

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 896

Introduced by Carlson, 38.

Read first time January 14, 2014

Committee:

A BILL

1 FOR AN ACT relating to the Erosion and Sediment Control Act; to amend
2 sections 2-4603, 2-4604, 2-4605, 2-4608, 2-4610, 2-4612,
3 and 2-4613, Reissue Revised Statutes of Nebraska; to
4 define and redefine terms; to provide for an order to
5 cease and desist as prescribed; to harmonize provisions;
6 and to repeal the original sections.

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

1 Section 1. Section 2-4603, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-4603 For purposes of the Erosion and Sediment Control
4 Act, unless the context otherwise requires:

5 (1) Commission ~~shall mean~~ means the Nebraska Natural
6 Resources Commission;

7 (2) Conservation agreement ~~shall mean~~ means an agreement
8 between the owner or operator of a farm unit and the district in
9 which the owner or operator agrees to implement a farm unit
10 conservation plan or, with the approval of the district within which
11 the farm unit is located, a portion of a farm unit conservation plan.
12 The agreement shall include a schedule for implementation and may be
13 conditioned on the district or other public entity furnishing
14 technical, planning, or financial assistance in the establishment of
15 the soil and water conservation practices necessary to implement the
16 plan or a portion of the plan;

17 (3) Director ~~shall mean~~ means the Director of Natural
18 Resources;

19 (4) District ~~shall mean~~ means a natural resources
20 district;

21 (5) Erosion or sediment control practice ~~shall mean:~~
22 means:

23 (a) The construction or installation and maintenance of
24 permanent structures or devices necessary to carry, to a suitable
25 outlet away from any building site, any commercial or industrial

1 development, or any publicly or privately owned recreational or
2 service facility not served by a central storm sewer system, any
3 water which would otherwise cause erosion in excess of the applicable
4 soil-loss ~~limit~~tolerance level and which does not carry or
5 constitute sewage or industrial or other waste;

6 (b) The employment of temporary devices or structures,
7 temporary seeding, fiber mats, plastic, straw, diversions, silt
8 fences, sediment traps, or other measures adequate either to prevent
9 erosion in excess of the applicable soil-loss ~~limit~~tolerance level
10 or to prevent excessive downstream sedimentation from land which is
11 the site of or is directly affected by any nonagricultural land-
12 disturbing activity; or

13 (c) The establishment and maintenance of vegetation upon
14 the right-of-way of any completed portion of any public street, road,
15 or highway or the construction or installation thereon of permanent
16 structures or devices or other measures adequate to prevent erosion
17 of the right-of-way in excess of the applicable soil-loss ~~limit~~;
18 tolerance level;

19 (6) Excess erosion means the occurrence of erosion in
20 excess of the applicable soil-loss tolerance level which causes or
21 contributes to an accumulation of sediment upon the lands of any
22 other person to the detriment or damage of such other person;

23 ~~(6)~~(7) Farm unit conservation plan ~~shall mean~~means a
24 plan jointly developed by the owner and, if appropriate, the operator
25 of a farm unit and the district within which the farm unit is located

1 based upon the determined conservation needs for the farm unit and
2 identifying the soil and water conservation practices which may be
3 expected to prevent soil loss by erosion from that farm unit in
4 excess of the applicable soil-loss ~~limit.~~ tolerance level. The plan
5 may also, if practicable, identify alternative practices by which
6 such objective may be attained;

7 ~~(7)~~ (8) Nonagricultural land-disturbing activity ~~shall~~
8 ~~mean~~ means a land change, including, but not limited to, tilling,
9 clearing, grading, excavating, transporting, or filling land, which
10 may result in soil erosion from wind or water and the movement of
11 sediment and sediment-related pollutants into the waters of the state
12 or onto lands in the state but ~~shall~~ does not include the following:

13 (a) Activities related directly to the production of
14 agricultural, horticultural, or silvicultural crops, including, but
15 not limited to, tilling, planting, or harvesting of such crops;

16 (b) Installation of aboveground public utility lines and
17 connections, fenceposts, sign posts, telephone poles, electric poles,
18 and other kinds of posts or poles;

19 (c) Emergency work to protect life or property; and

20 (d) Activities related to the construction of housing,
21 industrial, and commercial developments on sites under two acres in
22 size;

23 ~~(8)~~ (9) Person ~~shall mean~~ means any individual,
24 partnership, limited liability company, firm, association, joint
25 venture, public or private corporation, trust, estate, commission,

1 board, institution, utility, cooperative, municipality or other
2 political subdivision of this state, interstate body, or other legal
3 entity;

4 ~~(9)-(10)~~ Soil and water conservation practice ~~shall mean~~
5 means a practice which serves to prevent erosion of soil by wind or
6 water in excess of the applicable soil-loss ~~limit~~ tolerance level
7 from land used only for agricultural, horticultural, or silvicultural
8 purposes. Soil and water conservation practice ~~shall include, but not~~
9 be includes, but is not limited to:

10 (a) Permanent soil and water conservation practice,
11 including the planting of perennial grasses, legumes, shrubs, or
12 trees, the establishment of grassed waterways, the construction of
13 terraces, and other permanent soil and water practices approved by
14 the district; and

15 (b) Temporary soil and water conservation practice,
16 including the planting of annual or biennial crops, use of strip-
17 cropping, contour planting, minimum or mulch tillage, and other
18 cultural practices approved by the district; and

19 ~~(10)-(11)~~ Soil-loss ~~limit~~ shall mean tolerance level
20 means the maximum amount of soil loss due to erosion by wind or
21 water, expressed in terms of tons per acre per year, which is
22 determined to be acceptable in accordance with the Erosion and
23 Sediment Control Act. Soil loss may be impacted by water erosion
24 which may include (a) sheet and rill erosion which includes
25 relatively uniform soil loss across the entire field slope which may

1 leave small channels located at regular intervals across the slope
2 and (b) ephemeral gully erosion which occurs in well-defined
3 depressions or natural drainageways where concentrated overland flow
4 results in the convergence of rills forming deeper and wider
5 channels.

6 Sec. 2. Section 2-4604, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 2-4604 (1) The director shall, in cooperation with the
9 commission, the Department of Environmental Quality, the Natural
10 Resources Conservation Service of the United States Department of
11 Agriculture, and other appropriate state and federal agencies,
12 develop and coordinate a comprehensive state erosion and sediment
13 control program designed to reduce soil erosion in this state to
14 tolerable levels. The program, which shall be reasonable and
15 attainable, shall include:

16 (a) The soil-loss ~~limits~~ tolerance level for the various
17 types of soils in the state;

18 (b) State goals and a state strategy for reducing soil
19 losses on all lands in the state to an amount no more than the
20 applicable soil-loss ~~limit~~; tolerance level;

21 (c) Guidelines for establishing priorities for
22 implementation of the program at the state and local levels;

23 (d) Types of assistance to be provided by the state to
24 districts, cities, and counties in the implementation of the state
25 and local erosion and sediment control programs; and

1 (e) Such other elements as the director deems appropriate
2 in accordance with the objectives of the Erosion and Sediment Control
3 Act, including any recommendations for further legislative or
4 administrative action.

5 ~~(2) The state erosion and sediment control program shall~~
6 ~~be subject to the approval of the commission. It shall be presented~~
7 ~~to the Governor and the Legislature no later than January 1, 1987.~~
8 The state erosion and sediment control program may be revised by the
9 director and the commission at any time. Before approving the final
10 program, any such changes, the director and the commission shall
11 conduct at least four public hearings or meetings to receive
12 information from interested persons in different parts of the state.

13 ~~(3) The state erosion and sediment control program may be~~
14 ~~revised by the director and the commission at any time, except that~~
15 ~~such revisions shall be made according to the procedures required for~~
16 ~~approval of the original program.~~

17 Sec. 3. Section 2-4605, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 2-4605 (1) Each district shall, with the approval of the
20 director, ~~and on or before July 1, 1987,~~ adopt a district program for
21 implementation of the state erosion and sediment control program.
22 Each district's program shall include the:

23 (a) Soil-loss ~~limits~~ tolerance levels for the various
24 types of soils in the district. The soil-loss ~~limits~~ tolerance levels
25 shall be adopted and promulgated as rules and regulations and may be

1 more but not less stringent than those adopted by the director. It is
2 the intent of the Legislature that no land within the state be
3 assigned a soil-loss ~~limit~~tolerance level that cannot reasonably be
4 applied to such land;

5 (b) Recommended erosion or sediment control practices and
6 soil and water conservation practices which are suitable for
7 controlling erosion and sedimentation within the district; and

8 (c) Programs, procedures, and methods the district plans
9 to adopt and employ to implement the state erosion and sediment
10 control program. Each district may subsequently amend or modify the
11 program as necessary, subject to the approval of the director.

12 (2) The director with the advice and recommendation of
13 the commission shall review each district's program and all
14 amendments thereto and shall approve the program or amendments if the
15 director determines that the district's program is reasonable,
16 attainable, and in conformance with the state erosion and sediment
17 control program.

18 Sec. 4. Section 2-4608, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 2-4608 (1) Except to the extent jurisdiction has been
21 assumed by a municipality or county in accordance with section
22 2-4606, the district may inspect or cause to be inspected any land
23 within the district upon receipt of a written and signed complaint
24 which alleges that soil erosion is occurring in excess of the
25 applicable soil-loss ~~limit~~tolerance level. Complaints shall be

1 filed on a form provided by the director. Complaints may be filed by
2 any owner or operator of land being damaged by sediment, by any state
3 agency or political subdivision whose roads or other public
4 facilities are being damaged by sediment, by any state agency or
5 political subdivision with responsibility for water quality
6 maintenance if it is alleged that the soil erosion complained of is
7 adversely affecting water quality, or by a staff member or other
8 agent of the district authorized by the board of directors to file
9 such complaints. Inspections following receipt of a written and
10 signed complaint may be made only after notice to the owner and, if
11 appropriate, the operator of the land involved, and such person shall
12 be given an opportunity to accompany the inspector.

13 (2) The owner, the operator if appropriate, and the
14 district may agree to a plan and schedule for eliminating ~~excessive~~
15 excess erosion on and sedimentation from the land involved. Any such
16 agreement may be enforced in district court in the same manner as an
17 administrative order issued pursuant to the Erosion and Sediment
18 Control Act. If no agreement is reached, the findings of the
19 inspection shall be presented to the district board of directors and
20 the owner and, if appropriate, the operator of the land shall be
21 given a reasonable opportunity to be heard at a meeting of the board
22 or, if requested, at a public hearing. If the district finds that the
23 alleged sediment damage is occurring and that ~~excess soil~~ erosion is
24 occurring on the land inspected, it shall issue an administrative
25 order to the owner of record and, if appropriate, to the operator

1 describing the land and stating as nearly as possible the extent to
2 which the soil erosion exceeds the applicable soil-loss ~~limit~~.
3 tolerance level. When the complained-of erosion is the result of
4 agricultural, horticultural, or silvicultural activities, the
5 district shall direct the owner and, if appropriate, the operator to
6 bring the land into conformance with the applicable soil-loss ~~limit~~.
7 tolerance level. When the complained-of erosion is the result of a
8 nonagricultural land-disturbing activity, the district may authorize
9 the owner and, if appropriate, the operator to either bring such land
10 into conformance with the soil-loss ~~limit~~ tolerance level or to
11 prevent sediment resulting from ~~excessive~~ excess erosion from leaving
12 such land.

13 (3) The district may specify, as applicable, alternative
14 soil and water conservation practices or erosion or sediment control
15 practices which the owner and, if appropriate, the operator may use
16 to comply with the administrative order. A copy of the administrative
17 order shall be delivered by either personal service or certified or
18 registered mail to each person to whom it is directed and shall:

19 (a) In the case of erosion occurring on the site of any
20 nonagricultural land-disturbing activity, state a reasonable time
21 after service or mailing of the order when the work necessary to
22 establish or maintain erosion or sediment control practices shall be
23 commenced and the time, not more than forty-five days after service
24 or mailing of the order, when the work shall be satisfactorily
25 completed;

1 (b) In all other cases, state the time, not more than six
2 months after service or mailing of the order, the work needed to
3 establish or maintain the necessary soil and water conservation
4 practices or permanent erosion control practices shall be commenced
5 and the time, not more than one year after the service or mailing of
6 the order, the work shall be satisfactorily completed, unless the
7 requirements of the order are superseded by section 2-4610; and

8 (c) State any reasonable requirements regarding the
9 operation, utilization, and maintenance of the practices to be
10 installed, constructed, or applied.

11 (4) If the district determines that the erosion is the
12 result of an activity not normally associated with tillage, seeding,
13 or cultivation of farm land and the immediate discontinuance of such
14 activity is necessary to reduce or eliminate damage to neighboring
15 property, the district may petition the district court for an order
16 to the owner and, if appropriate, the operator, to immediately cease
17 and desist such activity until excess erosion can be brought into
18 conformance with the soil-loss tolerance level or sediment resulting
19 from excess erosion is prevented from leaving the property.

20 ~~(4)~~(5) Upon failure to comply with the order, the owner
21 or, if appropriate, the operator shall be deemed in violation of the
22 Erosion and Sediment Control Act and subject to further actions as
23 provided by such act.

24 Sec. 5. Section 2-4610, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 2-4610 (1) Any person owning or operating private
2 agricultural, horticultural, or silvicultural lands who has a farm
3 unit conservation plan approved by the district and is implementing
4 and maintaining the plan in strict compliance with a conservation
5 agreement or any person whose normal agricultural, horticultural, and
6 silvicultural practices are in conformance with the applicable soil-
7 loss limit ~~tolerance level~~ shall, for purposes of such land, be
8 deemed to be in compliance with the requirements of the Erosion and
9 Sediment Control Act and any approved erosion and sediment control
10 program.

11 ~~(2) If there is not available to any owner or operator at~~
12 ~~least ninety percent cost sharing assistance for the installation of~~
13 ~~permanent soil and water conservation practices which are required in~~
14 ~~an approved farm unit conservation plan or are required to conform~~
15 ~~agricultural, horticultural, and silvicultural practices to the~~
16 ~~applicable soil loss limit, any such owner or operator shall not be~~
17 ~~required to install such practices pursuant to the Erosion and~~
18 ~~Sediment Control Act until such cost sharing assistance is made~~
19 ~~available, except that such owner or operator may agree to a cost-~~
20 ~~share rate of less than ninety percent. To be enforceable, any~~
21 ~~agreement providing for cost sharing assistance at a rate of less~~
22 ~~than ninety percent shall include notice that the owner or operator~~
23 ~~may choose not to sign such agreement and that such choice will~~
24 ~~preserve the right to not less than ninety percent cost sharing~~
25 ~~assistance before any permanent soil and water conservation practices~~

1 ~~can be required by the district. The owner or operator may be~~
2 ~~required to utilize temporary soil and water conservation practices~~
3 ~~in the interim to minimize soil erosion and sediment damage.~~

4 ~~(3)-(2)~~ To prevent ~~excessive~~excess erosion and sediment
5 from leaving the land due to any agricultural or nonagricultural
6 land-disturbing activity, cost-sharing assistance may be available
7 from any district. Such assistance may be used for any erosion or
8 sediment control practice. The lack of available of cost-sharing
9 assistance does not offset the requirement that the owner and, if
10 appropriate, the operator of such land comply with the terms of an
11 approved plan of compliance or an administrative order.

12 Sec. 6. Section 2-4612, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 2-4612 The district shall petition the district court for
15 a court order requiring immediate compliance with ~~the~~an
16 administrative order previously issued by the district if:

17 (1) The work necessary to comply with the administrative
18 order is not commenced on or before the date specified in such order
19 or in any supplementary orders subsequently issued unless, in the
20 judgment of the district, the failure to commence or complete the
21 work as required by the administrative order is due to factors beyond
22 the control of the person to whom such order is directed and the
23 person can be relied upon to commence and complete the necessary work
24 at the earliest possible time;

25 (2) The work is not being performed with due diligence or

1 is not satisfactorily completed by the date specified in the
2 administrative order or the practices are not being operated,
3 utilized, or maintained as required;

4 (3) The work is not of a type or quality specified by the
5 district and, when completed, it will not or does not reduce soil
6 erosion from such land below the soil-loss ~~limit~~tolerance level or,
7 to the extent ~~excessive~~excess erosion is permitted by the district
8 for a nonagricultural land-disturbing activity, will not or does not
9 prevent sediment resulting from such ~~excessive~~excess erosion from
10 leaving the land involved; or

11 (4) The person to whom the administrative order is
12 directed advises the district that he or she does not intend to
13 commence or complete such work.

14 Sec. 7. Section 2-4613, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 2-4613 In the district court action, the burden of proof
17 shall be upon the district to show that soil erosion is occurring in
18 excess of the applicable soil-loss ~~limit~~tolerance level and that the
19 landowner or operator has not established or maintained soil and
20 water conservation practices or erosion or sediment control practices
21 in compliance with the district's erosion and sediment control
22 program. Upon receiving satisfactory proof, the court shall issue an
23 order directing the owner or operator to comply with the
24 administrative order previously issued by the district. The court may
25 modify the administrative order if deemed necessary. Notice of the

1 court order shall be given by either personal service or certified or
2 registered mail to each person to whom the order is directed, who
3 may, within thirty days from the date of the court order, appeal to
4 the Court of Appeals. Any person who fails to comply with the court
5 order issued within the time specified in such order, unless the
6 order has been stayed pending an appeal, shall be deemed in contempt
7 of court and punished accordingly.

8 Sec. 8. Original sections 2-4603, 2-4604, 2-4605, 2-4608,
9 2-4610, 2-4612, and 2-4613, Reissue Revised Statutes of Nebraska, are
10 repealed.