

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 229**

Final Reading

Introduced by Fischer, 43; Carlson, 38; Dubas, 34; Langemeier, 23;  
McCoy, 39; Schilz, 47; Larson, 40.

Read first time January 10, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water resources; to amend sections 81-15,174  
2 and 81-15,175, Reissue Revised Statutes of Nebraska, and  
3 section 61-218, Revised Statutes Cumulative Supplement,  
4 2010; to change and eliminate provisions relating to the  
5 Water Resources Cash Fund and the Nebraska Environmental  
6 Trust Fund; to provide an additional consideration for  
7 grants from the Nebraska Environmental Trust Fund as  
8 prescribed; to provide for fund transfers; to repeal the  
9 original sections; and to declare an emergency.

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

1                   Section 1. Section 61-218, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3                   61-218 (1) The Water Resources Cash Fund is created. The  
4 fund shall be administered by the Department of Natural Resources.  
5 ~~Transfers may be made from the fund to the General Fund at the~~  
6 ~~direction of the Legislature. Any money in the Water Resources Cash~~  
7 ~~Fund~~ fund available for investment shall be invested by the state  
8 investment officer pursuant to the Nebraska Capital Expansion Act and  
9 the Nebraska State Funds Investment Act.

10                   (2) The State Treasurer shall credit to the fund such  
11 money as is (a) transferred to the fund by the Legislature, (b) paid  
12 to the state as fees, deposits, payments, and repayments relating to  
13 the fund, both principal and interest, (c) donated as gifts,  
14 bequests, or other contributions to such fund from public or private  
15 entities, ~~and~~ (d) made available by any department or agency of the  
16 United States if so directed by such department or agency, and (e)  
17 allocated pursuant to section 81-15,175.

18                   (3) The fund shall be expended by the department (a) to  
19 aid management actions taken to reduce consumptive uses of water ~~and~~  
20 or to enhance streamflows or ground water recharge in river basins,  
21 subbasins, or reaches which are deemed by the department  
22 overappropriated pursuant to section 46-713 or fully appropriated  
23 pursuant to section 46-714 or are bound by an interstate compact or  
24 decree or a formal state contract or agreement, (b) for purposes of  
25 projects or proposals described in the grant application as set forth

1 in subdivision (2)(h) of section 81-15,175, and (c) and (b) to the  
2 extent funds are not expended pursuant to ~~subdivision (a)~~  
3 subdivisions (a) and (b) of this subsection, the department may  
4 conduct a statewide assessment of short-term and long-term water  
5 management activities and funding needs to meet statutory  
6 requirements in sections 46-713 to 46-718 and 46-739 and any  
7 requirements of an interstate compact or decree or formal state  
8 contract or agreement. The fund shall not be used to pay for  
9 administrative expenses or any salaries for the department or any  
10 political subdivision.

11 (4) It is the intent of the Legislature that ~~two million~~  
12 ~~seven hundred thousand three million three hundred thousand~~ dollars  
13 be transferred each fiscal year from the General Fund to the Water  
14 Resources Cash Fund for ~~FY2009-10~~ FY2011-12 through FY2018-19.

15 (5)(a) Expenditures from the Water Resources Cash Fund  
16 may be made to natural resources districts eligible under subsection  
17 (3) of this section for activities to either achieve a sustainable  
18 balance of consumptive water uses or assure compliance with an  
19 interstate compact or decree or a formal state contract or agreement  
20 and shall require a match of local funding in an amount equal to or  
21 greater than forty percent of the total cost of carrying out the  
22 eligible activity. The department shall, no later than August 1 of  
23 each year, beginning in 2007, determine the amount of funding that  
24 will be made available to natural resources districts from the Water  
25 Resources Cash Fund and notify natural resources districts of this

1 determination. The department shall adopt and promulgate rules and  
2 regulations governing application for and use of the Water Resources  
3 Cash Fund by natural resources districts. Such rules and regulations  
4 shall, at a minimum, include the following components:

5 (i) Require an explanation of how the planned activity  
6 will achieve a sustainable balance of consumptive water uses or will  
7 assure compliance with an interstate compact or decree or a formal  
8 state contract or agreement as required by section 46-715 and the  
9 controls, rules, and regulations designed to carry out the activity;  
10 and

11 (ii) A schedule of implementation of the activity or its  
12 components, including the local match as set forth in subdivision (5)  
13 (a) of this section.

14 (b) Any natural resources district that fails to  
15 implement and enforce its controls, rules, and regulations as  
16 required by section 46-715 shall not be eligible for funding from the  
17 Water Resources Cash Fund until it is determined by the department  
18 that compliance with the provisions required by section 46-715 has  
19 been established.

20 (6) The Department of Natural Resources shall submit an  
21 annual report to the Legislature no later than October 1 of each  
22 year, beginning in the year 2007, that shall detail the use of the  
23 Water Resources Cash Fund in the previous year. The report shall  
24 provide:

25 (a) Details regarding the use and cost of activities

1 carried out by the department; and

2 (b) Details regarding the use and cost of activities  
3 carried out by each natural resources district that received funds  
4 from the Water Resources Cash Fund.

5 (7)(a) Prior to the application deadline for fiscal year  
6 2011-12, the Department of Natural Resources shall apply for a grant  
7 of nine million nine hundred thousand dollars from the Nebraska  
8 Environmental Trust Fund, to be paid out in three annual installments  
9 of three million three hundred thousand dollars. The purposes listed  
10 in the grant application shall be consistent with the uses of the  
11 Water Resources Cash Fund provided in this section and shall be used  
12 to aid management actions taken to reduce consumptive uses of water,  
13 to enhance streamflows, to recharge ground water, or to support  
14 wildlife habitat in any river basin determined to be fully  
15 appropriated pursuant to section 46-714 or designated as  
16 overappropriated pursuant to section 46-713.

17 (b) If the application is granted, funds received from  
18 such grant shall be remitted to the State Treasurer for credit to the  
19 Water Resources Cash Fund for the purpose of supporting the projects  
20 set forth in the grant application. The department shall include in  
21 its grant application documentation that the Legislature has  
22 authorized a transfer of three million three hundred thousand dollars  
23 from the General Fund into the Water Resources Cash Fund for each of  
24 fiscal years 2011-12 and 2012-13 and has stated its intent to  
25 transfer three million three hundred thousand dollars to the Water

1 Resources Cash Fund for fiscal year 2013-14.

2 (c) It is the intent of the Legislature that the  
3 department apply for an additional three-year grant that would begin  
4 in fiscal year 2014-15 if the criteria established in subsection (4)  
5 of section 81-15,175 are achieved.

6 (8) The department shall establish a subaccount within  
7 the Water Resources Cash Fund for the accounting of all money  
8 received as a grant from the Nebraska Environmental Trust Fund as the  
9 result of an application made pursuant to subsection (7) of this  
10 section. At the end of each calendar month, the department shall  
11 calculate the amount of interest earnings accruing to the subaccount  
12 and shall notify the State Treasurer who shall then transfer a like  
13 amount from the Water Resources Cash Fund to the Nebraska  
14 Environmental Trust Fund.

15 Sec. 2. Section 81-15,174, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 81-15,174 The Nebraska Environmental Trust Fund is  
18 created. The fund shall be maintained in the state accounting system  
19 as a cash fund. Except as otherwise provided in this section, the  
20 fund shall be used to carry out the purposes of the Nebraska  
21 Environmental Trust Act, including the payment of administrative  
22 costs. Money in the fund shall include proceeds credited pursuant to  
23 section 9-812 and proceeds designated by the board pursuant to  
24 section 81-15,173. Any money in the fund available for investment  
25 shall be invested by the state investment officer pursuant to the

1 Nebraska Capital Expansion Act and the Nebraska State Funds  
2 Investment Act.

3 ~~The State Treasurer shall transfer nine hundred twenty-~~  
4 ~~five thousand dollars from the Nebraska Environmental Trust Fund to~~  
5 ~~the Department of Natural Resources Water Issues Cash Fund, as~~  
6 ~~administratively created pursuant to section 81-1111.04, on or after~~  
7 ~~July 1, 2003, but no later than July 10, 2003.~~

8 ~~The State Treasurer shall transfer one million dollars~~  
9 ~~from the Nebraska Environmental Trust Fund to the Water Resources~~  
10 ~~Trust Fund on July 1, 2004.~~

11 ~~The State Treasurer shall transfer two million seven~~  
12 ~~hundred sixty thousand seven hundred sixty dollars from the Nebraska~~  
13 ~~Environmental Trust Fund to the University of Nebraska Central~~  
14 ~~Administration Designated Cash Fund on March 1, 2007, unless LR 259CA~~  
15 ~~is approved by the voters in the November 2006 general election, then~~  
16 ~~the transfer shall occur on November 15, 2006.~~

17 Sec. 3. Section 81-15,175, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 81-15,175 (1) The board may make an annual allocation  
20 each fiscal year from the Nebraska Environmental Trust Fund to the  
21 Nebraska Environmental Endowment Fund as provided in section  
22 81-15,174.01. The board shall make annual allocations from the  
23 Nebraska Environmental Trust Fund and may make annual allocations  
24 each fiscal year from the Nebraska Environmental Endowment Fund for  
25 projects which conform to the environmental categories of the board

1 established pursuant to section 81-15,176 and to the extent the board  
2 determines those projects to have merit. The board shall establish a  
3 calendar annually for receiving and evaluating proposals and awarding  
4 grants. To evaluate the economic, financial, and technical  
5 feasibility of proposals, the board may establish subcommittees,  
6 request or contract for assistance, or establish advisory groups.  
7 Private citizens serving on advisory groups shall be reimbursed for  
8 their actual and necessary expenses pursuant to sections 81-1174 to  
9 81-1177.

10 (2) The board shall establish rating systems for ranking  
11 proposals which meet the board's environmental categories and other  
12 criteria. The rating systems shall include, but not be limited to,  
13 the following considerations:

14 (a) Conformance with categories established pursuant to  
15 section 81-15,176;

16 (b) Amount of funds committed from other funding sources;

17 (c) Encouragement of public-private partnerships;

18 (d) Geographic mix of projects over time;

19 (e) Cost-effectiveness and economic impact;

20 (f) Direct environmental impact; ~~and~~

21 (g) Environmental benefit to the general public and the  
22 long-term nature of such public benefit; and -

23 (h) Applications recommended by the Director of Natural  
24 Resources and submitted by the Department of Natural Resources  
25 pursuant to subsection (7) of section 61-218 shall be awarded fifty

1 priority points in the ranking process for the 2011 grant application  
2 if the Legislature has authorized annual transfers of three million  
3 three hundred thousand dollars to the Water Resources Cash Fund for  
4 each of fiscal years 2011-12 and 2012-13 and has stated its intent to  
5 transfer three million three hundred thousand dollars to the Water  
6 Resources Cash Fund in fiscal year 2013-14. Priority points shall be  
7 awarded if the proposed programs set forth in the grant application  
8 are consistent with the purposes of reducing consumptive uses of  
9 water, enhancing streamflows, recharging ground water, or supporting  
10 wildlife habitat in any river basin determined to be fully  
11 appropriated pursuant to section 46-714 or designated as  
12 overappropriated pursuant to section 46-713.

13 (3) A grant awarded under this section pursuant to an  
14 application made under subsection (7) of section 61-218 shall be paid  
15 out in the following manner:

16 (a) The initial three million three hundred thousand  
17 dollar installment shall be remitted to the State Treasurer for  
18 credit to the Water Resources Cash Fund no later than fifteen  
19 business days after the date that the grant is approved by the board;

20 (b) The second three million three hundred thousand  
21 dollar installment shall be remitted to the State Treasurer for  
22 credit to the Water Resources Cash Fund no later than May 15, 2013;  
23 and

24 (c) The third three million three hundred thousand dollar  
25 installment shall be remitted to the State Treasurer for credit to

1 the Water Resources Cash Fund no later than May 15, 2014 if the  
2 Legislature has authorized a transfer of three million three hundred  
3 thousand dollars from the General Fund to the Water Resources Cash  
4 Fund for fiscal year 2013-14.

5 (4) It is the intent of the Legislature that the  
6 Department of Natural Resources apply for an additional three-year  
7 grant from the Nebraska Environmental Trust Fund that would begin in  
8 fiscal year 2014-15 and such application shall be awarded fifty  
9 priority points in the ranking process as set forth in subdivision  
10 (2)(h) of this section if the following criteria are met:

11 (a) The Natural Resources Committee of the Legislature  
12 has examined options for water funding and has submitted a report to  
13 the Clerk of the Legislature and the Governor by December 1, 2012,  
14 setting forth:

15 (i) An outline and priority listing of water management  
16 and funding needs in Nebraska, including instream flows, residential,  
17 agricultural, recreational, and municipal needs, interstate  
18 obligations, water quality issues, and natural habitats preservation;

19 (ii) An outline of statewide funding options which create  
20 a dedicated, sustainable funding source to meet the needs set forth  
21 in the report; and

22 (iii) Recommendations for legislation;

23 (b) The projects and activities funded by the department  
24 through grants from the Nebraska Environmental Trust Fund under this  
25 section have resulted in enhanced stream flows, reduced consumptive

1 uses of water, recharged ground water, supported wildlife habitat, or  
2 otherwise contributed towards conserving, enhancing, and restoring  
3 Nebraska's ground water and surface water resources. On or before  
4 July 1, 2014, the department shall submit a report to the Natural  
5 Resources Committee of the Legislature providing demonstrable  
6 evidence of the benefits accrued from such projects and activities;  
7 and

8 (c) In addition to the grant reporting requirements of  
9 the trust, on or before July 1, 2014, the department provides to the  
10 board a report which includes documentation that:

11 (i) Expenditures from the Water Resources Cash Fund made  
12 to natural resources districts have met the matching fund  
13 requirements provided in subdivision (5)(a) of section 61-218;

14 (ii) Ten percent or less of the matching fund  
15 requirements has been provided by in-kind contributions for expenses  
16 incurred for projects enumerated in the grant application. In-kind  
17 contributions shall not include land or land rights; and

18 (iii) All other projects and activities funded by the  
19 department through grants from the Nebraska Environmental Trust Fund  
20 under this section were matched not less than forty percent of the  
21 project or activity cost by other funding sources.

22 ~~(3)~~(5) The board may establish a subcommittee to rate  
23 grant applications. If the board uses a subcommittee, the  
24 subcommittee shall (a) use the rating systems established by the  
25 board under subsection (2) of this section, (b) assign a numeric

1 value to each rating criterion, combine these values into a total  
2 score for each application, and rank the applications by the total  
3 scores, (c) recommend an amount of funding for each application,  
4 which amount may be more or less than the requested amount, and (d)  
5 submit the ranked list and recommended funding to the board for its  
6 approval or disapproval. A motion to deviate from the subcommittee's  
7 recommendations must specify the reason for doing so and be adopted  
8 with an affirmative vote of not fewer than eight members of the  
9 board.

10 ~~(4)-(6)~~ The board may commit funds to multiyear projects,  
11 subject to available funds and appropriations. No commitment shall  
12 exceed three years without formal action by the board to renew the  
13 grant or contract. Multiyear commitments may be exempt from the  
14 rating process except for the initial application and requests to  
15 renew the commitment.

16 ~~(5)-(7)~~ The board shall adopt and promulgate rules and  
17 regulations and publish guidelines governing allocations from the  
18 fund. The board shall conduct annual reviews of existing projects for  
19 compliance with project goals and grant requirements.

20 ~~(6)-(8)~~ Every five years the board may evaluate the long-  
21 term effects of the projects it funds. The evaluation may assess a  
22 sample of such projects. The board may hire an independent consultant  
23 to conduct the evaluation and may report the evaluation findings to  
24 the Legislature and the Governor.

25 Sec. 4. The State Treasurer shall transfer \$600,000 from

1 the General Fund to the Water Resources Cash Fund on or before June  
2 30, 2012, on such date as directed by the budget administrator of the  
3 budget division of the Department of Administrative Services,  
4 pursuant to section 61-218.

5           Sec. 5. The State Treasurer shall transfer \$600,000 from  
6 the General Fund to the Water Resources Cash Fund on or before June  
7 30, 2013, on such date as directed by the budget administrator of the  
8 budget division of the Department of Administrative Services,  
9 pursuant to section 61-218.

10           Sec. 6. Original sections 81-15,174 and 81-15,175,  
11 Reissue Revised Statutes of Nebraska, and section 61-218, Revised  
12 Statutes Cumulative Supplement, 2010, are repealed.

13           Sec. 7. Since an emergency exists, this act takes effect  
14 when passed and approved according to law.