

LEGISLATIVE BILL 1126

Approved by the Governor April 14, 1998

Introduced by Stuhr, 24

AN ACT relating to natural resources; to amend section 2-2634, Reissue Revised Statutes of Nebraska; to adopt the Buffer Strip Act; to change provisions relating to pesticide registration fees; to create a fund; and to repeal the original section.

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

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Buffer Strip Act.

Sec. 2. The Legislature finds and declares that:

(1) Buffer strips help to reduce the levels of sediment, crop nutrient, pesticides, and other chemicals introduced into surface water resources; and

(2) Both wildlife and people benefit as a result of improved water quality.

Sec. 3. For purposes of the Buffer Strip Act:

(1) Board means the Nebraska Pesticide Board created pursuant to section 4 of this act;

(2) Buffer strip means a strip of vegetation used to intercept or trap field sediment, organics, pesticides, and other potential pollutants before they reach surface water;

(3) Department means the Department of Agriculture;

(4) District means a natural resources district; and

(5) Person means any individual, partnership, firm, corporation, company, society, or association, the state or any department, agency, or subdivision thereof, or any other public or private entity.

Sec. 4. (1) In order to implement the Buffer Strip Act, the Nebraska Pesticide Board is created. It shall be the duty of the board to advise and provide recommendations to the department regarding the administration of the Buffer Strip Act, the use of proceeds from the Buffer Strip Incentive Fund, and the approval or disapproval of the buffer strip plan reviewed in section 5 of this act. The department may ask the board for a review of the existing rules and regulations, administrative procedures, and other components of the Buffer Strip Act. The board shall meet at least once a year.

(2) The Rules and Regulations Advisory Committee created pursuant to section 2-2626 shall appoint members of the Nebraska Pesticide Board. The board shall be composed of, but not limited to, the following members:

(a) Two persons representing the pesticide industry;

(b) Two persons representing agricultural producers;

(c) One person representing the University of Nebraska Institute of Agriculture and Natural Resources;

(d) One person representing environmental interests; and

(e) One person representing municipalities.

(3) The terms of the members of the board shall be three years, except that the terms of the initial members of the board shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the committee. As the terms of the initial members expire, their successors shall be appointed or elected for three-year terms in the same manner as the initial members. Any vacancy shall be filled by appointment in the same manner as the appointment of initial members.

(4) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 5. The department shall devise a statewide buffer strip plan with its priority being the improvement of the quality of the domestic and public water supply. Upon the approval of the board, the department shall submit the plan to the Legislature by December 1, 1998.

Sec. 6. The Buffer Strip Incentive Fund is created. Proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, proceeds raised from federal grants earmarked for the fund, and any proceeds raised from public or private donations made to the fund shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department to maintain the buffer strip program and for expenses directly related to the program, including necessary expenses of the department in carrying out its duties and

responsibilities under the Buffer Strip Act. The annual cost of administering the buffer strip program shall not exceed ten percent of the total annual proceeds credited to the fund. Such administrative costs shall include funds allocated by the department to the districts for their administrative costs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 7. (1) Any person who desires to create a buffer strip adjacent to surface water on his or her property may submit an application for buffer strip reimbursement to the district. The application shall include the location of the proposed buffer strip and the total number of acres to be included in the proposed buffer strip. If the person will receive any money from any other source for use of the land proposed for the buffer strip, the application shall include the identity of the source or sources, the amount of money to be received, and the length of time the money will be received.

(2) All applications for buffer strip reimbursement under the Buffer Strip Act shall be submitted by a date established by rules and regulations adopted and promulgated pursuant to section 11 of this act.

(3) Upon receipt of an application for buffer strip reimbursement, the district shall review the application for compliance with the requirements set forth in the rules and regulations adopted and promulgated pursuant to section 11 of this act.

(4) If the district determines that the application is not in compliance with the requirements established by the department, the district shall inform the applicant of the deficiencies in the plan and, if feasible, recommend an alternate plan which complies with the rules and regulations of the department. The applicant may then submit a new application consistent with the recommendation of the district.

(5) If the district determines that the application is in compliance with the standards established by the department, the district shall forward the application to the department. The application shall include a written evaluation of the applicant's compliance with the requirements set forth in rules and regulations adopted and promulgated pursuant to section 11 of this act.

Sec. 8. (1) Upon receipt of the application for buffer strip reimbursement, the department shall review the application for compliance with the rules and regulations adopted and promulgated pursuant to section 11 of this act.

(2) If the department determines that the application is not in compliance with the rules and regulations adopted and promulgated pursuant to section 11 of this act, the department shall inform the district of the deficiencies. The district shall then inform the applicant of the deficiencies and allow the applicant to submit a new application.

(3) The department shall determine which applications are in compliance with the rules and regulations adopted and promulgated under section 11 of this act and shall compile a list of all such applications according to the factors set forth in the rules and regulations. From such prioritized list, and based upon the amount of funds available, the department shall notify the districts which applications are approved. Funds approved by the department for buffer strip reimbursement shall only be for buffer strips created after January 1, 1996. The total amount of funds available for all new and existing agreements shall not exceed the projected available cash balance of the Buffer Strip Incentive Fund for the entire term of the agreements.

Sec. 9. (1) Upon approval of an application by the district and the department, the district shall enter into a contractual agreement with the applicant for the land included in the buffer strip. The agreement shall include a provision that the applicant shall maintain the buffer strip in accordance with the approved plan during the term of the rental agreement. The agreement may also include a provision that the applicant shall not apply specified fertilizers on buffered fields between designated dates. Failure to maintain the buffer strip in accordance with the plan shall be cause for all future payments under the agreement to be forfeited and shall be cause for the recovery by the department of any payments previously made. Upon submission of a copy of the agreement to the department, it shall authorize the State Treasurer to transfer funds to the district from the Buffer Strip Incentive Fund in an amount equal to the total amount of funds due for the agreement in that district that year. Such transfer shall be made as soon as funds are available.

(2) If the applicant does not receive reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed one hundred fifty dollars per acre

or fraction thereof included in the buffer strip.

(3) If the applicant receives reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed one hundred fifty dollars per acre included in the buffer strip, minus the amount of the other reimbursement.

(4) The actual amount of any payment made to an applicant under subsection (2) or (3) of this section shall be determined by the district using the sliding scale provided in rules and regulations adopted and promulgated pursuant to section 11 of this act. Such amount shall be included as part of the application submitted to the department.

(5) Contractual agreements pursuant to this section shall be for a minimum term of five years and a maximum term of ten years.

(6) Following the expiration of any contractual agreement pursuant to this section, the applicant may apply to renew the agreement. Any application for renewal of an agreement shall be made in accordance with sections 7 to 9 of this act and shall be considered with any new applications.

Sec. 10. Each district shall take reasonable steps to ensure that contractual agreements pursuant to section 9 of this act are complied with by the applicant. The department shall adequately reimburse the districts for the costs of such purposes. If the applicant does not comply with the terms of the agreement, the district shall discontinue any payments to the applicant.

Sec. 11. The department shall adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Buffer Strip Act. The rules and regulations shall include, but not be limited to, rules and regulations providing for:

(1) Types of vegetation suitable for buffer strips;

(2) Appropriate width of buffer strips;

(3) Types of surface water appropriate for protection by buffer strips;

(4) Soil types and classifications appropriate for protection by buffer strips;

(5) A sliding scale, based on land value and potential environmental benefit, to determine the amount to be paid as payment under the act for the buffer strip;

(6) An index to rank those applications that meet the technical requirements of the act to determine priority of funding. Such index shall, at a minimum, identify the factors that will be considered in scoring an application and assign a numerical value for each of those factors. In addition to those items listed in subdivisions (1) to (5) of this section, such factors shall also include an evaluation of each application for the water quality benefits from reduced soil erosion and runoff, the on-farm benefits of reduced soil erosion, and the cost per acre of an application. Priority may be given to those applications which create buffer strips at the lowest possible cost, assuming environmental protection benefits are equal in other respects;

(7) The minimum requirements necessary for any contractual agreement entered into between a district and applicant;

(8) A project map of the buffer strip program created by the Buffer Strip Act showing the location of buffer strips in each watershed; and

(9) Any other rule and regulation deemed appropriate for implementation of the Buffer Strip Act.

Sec. 12. Section 2-2634, Reissue Revised Statutes of Nebraska, is amended to read:

2-2634. (1) As a condition to registration or renewal of

registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of one hundred ninety dollars for each pesticide to be registered, except that the fee may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. In no event shall such fee exceed one hundred fifty dollars for each pesticide to be registered. All fees collected shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of each such fee to the Noxious Weed Cash Fund as provided in section 2-958; and

(b) Sixty dollars of each such fee to the Buffer Strip Incentive Fund as provided in section 6 of this act; and

(c) The remainder, if any, to the Pesticide Administrative Cash Fund.

(2) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed

in addition to the renewal fee.

Sec. 13. Original section 2-2634, Reissue Revised Statutes of Nebraska, is repealed.