

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1023

Introduced by Hilgers, 21; Brandt, 32; Flood, 19; Gragert, 40; Hughes,
44; McCollister, 20; McDonnell, 5; Wishart, 27.

Read first time January 13, 2022

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to water; to adopt the Lake Development Act
- 2 and the Water Recreation Enhancement Act; and to declare an
- 3 emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Lake Development Act.

3 Sec. 2. The Legislature finds and declares as follows:

4 (1) The future vibrancy of the people, communities, and businesses
5 of Nebraska depends on reliable sources of water;

6 (2) While it is in the state's best interest to retain control over
7 its water supplies, much of the state's water resources are currently
8 underutilized;

9 (3) In 2019, the state experienced historic flooding along the
10 Platte River which caused loss of life and over one billion dollars in
11 damage to private and public property and infrastructure;

12 (4) Well-planned flood control is critical to the future of the
13 people, communities, and businesses of Nebraska;

14 (5) In light of the disruption from the COVID-19 pandemic and the
15 trend toward a remote workforce around the country, people around the
16 country are rethinking where they want to work, live, and raise a family.
17 As people consider where to live, access to sustainable water resources
18 and outdoor recreational opportunities will be important considerations
19 in making Nebraska a competitive choice for the future;

20 (6) The state's lakes and rivers help Nebraskans enjoy the water
21 resources in our state and make Nebraska an even more attractive place to
22 live and raise a family;

23 (7) The state's water resources provide economic benefits to the
24 people, communities, and businesses of Nebraska by helping to attract
25 visitors from other states and boosting local economies;

26 (8) In 2021, the Legislature passed LB406, which established the
27 Statewide Tourism And Recreational Water Access and Resource
28 Sustainability Special Committee of the Legislature. The committee was
29 tasked with conducting studies on:

30 (a) The need to protect public and private property, including use
31 of levee systems, enhance economic development, and promote private

1 investment and the creation of jobs along the Platte River and its
2 tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

3 (b) The need to provide for public safety, public infrastructure,
4 land-use planning, recreation, and economic development in the Lake
5 McConaughy region of Keith County, Nebraska; and

6 (c) The socioeconomic conditions, recreational and tourism
7 opportunities, and public investment necessary to enhance economic
8 development and to catalyze private investment in the region in Knox
9 County, Nebraska, that lies north of State Highway 12 and extends to the
10 South Dakota border and includes Lewis and Clark Lake and Niobrara State
11 Park;

12 (9) After considerable study, the Statewide Tourism And Recreational
13 Water Access and Resource Sustainability Special Committee identified
14 potential opportunities within the floodway near the Platte River that
15 could be used to build a combined reservoir of approximately three
16 thousand six hundred surface acres, or greater, in or near Sarpy County,
17 the creation of which can be built without a dam of the Platte River, and
18 which will not negatively impact the city of Ashland, the surrounding
19 communities, or the economic development already occurring in such area;

20 (10) It is in the public interest to construct a lake at or near
21 this location. Such a lake would provide water quality, flood control,
22 and public recreational opportunities that would benefit generations of
23 Nebraskans, similar to the recreational opportunities provided by Lake
24 McConaughy, Lewis and Clark Lake, and Eugene T. Mahoney State Park;

25 (11) In addition to the primary purposes of providing flood control
26 and public recreational opportunities that will benefit the public,
27 building a lake will provide the collateral benefit of economic
28 development opportunities;

29 (12) It is in the public interest, and the purpose of the Lake
30 Development Act, that private parties contribute to the cost of
31 constructing and developing the lake and that the state seek out

1 donations and investments from private parties to fund such construction
2 and development;

3 (13) It is in the public interest, and the purpose of the act, that
4 the state manage the construction and development of the lake in a manner
5 that encourages private donations and investments, including through the
6 use of public-private partnerships, while also maintaining sufficient
7 oversight to protect the state's investment in the lake; and

8 (14) It is in the public interest, and the purpose of the act, that
9 the lake, and the land near or adjacent thereto, be developed in a
10 thoughtful and planned manner by the state and be free from control of
11 political subdivisions or municipalities to further the act's purposes of
12 providing flood control, recreational opportunities, and orderly
13 development of the project.

14 Sec. 3. (1) The Department of Natural Resources is granted all
15 power necessary to carry out the purposes of the Lake Development Act,
16 including, but not limited to, the power to:

17 (a) Purchase, sell, or lease land;

18 (b) Enter into contracts, including, but not limited to, contracts
19 relating to the provision of construction services, management services,
20 legal services, auditor services, and other consulting services or advice
21 as the department may require in the performance of its duties; and

22 (c) Enter into agreements with natural resources districts to
23 accomplish the purposes of the act. In any such agreement, a natural
24 resources district may use the full powers granted to it by law.

25 (2) It is the intent of the Legislature that the department engage
26 private parties and entities to construct and develop the lake and to
27 enter into contracts or public-private partnerships that the department
28 deems advantageous to the construction and development of the lake, and
29 land adjacent thereto, and to advance the purposes of the act.

30 (3) Notwithstanding any other provision of law, the department shall
31 give preference to (a) contract proposals relating to the development or

1 management of the lake from Nebraska nonprofit corporations whose
2 directors are appointed by the state or its officers and which agree to
3 be bound by the Open Meetings Act and sections 84-712 to 84-712.09 and to
4 publicly let contracts valued in excess of twenty-five thousand dollars
5 or (b) contract proposals which provide for a public-private partnership
6 with the state in constructing, developing, or managing the lake.

7 (4) The department is granted authority to select the land upon
8 which the lake will be built. In making such selection, the following
9 shall apply:

10 (a) The land shall be located in or near Sarpy County and within the
11 flood plain or floodway of the Platte River;

12 (b) Preference shall be given to locations that were materially
13 underwater when the Platte River flooded in 2019;

14 (c) It is the intent of the Legislature that the lake be at least
15 three thousand six hundred surface acres in size;

16 (d) No dam shall be constructed on the main channel of the Platte
17 River in order to construct the lake; and

18 (e) No city or village, or any part thereof, shall be flooded in
19 order to construct the lake.

20 (5) The department is granted authority to designate the land
21 selected for the lake under subsection (6) of this section, and land near
22 or adjacent thereto, as the Lake Development District.

23 (6) The department may, in the performance of its duties, seek input
24 and advice from any natural resources district that encompasses any of
25 the area included in the Lake Development District.

26 Sec. 4. Notwithstanding any other provision of law, no land within
27 the Lake Development District, as designated by the Department of Natural
28 Resources pursuant to section 3 of this act, shall be annexed.

29 Sec. 5. (1) There is hereby created the Lake Development Fund to be
30 administered by the Department of Natural Resources.

31 (2) The State Treasurer shall credit to the fund such money as is

1 (a) transferred to the fund by the Legislature and (b) donated as gifts,
2 bequests, or other contributions to such fund from public or private
3 entities.

4 (3) It is the intent of the Legislature that the State Treasurer
5 shall transfer to the Lake Development Fund an amount not to exceed XX
6 million dollars. Other than the initial transfer of XX million dollars,
7 no other money shall be transferred to the fund until a total of XX
8 million dollars from private donations or federal dollars have been,
9 through legally binding commitments, secured for the lake development
10 project.

11 (4) Other than the initial transfer described in subsection (3) of
12 this section, total distributions from the fund shall only be made in
13 amounts equal to, or less than, the total amount of private donations or
14 federal dollars received by the fund for the lake development project.

15 (5) The money in the fund shall not be subject to any fiscal-year
16 limitation or lapse provision of unexpended balance at the end of any
17 fiscal year or biennium. Transfers may be made from the fund to the
18 General Fund at the direction of the Legislature.

19 (6) Any money in the Lake Development Fund available for investment
20 shall be invested by the state investment officer pursuant to the
21 Nebraska Capital Expansion Act and the Nebraska State Funds Investment
22 Act.

23 Sec. 6. The Department of Natural Resources shall, no later than
24 November 1 of each year, provide an annual report to the Governor and the
25 Legislature regarding the use of the Lake Development Fund. The report
26 submitted to the Legislature shall be submitted electronically. The
27 report shall include (1) a detailed listing of how the proceeds of the
28 fund were expended in the prior fiscal year and (2) any distributions
29 from the fund that remain unexpended and on deposit as of the end of the
30 prior fiscal year.

31 Sec. 7. Sections 7 to 11 of this act shall be known and may be

1 cited as the Water Recreation Enhancement Act.

2 Sec. 8. The Legislature finds and declares as follows:

3 (1) The future vibrancy of the people, communities, and businesses
4 of Nebraska depends on reliable sources of water;

5 (2) While it is in the state's best interest to retain control over
6 its water supplies, much of the state's water resources are currently
7 underutilized;

8 (3) In 2019, the state experienced historic flooding along the
9 Platte River which caused loss of life and over one billion dollars in
10 damage to private and public property and infrastructure;

11 (4) Well-planned flood control is critical to the future of the
12 people, communities, and businesses of Nebraska;

13 (5) In light of the disruption from the COVID-19 pandemic and the
14 trend toward a remote workforce around the country, people around the
15 country are rethinking where they want to work, live, and raise a family.
16 As people consider where to live, access to sustainable water resources
17 and outdoor recreational opportunities will be important considerations
18 in making Nebraska a competitive choice for the future;

19 (6) The state's lakes and rivers help Nebraskans enjoy the water
20 resources in our state and make Nebraska an even more attractive place to
21 live and raise a family;

22 (7) The state's water resources provide economic benefits to the
23 people, communities, and businesses of Nebraska by helping to attract
24 visitors from other states and boosting local economies;

25 (8) In 2021, the Legislature passed LB406, which established the
26 Statewide Tourism And Recreational Water Access and Resource
27 Sustainability Special Committee of the Legislature. The committee was
28 tasked with conducting studies on:

29 (a) The need to protect public and private property, including use
30 of levee systems, enhance economic development, and promote private
31 investment and the creation of jobs along the Platte River and its

1 tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

2 (b) The need to provide for public safety, public infrastructure,
3 land-use planning, recreation, and economic development in the Lake
4 McConaughy region of Keith County, Nebraska; and

5 (c) The socioeconomic conditions, recreational and tourism
6 opportunities, and public investment necessary to enhance economic
7 development and to catalyze private investment in the region in Knox
8 County, Nebraska, that lies north of State Highway 12 and extends to the
9 South Dakota border and includes Lewis and Clark Lake and Niobrara State
10 Park;

11 (9) After considerable study, the Statewide Tourism And Recreational
12 Water Access and Resource Sustainability Special Committee identified the
13 following potential opportunities:

14 (a) Marina construction projects to expand water access and
15 recreational opportunities at the Lake McConaughy State Recreation Area
16 and the Lewis and Clark State Recreation Area; and

17 (b) A project to increase access to and the enjoyment of Niobrara
18 State Park through the construction of an event center and lodge;

19 (10) It is in the public interest to expand water access and
20 recreational opportunities at the Lake McConaughy State Recreation Area
21 and the Lewis and Clark State Recreation Area through the construction of
22 new marinas; and

23 (11) It is in the public interest to increase access to and the
24 enjoyment of Niobrara State Park through the construction of an event
25 center and lodge.

26 Sec. 9. (1) The purposes of the Water Recreation Enhancement Act
27 are to administer and carry out the following projects:

28 (a) Marina construction projects to expand water access and
29 recreational opportunities at the Lake McConaughy State Recreation Area
30 and the Lewis and Clark State Recreation Area; and

31 (b) A project to increase access to and the enjoyment of Niobrara

1 State Park through the construction of an event center and lodge.

2 (2) The Game and Parks Commission is granted all power necessary to
3 carry out the purposes of the Water Recreation Enhancement Act,
4 including, but not limited to, the power to:

5 (a) Enter into contracts, including, but not limited to, contracts
6 relating to the provision of construction services, management services,
7 legal services, auditor services, and other consulting services or advice
8 as the commission may require in the performance of its duties; and

9 (b) Enter into public-private partnerships to carry out the purposes
10 of the act.

11 Sec. 10. (1) There is hereby created the Water Recreation
12 Enhancement Fund to be administered by the Game and Parks Commission.

13 (2) The State Treasurer shall credit to the fund such money as is
14 (a) transferred to the fund by the Legislature and (b) donated as gifts,
15 bequests, or other contributions to such fund from public or private
16 entities.

17 (3) It is the intent of the Legislature that the State Treasurer
18 shall transfer to the Water Recreation Enhancement Fund an amount not to
19 exceed XX million dollars.

20 (4) The money in the fund shall not be subject to any fiscal-year
21 limitation or lapse provision of unexpended balance at the end of any
22 fiscal year or biennium. Transfers may be made from the fund to the
23 General Fund at the direction of the Legislature.

24 (5) Any money in the Water Recreation Enhancement Fund available for
25 investment shall be invested by the state investment officer pursuant to
26 the Nebraska Capital Expansion Act and the Nebraska State Funds
27 Investment Act.

28 Sec. 11. The Game and Parks Commission shall, no later than
29 November 1 of each year, provide an annual report to the Governor and the
30 Legislature regarding the use of the Water Recreation Enhancement Fund.
31 The report submitted to the Legislature shall be submitted

1 electronically. The report shall include (1) a detailed listing of how
2 the proceeds of the fund were expended in the prior fiscal year and (2)
3 any distributions from the fund that remain unexpended and on deposit as
4 of the end of the prior fiscal year.

5 Sec. 12. Since an emergency exists, this act takes effect when
6 passed and approved according to law.