintenance of any eligible project constructed with such assistance. Acceptance of Nebraska Soil and Water Conservation Fund money shall not in any other manner be construed as affecting land ownership rights unless the landowner voluntarily surrenders such rights.

{4} (5) To the extent feasible, the Nebraska Natural Resources Commission shall administer the

Nebraska Soil and Water Conservation Fund so that federal funds available within the state for the same general purposes are supplemented and not replaced with state funds.

Sec. 16. That original sections 2-1576 and 2-1579, Reissue Revised Statutes of Nebraska, 1943, and also sections 2-3244 to 2-3250, Reissue Revised Statutes of Nebraska, 1943, are repealed.