

## LEGISLATIVE BILL 594

Approved by the Governor February 8, 1988

Introduced by Lamb, 43

AN ACT relating to agriculture; to amend sections 2-4603, 2-4605, 2-4608, 2-4610, and 2-4612, Revised Statutes Supplement, 1986; to redefine a term; to change provisions relating to erosion and sediment control; to provide powers and duties; to authorize the use of certain practices as prescribed; and to repeal the original sections.

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

Section 1. That section 2-4603, Revised Statutes Supplement, 1986, be amended to read as follows:

2-4603. 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, or silvicultural 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. 2. That section 2-4605, Revised Statutes Supplement, 1986, be amended to read as follows:

2-4605. (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 Programs, 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. 3. That section 2-4608, Revised Statutes Supplement, 1986, be amended to read as follows:

2-4608. (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, or silvicultural 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.

(3) The district may specify, as applicable, ~~two or more approved alternative~~ 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 which the owner and, if appropriate, the operator may use to comply with the administrative order.~~ 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 2-4610; ~~and~~

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(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. 4. That section 2-4610, Revised Statutes Supplement, 1986, be amended to read as follows:

2-4610. (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, for purposes of such land, 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 percent 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, except that such owner or operator may agree to a cost-share rate of less than ninety percent. To be enforceable, any agreement providing for cost-sharing assistance at a rate of less than ninety percent shall include notice that the owner or operator may choose not to sign such agreement and that such choice will preserve the right to not less than ninety percent cost-sharing assistance before any permanent soil and water conservation practices can be required by the district. 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. 5. That section 2-4612, Revised Statutes Supplement, 1986, be amended to read as follows:

2-4612. 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 or the practices are not being operated, utilized, or maintained as required;

(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. 6. That original sections 2-4603, 2-4605, 2-4608, 2-4610, and 2-4612, Revised Statutes Supplement, 1986, are repealed.