

## LEGISLATIVE BILL 1234

Approved by the Governor April 11, 2000

Introduced by Schrock, 38; Aguilar, 35; Beutler, 28; Bohlke, 33; Bourne, 8; Bromm, 23; Bruning, 3; Byars, 30; Connealy, 16; Coordsen, 32; Cudaback, 36; Dickey, 18; Hartnett, 45; Hudkins, 21; Janssen, 15; Jensen, 20; Jones, 43; Kiel, 9; Kremer, 34; Kristensen, 37; Lynch, 13; D. Pederson, 42; Preister, 5; Schimek, 27; Stuhr, 24; Thompson, 14; Tyson, 19; Vrtiska, 1; Wehrbein, 2; Wickersham, 49

AN ACT relating to the environment; to amend sections 23-373, 76-2,112, 81-1532, 81-15,152, and 81-15,153, Reissue Revised Statutes of Nebraska, section 19-902, Revised Statutes Supplement, 1998, and section 23-114, Revised Statutes Supplement, 1999; to state intent; to define terms; to create the Niobrara Council; to provide powers and duties; to create a fund; to provide for grants for wastewater treatment facilities; to create the Ethanol Pricing Task Force; to provide duties and a termination date; to prohibit the sale of methyl tertiary butyl ether as prescribed; to provide for a study and findings relating to water quality monitoring; to eliminate provisions relating to the Niobrara River and wastewater treatment facility funds; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; and to outright repeal section 81-1533, Reissue Revised Statutes of Nebraska, and sections 72-2001 to 72-2004, Revised Statutes Supplement, 1998.

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

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

Sec. 2. For purposes of sections 1 to 8 of this act, Niobrara scenic river corridor means the area designated as a national scenic river and a part of the national wild and scenic rivers system under 16 U.S.C. 1274(a)(117) and described in the 1996 Niobrara National Scenic River General Management Plan/Environmental Impact Statement.

Sec. 3. (1) The Niobrara Council is created. The council membership shall include:

(a) A representative of each of the county boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the county board of the respective county;

(b) A representative of the Middle Niobrara Natural Resources District and the Lower Niobrara Natural Resources District chosen by the board of the respective district;

(c) The secretary of the Game and Parks Commission or his or her designee;

(d) A representative of the United States Fish and Wildlife Service and a representative of the National Park Service chosen by the Governor from lists of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the federal services;

(e) An individual from each of Brown, Cherry, Keya Paha, and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, from each county submitted by the county board representatives on the council;

(f) A representative from a recreational business operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board representatives on the council;

(g) A timber industry representative operating within the Niobrara

scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board representatives on the council; and

(h) A representative of a recognized, nonprofit environmental, conservation, or wildlife organization chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board representatives on the council.

The council members shall be selected within ninety days after the operative date of this section. The council members shall hold office for three-year terms and until a successor is appointed and qualified. The council members shall serve at the pleasure of the appointing board or the Governor.

(2) The council shall elect a chairperson, a vice-chairperson, a secretary, and a treasurer who shall jointly serve as the executive committee for the council. The council shall meet on a regular basis, preferably once a month, with a minimum of six meetings per year. Special meetings may be called by any member of the executive committee or at the request of a simple majority of the members of the council.

(3) A majority of the council members shall be present at a meeting before any action may be taken by the council. The majority shall be determined from the number of council members who are selected and are serving rather than the number of possible members. All actions of the council require a majority vote of all council members present at any meeting, except that any vote to reject or adopt any zoning regulation or variance under section 6 of this act shall be by two-thirds of all the council members selected and serving. A council member may not participate or vote on any matter on which he or she participated or voted as a member of a county board, county planning commission, or natural resources district board, and in such a case such council member shall not be counted for purposes of determining whether quorum or vote requirements have been satisfied.

(4) Members shall be reimbursed for actual and necessary expenses incurred in carrying out their duties on the council as provided in sections 81-1174 to 81-1177.

Sec. 4. The mission of the Niobrara Council is to assist in all aspects of the management of the Niobrara scenic river corridor since portions of the Niobrara River have been designated as a national scenic river under 16 U.S.C. 1274(a)(117), giving consideration and respect to local and governmental input and private landowner rights, and to maintain and protect the integrity of the resources associated with the Niobrara scenic river corridor. The council shall perform management functions related to the Niobrara scenic river corridor, including, but not limited to, those authorized and delegated to it by the National Park Service. The Game and Parks Commission may provide administrative support when requested by the council to carry out its duties. This support shall not exceed fifty thousand dollars in any calendar year. In the Niobrara scenic river corridor, the council may hold title to real estate in the name of the council. The council may purchase, accept gifts of, or trade real estate and may obtain conservation easements as provided in the Conservation and Preservation Easements Act.

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

Sec. 6. The Niobrara Council shall review and approve or reject all zoning regulations, including existing regulations, new regulations, proposed regulations, and variances granted for nonconforming uses, which affect land in the Niobrara scenic river corridor that is not incorporated within the boundaries of a municipality. If the council rejects a zoning regulation or variance, the governing body enacting the regulation or variance has six months to present an alternative to the council. If no alternative is proposed or if the alternative is also rejected, the council may adopt zoning regulations for such area. In counties without zoning the council may develop and enforce zoning regulations within the Niobrara scenic river corridor under the guidance of the federal Wild and Scenic Rivers Act or under the guidance of the general management plan as written by the National Park Service. The council shall follow the requirements for zoning regulations in sections 23-114 to 23-114.05 and 23-164 to 23-174.10, except that no separate planning commission is required and the council shall fulfill the duties of both the

county board and the planning commission in such sections.

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

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

(3) The council shall review the proposal and consult with the agency. If, within thirty days after such review and consultation, the council finds that the proposed action is not consistent with the purposes of this section, the agency shall not proceed with the action until after a justification for the action has been submitted to the Governor and approved by the Governor in writing. The justification shall include the following elements: The anticipated current, future, and cumulative effects on the scenic and natural resources of the designated scenic river corridor; the social and economic necessity for the proposed action; all possible alternatives to the proposed action including a no-action alternative; the comparative benefits of proposed alternative actions; and the mitigation measures outlined in the proposed action.

Sec. 8. The Niobrara Council shall not have zoning jurisdiction outside the boundaries of the Niobrara scenic river corridor.

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

19-902. (1) For any or all of the purposes designated in section 19-901, the city council or village board may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of sections 19-901 to 19-914 and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within the districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations applicable to one district may differ from those applicable to other districts. If a regulation affects the Niobrara scenic river corridor as defined in section 2 of this act and is not incorporated within the boundaries of the municipality, the Niobrara Council shall act on the regulation as provided in section 6 of this act.

(2)(a) The city council or village board shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act, or the United States Department of Housing and Urban Development. The city council or village board may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city council or village board may also require that manufactured homes meet the following standards:

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

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

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

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

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

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

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

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

(3) For purposes of this section, manufactured home shall mean (a) a

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

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

Sec. 10. Section 23-114, Revised Statutes Supplement, 1999, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(4) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a

modular housing unit as defined in section 71-1557 bearing a seal in accordance with the Nebraska Uniform Standards for Modular Housing Units Act.

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

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

Sec. 11. Section 23-373, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) If the property is within the Niobrara scenic river corridor as defined in section 2 of this act, the approval of the Niobrara Council is required; and

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

Sec. 12. Section 76-2,112, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) In order to minimize conflicts with land-use planning, each conservation or preservation easement shall be approved by the appropriate governing body. Such approving body shall first refer the proposed acquisition to and receive comments from the local planning commission with jurisdiction over such property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. If the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village, approval of the governing body of such city or village shall be required. If such property is located entirely outside the boundaries and zoning jurisdiction of any city or village, approval of the county board shall be required. If the property is located in the Niobrara scenic river corridor as defined in section 2 of this act and is not incorporated within the boundaries of a city or village, the Niobrara Council approval rather than city, village, or county approval shall be required. Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land.

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

Sec. 13. Section 81-1532, Reissue Revised Statutes of Nebraska, is amended to read:

81-1532. Sections 81-1501 to ~~81-1533~~ 81-1532 shall be known and may be cited as the Environmental Protection Act.

Sec. 14. Section 81-15,152, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,152. The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements for making loans under the Wastewater Treatment Facilities Construction Assistance Act;

(2) The power to adopt a system for the ranking of wastewater treatment construction projects with known needs or for which loan applications have been received by the department. In establishing the system the council shall consider, among other things, the severity of pollution, public health, water quality impact, population, financial capability, and eligibility of the construction project for federal or state funds. This priority system shall be reviewed annually by the council;

(3) The power to adopt and promulgate rules and regulations to govern types of nonpoint source control system projects which will be eligible for loans and to adopt a system for priority ranking of such projects;

(4) The power to adopt a system of establishing interest rates to be charged on loans. The system shall presume that the current market interest rate shall be charged unless a municipality or a county demonstrates a serious financial hardship. The system may allow discounted interest rates for short-term loans. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Wastewater Treatment Facilities Construction Assistance Act. Such fee shall be based on the availability of federal funding for such purpose and the projected administrative needs for carrying out the purposes of the act;

(6) The power to determine the maximum amount of any one loan or combination of loans for any single municipality or any single county; ~~and~~

(7) Except as limited by section 81-15,151, the power to obligate the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof, in whole or in part, to repay with interest loans to or deposits into the fund, including bonds, the proceeds of which are deposited into the fund; and

(8) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements, including any funding caps and cost-share requirements, for grants pursuant to subdivision (10) of section 81-15,153.

Sec. 15. Section 81-15,153, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,153. The department shall have the following powers and duties:

(1) The power to establish a program to make loans to municipalities or to counties, individually or jointly, for construction or modification of publicly owned wastewater treatment works in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power to establish a program to make loans to municipalities or to counties for construction, rehabilitation, operation, or maintenance of nonpoint source control systems in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act. The department shall propose such rules and regulations to the council no later than July 1, 1997;

(3) The power, if so authorized by the council pursuant to section 81-15,152, to execute and deliver documents obligating the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof to the extent permitted by section 81-15,151 to repay, with interest, loans to or deposits into the fund and to execute and deliver documents pledging to the extent permitted by section 81-15,151 all or part of the fund and its assets to secure, directly or indirectly, the loans or deposits;

(4) The duty to prepare an annual report for the Governor and the Legislature containing information which shows the financial status of the program;

(5) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;  
 (b) Accounting for payments or deposits received by the fund;  
 (c) Accounting for disbursements made by the fund; and  
 (d) Balancing the fund at the beginning and end of the accounting period;

(6) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(7) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Clean Water Act;

(9) The power to make ~~state allocations~~ grants concurrent with loans to municipalities with populations of eight hundred inhabitants or less which demonstrate serious financial hardships. The annual obligation to the state shall not exceed ~~three~~ five hundred thousand dollars. The department may authorize grants for up to one-half of the eligible project cost. Such state allocations shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds. All funds ~~appropriated shall be administered on a cash-flow basis utilizing General Funds shall be~~ appropriated to Agency No. 84 -- Department of Environmental Quality, Program No. 523 -- Wastewater Facilities Construction Assistance Program, to meet payment requirements as they occur; ~~the department shall submit to the Governor and the Clerk of the Legislature a semiannual report on January 1 and July 1 of each year containing information which shows the financial status of the program, including a statement of the fund balance, an itemized list of all conditional grants made to municipalities, including actual and estimated amounts and the time of payouts, the necessary appropriations required to meet those grants, and any other information which will reflect the progress and financial status of the program. Each member of the Legislature shall receive a copy of the report required by this subdivision by making a request for it to the department; and~~

(10) The power to authorize emergency grants to municipalities with wastewater treatment facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such grants shall not be used for routine repair or maintenance of facilities; and

(11) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 16. (1) The Ethanol Pricing Task Force is created. The task force shall examine the practices, policies, and methods by which ethanol prices are set and shall include a comparison of ethanol prices to other motor fuel prices in Nebraska. The task force shall collect data on price differences and how they impact the marketing and sale of ethanol. On or before December 1, 2000, the task force shall file a written report with the Legislature with its findings and recommendations concerning ethanol pricing practices.

(2) The task force shall consist of nine members as follows:

(a) A representative of petroleum marketers;

(b) A representative of motor fuel retailers;

(c) A representative of the ethanol industry;

(d) An agricultural producer;

(e) A member of the Nebraska Ethanol Board;

(f) A representative of the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(g) One person representing environmental interests; and

(h) Two members of the Legislature, including the chairperson of the Natural Resources Committee.

The Governor shall appoint members in subdivisions (a) through (g) of this subsection. The Executive Board of the Legislative Council shall appoint members in subdivision (h) of this subsection. Members shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177.

(3) The Executive Board of the Legislative Council shall provide the task force with necessary equipment, supplies, and staff support.

(4) The task force shall terminate on December 31, 2000.

Sec. 17. On or after the operative date of this section, a retailer shall not offer for sale in this state any petroleum product that contains more than one percent of methyl tertiary butyl ether (MTBE) by volume. For purposes of this section, retailer has the same definition as in section

66-482.

Sec. 18. The Legislature finds that (1) existing monitoring of ground water quality performed by natural resources districts is excellent and deserves recognition, (2) substantial efforts have been undertaken by the Department of Environmental Quality to monitor surface water quality, and (3) it is within the state's capacity to develop a comprehensive, integrated statewide water quality monitoring system.

Sec. 19. The Department of Environmental Quality shall conduct a comprehensive study of water quality monitoring in Nebraska pursuant to section 20 of this act. In preparing Phase I of the study, the department shall work with and consult an advisory committee consisting of a designee from each of the following: The American Consulting Engineers Council of Nebraska, the Department of Agriculture, the Nebraska Natural Resources Commission, the Department of Health and Human Services Regulation and Licensure, the Department of Natural Resources, the League of Nebraska Municipalities, the Nebraska Association of Resources Districts, the Game and Parks Commission, the United States Geological Survey, and the University of Nebraska. The advisory group for Phase II of the study shall include the members listed in this section for Phase I and be expanded to include all groups found by the Department of Environmental Quality to be significant stakeholders in the water quality area. Phase I of the study shall be presented to the Natural Resources Committee of the Legislature on or before December 1, 2000, and Phase II shall be presented to the committee on or before June 30, 2001.

Sec. 20. (1) The study required by section 19 of this act shall consist of two phases. Phase I of the study shall consist of an assessment of Nebraska's current water quality monitoring efforts and shall address, but not be limited to, the following:

(a) A detailed description of all current water quality monitoring efforts at the state and local levels, including scope, location, timing, procedure, number of personnel, state agency or local government involved, and funding; and

(b) An analysis of current water quality monitoring efforts, indicating what the existing system does well and fails to do or does inadequately. The analysis shall address, but not be limited to, the following questions:

(i) Is the current number of monitoring sites sufficient to provide accurate information on water quality in all regions of the state;

(ii) Is the current frequency of monitoring efforts sufficient to provide an accurate measurement of changes in water quality over time;

(iii) Are the current methods of sample collection and analysis scientifically sound and is the collection of samples and subsequent testing conducted in a manner which reasonably assures accurate measurements;

(iv) Is the current reporting process timely and does it present information to policymakers in an understandable and usable form;

(v) Is the current coordination of monitoring efforts between the Department of Environmental Quality, natural resources districts, and county or local governments sufficient; and

(vi) Does the current system provide a mechanism ensuring statewide or regional coordination of water quality monitoring efforts when desirable.

(2) Phase II of the study shall utilize the information gathered during Phase I and shall consist of a detailed description of the changes required in the current system to establish a comprehensive, integrated statewide water quality monitoring system, including preferred alternatives if multiple options exist. The proposed monitoring system shall include, but not be limited to, the following:

(a) Recommended monitoring site locations;

(b) A description of acceptable monitoring techniques;

(c) The institutional flexibility to allow contaminants to be monitored on a statewide or regional basis as needed;

(d) Procedures to determine when coordinated monitoring between state and local entities is needed and policies for directing such monitoring;

(e) Provisions for the development of long-term trend lines for problem contaminants, for the inclusion of new contaminants, and for elimination of contaminants no longer requiring monitoring;

(f) Mechanisms to determine the best locations to monitor water quality for different types of contaminants and how to define local or regional problem areas; and

(g) An estimate of funding necessary to implement the recommendations of the study.

Sec. 21. Section 6 of this act becomes operative on July 1, 2001. The other sections of this act become operative on their effective date.



Sec. 22. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 23. Original sections 23-373, 76-2,112, 81-1532, 81-15,152, and 81-15,153, Reissue Revised Statutes of Nebraska, section 19-902, Revised Statutes Supplement, 1998, and section 23-114, Revised Statutes Supplement, 1999, are repealed.

Sec. 24. The following sections are outright repealed: Section 81-1533, Reissue Revised Statutes of Nebraska, and sections 72-2001 to 72-2004, Revised Statutes Supplement, 1998.