

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 40**

Introduced by Blood, 3.

Read first time January 05, 2023

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to agriculture; to adopt the Riparian
- 2 Protection and Water Quality Practices Act; and to provide an
- 3 operative date.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 12 of this act shall be known and may be  
2 cited as the Riparian Protection and Water Quality Practices Act.

3           Sec. 2. For the purposes of the Riparian Protection and Water  
4 Quality Practices Act:

5           (1) Buffer means an area consisting of perennial vegetation,  
6 excluding invasive plants and noxious weeds, adjacent to all bodies of  
7 water within the state that protects the water resources of the state  
8 from runoff pollution, stabilizes soils, shores, and banks, and protects  
9 or provides riparian corridors;

10          (2) Buffer-protection map means buffer maps established and  
11 maintained by the department;

12          (3) Department means the Department of Agriculture;

13          (4) Director means the Director of Agriculture;

14          (5) Local water management authority means a natural resources  
15 district, metropolitan utilities district, county, city, or village  
16 operating separately or jointly in its role as a local water management  
17 authority;

18          (6) Normal water level means the level evidenced by the long-term  
19 presence of surface water as indicated directly by hydrophytic plants or  
20 hydric soils or indirectly determined via hydrological models or  
21 analysis; and

22          (7) With jurisdiction means a department determination that the  
23 local water management authority has adopted a rule, regulation,  
24 ordinance, resolution or official controls providing procedures for the  
25 issuance of administrative penalty orders, enforcement, and appeals for  
26 purposes of this section.

27          Sec. 3. (1) The Legislature hereby declares it is the policy of  
28 this state to establish riparian buffers and water quality practices to  
29 (a) protect state water resources from erosion and runoff pollution, (b)  
30 stabilize soils, shores, and banks, and (c) protect or provide riparian  
31 corridors.

1       (2) It is the purpose of the Riparian Protection and Water Quality  
2 Practices Act to utilize riparian buffers and water quality practices to  
3 help purify the public waters and ground water of this state from  
4 nitrates, pesticides, and other chemical contaminants. The department  
5 shall have the authority and responsibility to implement and administer  
6 the act.

7       Sec. 4. (1) Except as provided in subsection (2) of this section,  
8 landowners owning property adjacent to a water body identified and mapped  
9 on a buffer-protection map created by the department shall maintain a  
10 buffer to protect the state's water resources as follows:

11       (a) For all public waters of this state, the more restrictive of:

12       (i) A fifty-foot-average width, a thirty-foot-minimum width, a  
13 continuous buffer of perennially rooted vegetation; or

14       (ii) The state standards and criteria set by the department pursuant  
15 to rules and regulations adopted and promulgated pursuant to this  
16 section.

17       (b) For public drainage systems, a sixteen and one-half-foot-minimum  
18 width continuous buffer. The buffer vegetation shall not impede future  
19 maintenance of the ditch.

20       (2) A landowner owning property adjacent to a water body identified  
21 on a buffer-protection map created by the department and whose property  
22 is used for cultivation farming may meet the requirements under  
23 subsection (1) of this section by adopting an alternative riparian water  
24 quality practice, or a combination of structural, vegetative, and  
25 management practices, based on common alternative practices adopted and  
26 published by the department, other practices approved by the department,  
27 or practices based on local conditions approved by the local water  
28 management authority that are consistent with the practices adopted and  
29 published or approved by the department, and that provide water quality  
30 protection comparable to the buffer protection for the water body that  
31 the property abuts. Such practices include retention ponds and

1 alternative measures that prevent overland flow to the water resource.

2 (3) The width of a buffer on any public waters of this state shall  
3 be measured from the top or crown of the bank. For public waters where  
4 there is no defined bank, measurement shall be from the edge of the  
5 normal water level. The width of the buffer on public drainage systems  
6 shall be measured outward from the top edge of the constructed channel or  
7 to the crown of the leveled spoil bank, whichever is greater.

8 (4) Upon request by a landowner or the authorized agent or operator  
9 of a landowner, a technical professional employee or contractor of the  
10 local water management authority may issue a validation of compliance  
11 with the requirements of this section. Such validation may be appealed to  
12 the department as provided in section 10 of this act.

13 (5) Buffers or alternative water quality practices required under  
14 subsection (1) or (2) of this section shall be in place for the public  
15 waters of this state and for public drainage systems according to a  
16 timeline developed by the director but not later than by January 1, 2026.

17 (6) Nothing in this section limits the eligibility of a landowner or  
18 the authorized agent or operator of a landowner to participate in federal  
19 or state conservation programs, including enrolling or reenrolling in  
20 federal conservation programs.

21 (7) A person planting buffers or water quality protection practices  
22 to meet the requirements in subsection (1) of this section shall use only  
23 seed mixes verified by the department to prevent contamination with  
24 Palmer amaranth or other noxious weed seeds.

25 Sec. 5. In consultation with local water management authorities,  
26 the department shall develop, adopt, and submit to each local water  
27 management authority in the state a summary of watercourses for inclusion  
28 in the local water management authority's plan. A local water management  
29 authority shall include such summary of watercourses identified under  
30 this section as an addendum to its comprehensive local water management  
31 plan or comprehensive watershed management plan.

1           Sec. 6. Land adjacent to waters subject to section 4 of this act is  
2 exempt from the water resource protection requirements under such section  
3 to the extent these exemptions are not inconsistent with the requirements  
4 of the rules and regulations adopted and promulgated by the department  
5 pursuant to the Riparian Protection and Water Quality Practices Act if it  
6 is:

7           (1) Enrolled in the federal Conservation Reserve Program;

8           (2) Used as a public or private water access or recreational use  
9 area including stairways, landings, picnic areas, access paths, beach and  
10 watercraft access areas, and permitted water-oriented structures as  
11 provided in the standards and criteria set by the department pursuant to  
12 section 4 of this act;

13           (3) Covered by a road, trail, building, or other structure; or

14           (4) Regulated by a national pollutant discharge elimination system  
15 in any of the following categories:

16           (i) A municipal separate storm sewer system;

17           (ii) Construction stormwater; or

18           (iii) Industrial stormwater;

19           (5) Part of a water-inundation cropping system; or

20           (6) In a temporary non-vegetated condition due to drainage tile  
21 installation and maintenance, alfalfa or other perennial crop or plant  
22 seeding, or construction or conservation projects authorized by a  
23 federal, state, or local government unit.

24           Sec. 7. (1) Local water management authorities shall assist  
25 landowners with implementation of the water resource riparian protection  
26 requirements established under the Riparian Protection and Water Quality  
27 Practices Act. Such assistance includes planning, technical assistance,  
28 implementation of approved alternative practices, and tracking progress  
29 toward compliance with requirements.

30           (2) The department shall provide sufficient resources to local water  
31 management authorities to assist in implementing this section.

1           Sec. 8. (1) A local water management authority shall notify the  
2 department if it determines that a landowner is not in compliance with  
3 the Riparian Protection and Water Quality Practices Act. The department  
4 shall provide the landowner with a list of corrective actions needed to  
5 come into compliance and a practical timeline to meet the requirements  
6 under the act.

7           (2) If the landowner does not comply with the list of actions and  
8 timeline provided, the department may enforce the act by issuing an order  
9 imposing an administrative penalty consistent with rules and regulations  
10 adopted and promulgated by the department. Such penalty shall not exceed  
11 one thousand dollars for any single violation. Any penalty collected  
12 pursuant to this subsection shall be remitted to the State Treasurer for  
13 distribution in accordance with Article VII, section 5, of the  
14 Constitution of Nebraska.

15           (3) If the department determines that sufficient steps have been  
16 taken to fully resolve noncompliance, all or part of the penalty may be  
17 waived.

18           (4) An order issued under subsection (2) of this section may be  
19 appealed to the department as provided under section 10 of this act.

20           (5) A corrective action is not required for conditions resulting  
21 from a flood or other act of nature.

22           (6) A landowner agent or operator of a landowner shall not remove or  
23 willfully degrade a riparian buffer or water quality practice, wholly or  
24 partially, unless the agent or operator has obtained a signed statement  
25 from the landowner stating that the permission for the work has been  
26 granted by the unit of government authorized to approve the work or that  
27 a buffer or water quality practice is not required as validated by the  
28 local water management authority. Removal or willful degradation of a  
29 riparian buffer or water quality practice, wholly or partially, by such  
30 agent or operator is a separate and independent offense and may be  
31 subject to the corrective actions and penalties described in this

1 section.

2       Sec. 9. The department may withhold resources from a local water  
3 management authority with jurisdiction that fails to help implement the  
4 Riparian Protection and Water Quality Resources Act. Such assistance may  
5 be restored upon the department's approval of a corrective action plan.

6       Sec. 10. A landowner or an agent or operator of such landowner may  
7 appeal the terms and conditions of a validation by a local water  
8 management authority as described in section 4 of this act or an  
9 administrative penalty order of the department issued pursuant to section  
10 8 of this act within thirty days of receipt of written or electronic  
11 notice of such validation or order. The request for an appeal shall be in  
12 writing. The appealing party must provide a copy of the validation or  
13 order that is being appealed, the basis for the appeal, and any  
14 supporting evidence. The request for appeal may be submitted personally,  
15 by first class mail, or electronically to the director. If a written or  
16 electronic request for appeal is not submitted within thirty days, the  
17 validation or order shall be final. The director shall review the request  
18 and supporting evidence and issue a decision within sixty days of receipt  
19 of an appeal. The director's decision is appealable pursuant to the  
20 Administrative Procedure Act.

21       Sec. 11. A landowner may contact the department for information on  
22 how to apply for local, state, or federal cost-sharing grants, contracts,  
23 or loans that are available to establish buffers or other water resource  
24 protection measures.

25       Sec. 12. The department may adopt and promulgate rules and  
26 regulations to carry out the Riparian Protection and Water Quality  
27 Practices Act.

28       Sec. 13. This act becomes operative on January 1, 2024.