

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 529

Introduced by Carlson, 38.

Read first time January 18, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to real estate; to amend sections 76-2,112,
2 76-2,114, 81-15,173, and 81-15,176, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 conservation and preservation easements and the Nebraska
5 Environmental Trust Act; and to repeal the original
6 sections.

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

1 Section 1. Section 76-2,112, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-2,112 (1) A conservation or preservation easement
4 shall be an interest in real property, created by an instrument in
5 which the purpose for the easement is clearly stated. The instrument
6 shall be filed, duly recorded, and indexed in the office of the
7 register of deeds of the county in which the real property subject to
8 the conservation or preservation easement is located.

9 (2) No conveyance of a conservation or preservation
10 easement shall be effective until accepted by the holder. At the same
11 time notice of the proposed conservation or preservation easement is
12 given to the governing body, the proposed holder shall provide
13 written notice of the proposed easement to the governing bodies of
14 all entities levying taxes on the property. Such notice shall be
15 delivered by first-class mail and shall include a statement of the
16 fiscal impact of changing the classification of the property or
17 removing it from the tax rolls.

18 (3) In order to minimize conflicts with land-use
19 planning, each conservation or preservation easement shall be
20 approved by the appropriate governing body. Such approving body shall
21 first refer the proposed acquisition to and receive comments from the
22 local planning commission with jurisdiction over such property, which
23 shall within sixty days of the referral provide such comments
24 regarding the conformity of the proposed acquisition to comprehensive
25 planning for the area. If such comments are not received within sixty

1 days, the proposed acquisition shall be deemed approved by the local
2 planning commission. If the property is located partially or entirely
3 within the boundaries or zoning jurisdiction of a city or village,
4 approval of the governing body of such city or village shall be
5 required. If such property is located entirely outside the boundaries
6 and zoning jurisdiction of any city or village, approval of the
7 county board shall be required. If the property is located in the
8 Niobrara scenic river corridor as defined in section 72-2006 and is
9 not incorporated within the boundaries of a city or village, the
10 Niobrara Council approval rather than city, village, or county
11 approval shall be required. Approval of a proposed acquisition may be
12 denied upon a finding by the appropriate governing body that the
13 acquisition is not in the public interest when the easement is
14 inconsistent with (a) a comprehensive plan for the area which had
15 been officially adopted and was in force at the time of the
16 conveyance, (b) any national, state, regional, or local program
17 furthering conservation or preservation, ~~or~~ (c) any known proposal by
18 a governmental body for use of the land, or (d) the best interest of
19 the county.

20 (4) Notwithstanding the provisions of subsection (3) of
21 this section, the state, or any state agency or political subdivision
22 other than a city, village, or county, may accept an easement after
23 first referring the proposed acquisition to and receiving comments
24 from the local planning commission with jurisdiction over the
25 property, which shall within sixty days of the referral provide such

1 comments regarding the conformity of the proposed acquisition to
2 comprehensive planning for the area. If such comments are not
3 received within sixty days, the proposed acquisition shall be deemed
4 approved by the local planning commission.

5 Sec. 2. Section 76-2,114, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 76-2,114 (1) Unless a conservation or preservation
8 easement is otherwise modified or terminated according to the terms
9 of the easement or the provisions of sections 76-2,111 to 76-2,118,
10 the owner of the subject real property or the holder of the easement
11 may petition the district court in which the greater part of the
12 servient estate is located for modification or termination of the
13 easement. The court may modify or terminate the easement pursuant to
14 this section only if the petitioner establishes that it is no longer
15 in the public interest to hold the easement or that the easement no
16 longer substantially achieves the conservation or preservation
17 purpose for which it was created. No comparative economic test shall
18 be used to determine whether the public interest or the conservation
19 or preservation purpose of the easement is still being served. No
20 modification shall be permitted which is in excess of that reasonably
21 necessary to remedy the deficiency of the easement.

22 (2) A conservation or preservation easement held by a
23 charitable corporation or trust as defined in section 76-2,111 shall
24 be limited in duration to ten years. At least ninety days prior to
25 the expiration of ten years, the charitable corporation or trust

1 shall notify the county board in writing of the date of expiration
2 and whether it desires to continue the easement. Failure to provide
3 such notice shall result in termination of the easement at the end of
4 the ten-year period. Within sixty days after receipt of the notice,
5 the county board shall hold a public hearing and determine whether to
6 continue or deny the easement.

7 Sec. 3. Section 81-15,173, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 81-15,173 The board shall have and may exercise the
10 following powers and duties:

11 (1) Adopt bylaws to govern the proceedings of the board;

12 (2) Keep records, conduct hearings, and adopt and
13 promulgate rules and regulations to carry out its duties and
14 implement the Nebraska Environmental Trust Act;

15 (3) Contract with the Game and Parks Commission for
16 administrative support;

17 (4) Contract with governmental and private agencies to
18 receive services and technical assistance;

19 (5) Contract with governmental and private agencies to
20 provide services and technical assistance;

21 (6) Establish environmental categories for use of the
22 funds and develop an appropriate rating system for each category;

23 (7) Establish ad hoc advisory boards and subcommittees;

24 (8) Sponsor or assist environmental proposals pertaining
25 to the environmental categories of the board, including issuing

1 grants to agencies, organizations, and persons engaged in the
2 purposes of the trust;

3 (9) Cooperate with or assist any unit of the state, any
4 political subdivision, or any private, public, or federal agency,
5 foundation, or person in furtherance of the purposes of the trust;

6 (10) Acquire and dispose of personal property in
7 furtherance of the purposes of the trust; and

8 (11) Apply for or accept any gift, grant, bequest,
9 royalty, or donation, designate the fund to which it will be
10 credited, and expend the proceeds in furtherance of the purposes of
11 the trust.

12 The board shall not hold property in fee nor shall it
13 obtain easements.

14 Sec. 4. Section 81-15,176, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 81-15,176 (1) Subject to subsection (3) of this section,
17 the board shall establish environmental categories of projects
18 eligible for funding by the trust. The board, after allowing
19 opportunity for public comment, shall designate as categories those
20 environmental goals which most affect the natural physical and
21 biological environment in Nebraska, including the air, land, ground
22 water and surface water, flora and fauna, prairies and forests,
23 wildlife and wildlife habitat, and areas of aesthetic or scenic
24 values. In designating environmental categories, the board shall
25 attempt to focus on the areas which promise the greatest

1 opportunities for effective action to achieve and preserve the future
2 environmental quality in the state. The board shall establish
3 categories for five-year periods beginning July 1, 1995. The board
4 may establish annual priorities within the five-year categories. The
5 board shall provide for public involvement in developing the
6 categories for such five-year periods and any priorities within these
7 categories, including, but not limited to, public meetings in each of
8 the three congressional districts.

9 (2) The board shall establish criteria for determining
10 the eligibility of projects for grant assistance, which criteria
11 shall include the following:

12 (a) The grants shall not provide direct assistance to
13 regulatory programs or to implement actions mandated by regulations
14 except remediation;

15 (b) No more than sixty percent of grant allocations in
16 any year shall assist remediation of soils or ground water, and no
17 grants for this purpose shall occur unless all other available
18 sources of funding are, in the opinion of the board, being
19 substantially utilized;

20 (c) No more than ten percent of the grant allocations in
21 any year shall be used by the recipients for land purchases and
22 easements;

23 (d) Only political subdivisions shall use grant
24 allocations for land acquisition;

25 ~~(e)~~ (e) The grants shall not pay for projects which

1 provide primarily private benefits or relieve private liability for
2 environmental damage;

3 ~~(d)~~ (f) The grants shall not pay for projects which have
4 direct beneficiaries who could afford the costs of the benefits
5 without experiencing serious financial hardship;

6 ~~(e)~~ (g) The grants should assist those projects which
7 offer the greatest environmental benefits relative to cost;

8 ~~(f)~~ (h) The grants should assist those projects which
9 provide clear and direct environmental benefits;

10 ~~(g)~~ (i) The grants should assist those projects which
11 will make a real contribution to achieving the board's environmental
12 categories;

13 ~~(h)~~ (j) The grants should assist those projects which
14 offer the greatest public benefits; and

15 ~~(i)~~ (k) The grants shall not pay for land or easements
16 acquired without the full and express consent of the landowner.

17 (3) Until the first five-year categories become effective
18 on July 1, 1995, the board shall observe the following categories for
19 allocating grants:

20 (a) Critical habitat areas, including wetlands
21 acquisition, preservation, and restoration and acquisition and
22 easements of areas critical to rare or endangered species;

23 (b) Surface water quality, including actions to preserve
24 lakes and streams from degradation;

25 (c) Ground water quality, including fostering best

1 management practices as defined in section 46-706, actions to
2 preserve ground water from degradation, and remediation of soils or
3 ground water; and

4 (d) Development of recycling markets and reduction of
5 solid waste volume and toxicity.

6 (4) The board may refine and clarify these initial
7 categories.

8 Sec. 5. Original sections 76-2,112, 76-2,114, 81-15,173,
9 and 81-15,176, Reissue Revised Statutes of Nebraska, are repealed.