

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 595

Introduced by Carlson, 38.

Read first time January 19, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water resources; to amend section 2-3226.04,
2 Reissue Revised Statutes of Nebraska, and sections
3 2-3225, 2-3226.05, 2-3226.08, and 2-3226.09, Revised
4 Statutes Cumulative Supplement, 2010; to adopt the Water
5 Resources Revolving Loan Fund Act; to change provisions
6 relating to use of property tax and occupation tax
7 proceeds and river-flow enhancement bond proceeds as
8 prescribed; to provide duties for natural resources
9 districts; to provide for transfers of funds; to
10 harmonize provisions; and to repeal the original
11 sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Water Resources Revolving Loan Fund Act.

3 Sec. 2. (1) The Legislature finds that:

4 (a) Ground water is one of the most valuable natural
5 resources in the state;

6 (b) An adequate supply of water is essential to the
7 general welfare of the citizens of this state and to the present and
8 future development of water resources in the state;

9 (c) Natural resources districts have the legal authority
10 to regulate certain activities and, except as otherwise specifically
11 provided by statute, as local entities are the preferred regulators
12 of activities which may contribute to ground water management and
13 river-flow enhancement programs; and

14 (d) Given the impact of extended drought on areas of the
15 state, the economic prosperity and future well-being of the state is
16 advanced by providing economic assistance in the form of creation of
17 the Water Resources Revolving Loan Fund to alleviate the adverse
18 economic impact of regulatory decisions necessary for management,
19 protection, and conservation of limited water resources.

20 (2) The Legislature recognizes:

21 (a) Its duty to define broad policy goals concerning the
22 utilization and management of water and to ensure local
23 implementation of those goals;

24 (b) The need to provide for orderly management systems in
25 areas where management of ground water is necessary to achieve

1 locally and regionally determined ground water management objectives
2 and where available data, evidence, or other information indicates
3 that present or potential ground water conditions, including
4 subirrigation conditions, require the designation of areas with
5 special regulation of development and use; and

6 (c) That the management, protection, and conservation of
7 water and the reasonable and beneficial use thereof are essential to
8 the economic prosperity and future well-being of the state and that
9 the public interest demands procedures for the implementation of
10 enhancement programs to conserve and protect water supplies and to
11 prevent the contamination or inefficient or improper use thereof.

12 Sec. 3. For purposes of the Water Resources Revolving
13 Loan Fund Act:

14 (1) Commission means the Nebraska Natural Resources
15 Commission;

16 (2) Construction means any of the following: Preliminary
17 planning to determine the feasibility of a project, including
18 engineering, architectural, legal, fiscal, or economic investigations
19 or studies; preliminary actions, including surveys, designs, plans,
20 working drawings, specifications, procedures, or other necessary
21 actions; or erection, including building, acquisition, alteration,
22 remodeling, or improvement;

23 (3) Department means the Department of Natural Resources;

24 (4) Director means Director of Natural Resources;

25 (5) District means a natural resources district;

1 (6) Joint public agency means a joint public agency as
2 defined in section 13-2503 whose participating public agencies
3 consist only of qualified natural resources districts; and

4 (7) Project means any project authorized under section
5 2-3226.04.

6 Sec. 4. (1) The Water Resources Revolving Loan Fund is
7 created. The fund shall be held as a trust fund for the purposes and
8 uses described in the Water Resources Revolving Loan Fund Act. The
9 fund shall consist of federal grants, state appropriations,
10 repayments of principal and interest on loans, and other money
11 designated for the fund. Any money in the fund available for
12 investment shall be invested by the state investment officer pursuant
13 to the Nebraska Capital Expansion Act and the Nebraska State Funds
14 Investment Act. Investment earnings shall be credited to the fund.

15 (2) Upon approval by the commission, the director may
16 make loans from the fund pursuant to the act and may conduct
17 activities related to financial administration of the fund.

18 (3) Upon approval by the commission, the department may
19 create or direct the creation of accounts within the fund as the
20 department determines appropriate and useful in administering the
21 fund and in providing for the security, investment, and repayment of
22 bonds.

23 (4) The Water Resources Revolving Loan Administration
24 Fund is created. Any funds available for administering loans or fees
25 collected pursuant to the Water Resources Revolving Loan Fund Act

1 shall be remitted to the State Treasurer for credit to the Water
2 Resources Revolving Loan Administration Fund. The Water Resources
3 Revolving Loan Administration Fund shall be administered by the
4 department. The Water Resources Revolving Loan Administration Fund
5 and assets thereof may be used to provide for financing or
6 refinancing obligations or fees related to the Water Resources
7 Revolving Loan Fund Act. The director may transfer any money in the
8 Water Resources Revolving Loan Administration Fund to the Water
9 Resources Revolving Loan Fund to meet the financing requirements
10 after financing or refinancing obligations or fees are paid. Any
11 money in the Water Resources Revolving Loan Administration Fund
12 available for investment shall be invested by the state investment
13 officer pursuant to the Nebraska Capital Expansion Act and the
14 Nebraska State Funds Investment Act. Investment earnings shall be
15 credited to the fund.

16 Sec. 5. The department may make an interest-free loan
17 from the Water Resources Revolving Loan Fund for not more than forty
18 percent of the cost of a project to an applicant which is a natural
19 resources district or a joint public agency if the applicant agrees
20 to match the amount of the interest-free loan with bonds, other
21 financing, or other funding sources. The department may make loans
22 from the fund to eligible natural resources districts or joint public
23 agencies for project costs in excess of forty percent, which loans
24 shall bear interest at the rate established by the commission. The
25 maximum term of a loan under this section shall be ten years, and not

1 more than thirty percent of the average annual balance in the fund
2 may be used for a single project. A loan under this section shall be
3 repaid by the district or joint public agency from any revenue source
4 authorized by the Legislature. The commission shall adopt and
5 promulgate rules and regulations for disbursement of funds and
6 repayment terms for loans made under this section.

7 Sec. 6. (1) A loan from the Water Resources Revolving
8 Loan Fund may be made to finance or refinance the costs of a project,
9 including, but not limited to, (a) acquisition of water rights by
10 purchase or lease in accordance with Chapter 46, article 6,
11 pertaining to ground water and Chapter 46, article 2, pertaining to
12 surface water, including storage water rights with respect to a river
13 or any of its tributaries, (b) acquisition by purchase or lease or
14 the administration and management, pursuant to mutual agreement, of
15 canals and other works, including reservoirs, constructed for
16 irrigation from a river or any of its tributaries, (c) vegetation
17 management, including, but not limited to, the removal of invasive
18 species in or near a river or any of its tributaries, (d)
19 augmentation of river flows consistent with the authority granted
20 under Chapter 2, article 32, and (e) development, storage, or
21 conveyance of water or provision of, contracting for, or furnishing
22 of water for domestic purposes, agriculture, manufacturing, and any
23 and all other beneficial uses.

24 (2) A loan from the fund shall only be available to a
25 natural resources district or a joint public agency in connection

1 with a project which is to be owned, operated, or financed by the
2 natural resources district or by the joint public agency for the
3 benefit of its member natural resources districts.

4 Sec. 7. (1) An applicant for a loan under the Water
5 Resources Revolving Loan Fund Act shall submit a written application
6 to the department on a form provided by the department. The
7 application shall include all information deemed necessary by the
8 department, including, but not limited to, the name and location of
9 the applicant, the project to be undertaken by the applicant, and the
10 amount of the loan requested by the applicant. The department shall
11 grant or deny the application within six months after receiving an
12 application.

13 (2) If the department grants the application, the
14 department and the applicant shall execute an agreement which shall
15 include, but need not be limited to, the identity of the recipient,
16 the amount of the loan, the interest rate, if any, on the loan, the
17 location and a description of the project to be funded with the
18 proceeds of the loan, the term of the loan, a repayment schedule, any
19 penalties for failure to make the required payments according to the
20 schedule, and any other terms and conditions of the loan agreed upon
21 between the department and the loan recipient.

22 (3) The loan recipient shall commence construction of the
23 project within six months after receipt of the loan. If the loan
24 recipient does not commence construction of the project within such
25 time period, it shall return the amount of such loan to the

1 department. The amount returned shall be remitted to the State
2 Treasurer for credit to the Water Resources Revolving Loan Fund.

3 Sec. 8. If a loan recipient fails to make any payment
4 pursuant to a loan agreement under the Water Resources Revolving Loan
5 Fund Act, the amount of such payment plus any interest and penalty
6 shall be deducted from the amount of state aid to which the loan
7 recipient or its member natural resources districts is entitled under
8 section 77-27,137.02 and any other aid program administered by the
9 commission. Such amount shall be paid directly or transferred to the
10 Water Resources Revolving Loan Fund.

11 Sec. 9. The commission shall have the following powers
12 and duties:

13 (1) The power to adopt and promulgate rules and
14 regulations to govern application procedures and requirements for
15 making loans under the Water Resources Revolving Loan Fund Act;

16 (2) The power to adopt an intended use plan which shall
17 include funding priorities. The commission shall develop a priority
18 system based upon section 6 of this act. The intended use plan shall
19 be reviewed annually by the commission;

20 (3) The power to establish interest rates to be charged
21 on loans. The system may allow discounted interest rates for short-
22 term loans;

23 (4) The power to set delinquency rates or fees for loans
24 that are not repaid on time;

25 (5) The power to create an administrative fee to be

1 assessed on a loan for the purpose of administering the Water
2 Resources Revolving Loan Fund Act; and

3 (6) The power to obligate the Water Resources Revolving
4 Loan Fund and the assets thereof, in whole or in part, to repay with
5 interest loans to or credits into such fund, including bonds, the
6 proceeds of which are credited to such fund.

7 Sec. 10. The department shall have the following powers
8 and duties:

9 (1) The power to establish a program to make loans to
10 natural resources districts or joint public agencies for construction
11 or modification of projects in accordance with the Water Resources
12 Revolving Loan Fund Act and the rules and regulations adopted and
13 promulgated pursuant to the act;

14 (2) If authorized by the commission, the power to execute
15 and deliver documents obligating the Water Resources Revolving Loan
16 Fund and the assets thereof to the extent permitted to repay, with
17 interest, loans to or credits into such fund;

18 (3) The duty to prepare an annual report for the Governor
19 and the Legislature;

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

23 (a) Accounting for payments or deposits credited to the
24 fund;

25 (b) Accounting for disbursements from the fund; and

1 (c) Balancing the fund at the beginning and end of the
2 accounting period;

3 (5) The power to provide financial assistance, consistent
4 with the Water Resources Revolving Loan Fund Act, for completion of
5 engineering studies, research projects, preliminary engineering
6 reports, water protection, and other studies for the uses described
7 in section 6 of this act; and

8 (6) Such other powers as may be necessary and appropriate
9 for the exercise of its duties under the act.

10 Sec. 11. (1) If funds are loaned to or otherwise credited
11 to the Water Resources Revolving Loan Fund with an obligation to
12 repay such loan or credit, the obligation to repay the amount of the
13 loan or credit and the interest thereon shall, upon authorization by
14 the commission and execution and delivery by the department of an
15 agreement to repay the loan or credit, be a valid and binding
16 obligation of such fund or portions thereof and payable in accordance
17 with the terms of the agreement executed by the department.

18 (2) Any pledge of the Water Resources Revolving Loan Fund
19 or any part thereof or any pledge of the assets of such fund made by
20 the department as authorized by the commission shall be valid and
21 binding from the time the pledge is made. The revenue, money, or
22 assets so pledged shall immediately be subject to a lien of such
23 pledge without any physical delivery thereof or further act, and the
24 lien shall be valid and binding as against all parties having claims
25 of any kind in tort, contract, or otherwise against such fund or the

1 assets thereof regardless of whether the parties have notice of the
2 lien. Neither the action by the commission, the pledge agreement
3 executed by the department, nor any other instrument by which a
4 pledge is created need be recorded.

5 Sec. 12. At the end of the first calendar month following
6 the effective date of this act, the State Treasurer shall transfer:

7 (1) One-half of the funds remaining in the Water
8 Contingency Cash Fund to the Water Resources Revolving Loan Fund. On
9 and after the effective date of this act, any payments made by
10 natural resources districts pursuant to section 2-3226.07, 2-3226.08,
11 or 2-3226.09 shall be remitted to the State Treasurer for credit to
12 the Water Resources Revolving Loan Fund.

13 (2) One-half of the funds remaining in the Water
14 Contingency Cash Fund to the Cash Reserve Fund; and

15 (3) Any funds remaining in the XXX Fund to the Water
16 Resources Revolving Loan Fund. On and after the effective date of
17 this act, any payments made by natural resources districts pursuant
18 to section 2-3226.07, 2-3226.08, or 2-3226.09 shall be remitted to
19 the State Treasurer for credit to the Water Resources Revolving Loan
20 Fund.

21 Sec. 13. Section 2-3225, Revised Statutes Cumulative
22 Supplement, 2010, is amended to read:

23 2-3225 (1)(a) Each district shall have the power and
24 authority to levy a tax of not to exceed four and one-half cents on
25 each one hundred dollars of taxable valuation annually on all of the

1 taxable property within such district unless a higher levy is
2 authorized pursuant to section 77-3444.

3 (b) Each district shall also have the power and authority
4 to levy a tax equal to the dollar amount by which its restricted
5 funds budgeted to administer and implement ground water management
6 activities and integrated management activities under the Nebraska
7 Ground Water Management and Protection Act exceed its restricted
8 funds budgeted to administer and implement ground water management
9 activities and integrated management activities for FY2003-04, not to
10 exceed one cent on each one hundred dollars of taxable valuation
11 annually on all of the taxable property within the district.

12 (c) In addition to the power and authority granted in
13 subdivisions (1)(a) and (b) of this section, each district located in
14 a river basin, subbasin, or reach that has been determined to be
15 fully appropriated pursuant to section 46-714 or designated
16 overappropriated pursuant to section 46-713 by the Department of
17 Natural Resources shall also have the power and authority to levy a
18 tax equal to the dollar amount by which its restricted funds budgeted
19 to administer and implement ground water management activities and
20 integrated management activities under the Nebraska Ground Water
21 Management and Protection Act exceed its restricted funds budgeted to
22 administer and implement ground water management activities and
23 integrated management activities for FY2005-06, not to exceed three
24 cents on each one hundred dollars of taxable valuation on all of the
25 taxable property within the district for fiscal year 2006-07 and each

1 fiscal year thereafter through fiscal year 2011-12.

2 (d) In addition to the power and authority granted in
3 subdivisions (a) through (c) of this subsection, a district with
4 jurisdiction that includes a river subject to an interstate compact
5 among three or more states and that also includes one or more
6 irrigation districts within the compact river basin may annually levy
7 a tax not to exceed ten cents per one hundred dollars of taxable
8 valuation of all taxable property in the district. The proceeds of
9 such tax may be used for the payment of principal and interest on
10 bonds and refunding bonds issued pursuant to section 2-3226.01 or for
11 the repayment of financial assistance received by the district
12 pursuant to section 2-3226.07. Such levy is not includable in the
13 computation of other limitations upon the district's tax levy.

14 (2) The proceeds of the tax levies authorized in
15 subdivisions (1)(a) through (c) of this section shall be used,
16 together with any other funds which the district may receive from any
17 source, for the operation of the district and for the purpose of
18 paying all or any part of the costs and expenses of one or more
19 qualified projects authorized pursuant to the Water Resources
20 Revolving Loan Fund Act or section 2-3226.04. When adopted by the
21 board, the tax levies authorized in subdivisions (1)(a) through (d)
22 of this section shall be certified by the secretary to the county
23 clerk of each county which in whole or in part is included within the
24 district. Such levy shall be handled by the counties in the same
25 manner as other levies, and proceeds shall be remitted to the

1 district treasurer. Such levy shall not be considered a part of the
2 general county levy and shall not be considered in connection with
3 any limitation on levies of such counties.

4 Sec. 14. Section 2-3226.04, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 2-3226.04 The proceeds of bonds issued pursuant to
7 section 2-3226.01 shall only be used to pay or refinance the costs of
8 (1) acquisition by purchase or lease of water rights in accordance
9 with Chapter 46, article 6, pertaining to ground water, and Chapter
10 46, article 2, pertaining to surface water, including storage water
11 rights with respect to a river or any of its tributaries, (2)
12 acquisition by purchase or lease or the administration and
13 management, pursuant to mutual agreement, of canals and other works,
14 including reservoirs, constructed for irrigation from a river or any
15 of its tributaries, (3) vegetation management, including, but not
16 limited to, the removal of invasive species in or near a river or any
17 of its tributaries, ~~and~~—(4) the augmentation of river flows
18 consistent with the authority granted under Chapter 2, article 32,
19 and (5) development, storage, transportation, provision of,
20 contracting for, and furnishing of water for domestic purposes,
21 agriculture, manufacturing, and any and all other beneficial uses.

22 Sec. 15. Section 2-3226.05, Revised Statutes Cumulative
23 Supplement, 2010, is amended to read:

24 2-3226.05 (1) A district with an integrated management
25 plan as described in subsection (1) of section 2-3226.01 may levy an

1 occupation tax upon the activity of irrigation of agricultural lands
2 within such district on an annual basis, not to exceed ten dollars
3 per irrigated acre, the proceeds of which may be used for (a)
4 repaying principal and interest on any bonds or refunding bonds
5 issued pursuant to section 2-3226.01 for one or more projects under
6 section 2-3226.04, (b) the repayment of financial assistance received
7 by the district pursuant to section 2-3226.07, ~~or~~(c) payment of all
8 or any part of the costs and expenses of one or more qualified
9 projects described in section 2-3226.04, or (d) payment of all or any
10 part of the costs and expenses of one or more projects authorized
11 pursuant to the Water Resources Revolving Loan Fund Act. If such
12 district has more than one river basin as described in section 2-1504
13 within its jurisdiction, such district shall confine such occupation
14 tax authorized in this section to the geographic area affected by an
15 integrated management plan adopted in accordance with section 46-715.

16 (2) Acres classified by the county assessor as irrigated
17 shall be subject to such district's occupation tax unless, on or
18 before July 1, 2007, and on or before March 1 in each subsequent
19 year, the record owner certifies to the district the nonirrigation
20 status of such acres.

21 (3) Any such occupation tax shall remain in effect so
22 long as the natural resources district has bonds outstanding which
23 have been issued stating such occupation tax as an available source
24 for payment and for the purpose of paying all or any part of the
25 costs and expenses of one or more projects authorized pursuant to the

1 Water Resources Revolving Loan Fund Act or section 2-3226.04.

2 (4) Such occupation taxes shall be certified to,
3 collected by, and accounted for by the county treasurer at the same
4 time and in the same manner as general real estate taxes, and such
5 occupation taxes shall be and remain a perpetual lien against such
6 real estate until paid. Such occupation taxes shall become delinquent
7 at the same time and in the same manner as general real property
8 taxes. The county treasurer shall publish and post a list of
9 delinquent occupation taxes with the list of real property subject to
10 sale for delinquent property taxes provided for in section 77-1804.
11 In addition, the list shall be provided to natural resources
12 districts which levied the delinquent occupation taxes. The list
13 shall include the record owner's name, the parcel identification
14 number, and the amount of delinquent occupation tax. For services
15 rendered in the collection of the occupation tax, the county
16 treasurer shall receive the fee provided for collection of general
17 natural resources district money under section 33-114.

18 (5) Such lien shall be inferior only to general taxes
19 levied by political subdivisions of the state. When such occupation
20 taxes have become delinquent and the real property on which the
21 irrigation took place has not been offered at any tax sale, the
22 district may proceed in district court in the county in which the
23 real estate is situated to foreclose in its own name the lien in the
24 same manner and with like effect as a foreclosure of a real estate
25 mortgage, except that sections 77-1903 to 77-1917 shall govern when

1 applicable.

2 Sec. 16. Section 2-3226.08, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

4 2-3226.08 (1) Any district receiving financial assistance
5 pursuant to section 2-3226.07 shall remit to the department the
6 proceeds of the property tax authorized pursuant to subdivision (1)
7 (d) of section 2-3225, the proceeds of the occupation tax authorized
8 pursuant to section 2-3226.05, or both, when such proceeds are
9 available for distribution until the amount of such financial
10 assistance has been repaid. Such proceeds shall be remitted within
11 fifteen days after receipt of the proceeds by the district.

12 (2) If the district does not receive proceeds described
13 in subsection (1) of this section, the district shall reimburse the
14 Water Contingency Cash Fund by such means as are provided by the
15 Legislature. Such reimbursement shall be made no later than June 30,
16 2013.

17 (3) After the financial assistance described in
18 subsection (1) of this section has been repaid, any district
19 receiving all or part of any loan proceeds pursuant to the Water
20 Resources Revolving Loan Fund Act shall remit to the department the
21 loan proceeds pursuant to the loan agreement under sections 5 and 6
22 of this act.

23 Sec. 17. Section 2-3226.09, Revised Statutes Cumulative
24 Supplement, 2010, is amended to read:

25 2-3226.09 The department shall remit reimbursements

1 received pursuant to subsection (1) of section 2-3226.08 to the State
2 Treasurer for credit to the Water Contingency Cash Fund. The
3 department shall remit reimbursements received pursuant to subsection
4 (3) of section 2-3226.08 to the State Treasurer for credit to the
5 Water Resources Revolving Loan Fund. The department shall calculate
6 the amount of such reimbursements so remitted. After the initial
7 disbursement of financial assistance by the department as authorized
8 in section 2-3226.07, the State Treasurer shall, at the end of each
9 calendar month, transfer ~~the balance~~ one-half of the balance in the
10 Water Contingency Cash Fund to the Water Resources Revolving Fund and
11 one-half of the balance in the Water Contingency Cash Fund to the
12 Cash Reserve Fund.

13 Sec. 18. Original section 2-3226.04, Reissue Revised
14 Statutes of Nebraska, and sections 2-3225, 2-3226.05, 2-3226.08, and
15 2-3226.09, Revised Statutes Cumulative Supplement, 2010, are
16 repealed.