

## LEGISLATIVE BILL 779

Approved by the Governor May 27, 1999

Introduced by Engel, 17; Bromm, 23; Coordsen, 32; Raikes, 25; Wehrbein, 2

AN ACT relating to land; to amend sections 31-601, 31-602, 33-104, 39-1713 to 39-1719, 72-201, 72-202, 72-204 to 72-205.04, 72-222.02, 72-229, 72-231, 72-232, 72-233, 72-234, 72-235 to 72-239, 72-240.02, 72-240.03, 72-240.05, 72-240.07, 72-240.10, 72-240.21 to 72-240.23, 72-241, 72-246, 72-253, 72-255, 72-302, 72-304, 72-305, 72-308, and 72-907, Reissue Revised Statutes of Nebraska, and section 72-303, Revised Statutes Supplement, 1998; to change provisions relating to obtaining access to isolated land, appraisals, leases, and duties of the Board of Educational Lands and Funds; to eliminate provisions relating to contracts of sale and leases by the board; to harmonize provisions; to repeal the original sections; and to outright repeal sections 72-209, 72-210, 72-211, 72-232.01, and 72-240.24, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 31-601, Reissue Revised Statutes of Nebraska, is amended to read:

31-601. Whenever any drainage district organized or incorporated in accordance with the laws of this state, whether heretofore or hereafter organized, shall include within its boundaries any school or university lands, or other public land, the title to which is in the State of Nebraska, ~~whether said lands have been leased or sold upon contract,~~ said the lands shall be subject to assessment for special benefits, which shall be apportioned to ~~said the~~ the land to the same extent and in the same manner as the private lands included in the district, and the proceedings to include such school, university, or other state lands in such drainage district, and to apportion and assess the benefits thereto, shall be the same in all respects as is provided by law for the including of private lands and the apportionment and assessment of the benefits thereto. The assessments apportioned and levied against any school, university, or public lands, the title of which is in the state, shall be and remain a perpetual lien against such real estate; and the leasehold interest of any lessee thereof, ~~or the interest of any purchaser under a contract from the state,~~ or his or her assigns, may be sold for taxes, and ~~said the~~ the assessments shall draw the same rate of interest as delinquent taxes, and all the provisions of law for the sale, redemption, and foreclosure of tax liens which apply to individual landowners within ~~said the~~ the drainage district shall apply to lessees, ~~or purchasers under contract with the state,~~ ~~or of~~ school, university, and other public lands. It is further provided that in the event any levies or assessments against ~~said the~~ the school, university, or other state lands, ~~whether leased or sold on contract,~~ are not paid when due and delinquent, the drainage district may file claims with the Director of Administrative Services for the share of any apportionment to be paid by ~~said the~~ the lands; and it shall be the duty of the director to draw warrants to be paid from such funds of the state as are available for the payment of such warrants, and transmit the same to the treasurer of such drainage district; and the State Treasurer is hereby authorized and directed to pay ~~said the~~ the warrants for the purposes herein set forth.

Sec. 2. Section 31-602, Reissue Revised Statutes of Nebraska, is amended to read:

31-602. In the event the apportionment and assessments so levied have been paid by the state, the state or the fund from which payments have been made shall be subrogated to all the rights and remedies of ~~said the~~ the drainage district, for the collection of ~~said the~~ the assessments and levies against lessees ~~or the purchasers of such school lands under contract from the state,~~ or their heirs or assigns. ~~7 or the state may add the sum so advanced to any balance remaining unpaid to the state on any contract of sale of such lands, and require payment of the same before the issuance of a deed.~~

Sec. 3. Section 33-104, Reissue Revised Statutes of Nebraska, is amended to read:

33-104. There shall be paid to the Board of Educational Lands and Funds, in advance, for services of the secretary of the board by a party demanding or necessitating the service, the following fees: For ~~a recording lease or contract of sale of school lands,~~ one dollar; for copy of any instrument, paper, or record in his or her office, fifteen cents for each one hundred words with a minimum of one dollar and fifty cents; for certificate

and seal, one dollar; for filing and recording an assignment, conditional assignment, or sublease agreement, ten dollars; for notice of delinquent account, three dollars; for reinstatement of account, if redemption is made prior to the date when notice of publication is made, five dollars; for copies of maps or plats, three dollars per hour for the time actually required and spent for the copying or preparation thereof.

Sec. 4. Section 39-1713, Reissue Revised Statutes of Nebraska, is amended to read:

39-1713. (1) When any person ~~shall present~~ presents to the county board an affidavit satisfying it ~~(1) (a)~~ that he or she is the owner of the real estate described therein located within the county, ~~(2) (b)~~ that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, ~~(3) (c)~~ that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and ~~(4) (d)~~ asking that a ~~public access~~ an access road be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for ~~such access~~ an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections 39-1713 to 39-1719:

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section 39-1716; and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Roads, Department of Aeronautics, Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

Sec. 5. Section 39-1714, Reissue Revised Statutes of Nebraska, is amended to read:

39-1714. Whenever all the other conditions prescribed by section 39-1713 are present and, instead of being entirely shut off from all public roads, the only access by any owner of real estate to any public road is by an established private road less than two rods in width, the county board shall, upon the filing of an affidavit or affidavit and petition asking that an access road be provided in accordance with section 39-1716, substantially in the manner set forth in section 39-1713, setting forth such facts, appoint a time and place and hold a hearing thereon in the manner set forth in section 39-1713.

Sec. 6. Section 39-1715, Reissue Revised Statutes of Nebraska, is amended to read:

39-1715. When a hearing is to be held as provided in sections 39-1713 and 39-1714, the county board shall cause notice of the time and place of the hearing to be given by posting notices thereof in three public places in the county at least ten days before the time fixed therefor. At least fifteen days' written notice of the time and place of the hearing shall be given to all of the owners and occupants of the lands through which ~~such access~~ the access road may pass. The notice shall be served personally or by leaving a copy thereof at the usual place of abode of each occupant of such lands and, whenever possible, by either registered or certified mail to the owners of such ~~land~~ lands.

Sec. 7. Section 39-1716, Reissue Revised Statutes of Nebraska, is amended to read:

39-1716. (1) The county board shall, if it finds ~~(1) (a)~~ that the conditions set forth in section 39-1713 or 39-1714 exist, ~~(2) (b)~~ that the isolated land was not isolated at the time it was purchased by the owner or that the owner acquired the land directly from the State of Nebraska, ~~(3) (c)~~ that the isolation of the land was not caused by the owner or by any other person with the knowledge and consent of the owner, and ~~(4) (d)~~ that access is necessary for existing utilization of the isolated land, proceed to provide an access road ~~public access~~ and, if it finds that the amount of use and the number of persons served warrants such action, may lay out a public road ~~of not more than four nor less than two rods in width~~, to such real estate.

(2) The county board shall appraise the damages to be suffered by the owner or owners of the real estate over or through which the access road will be provided. Such damages shall be paid by the person petitioning that ~~such access~~ the access road be provided. For any real estate purchased or otherwise acquired after January 1, 1982, for which public access is granted pursuant to sections 39-1713 to 39-1719, the person petitioning for

such access shall also reimburse the county for all engineering and construction costs incurred in providing such access. ~~In these cases in which public access is granted pursuant to sections 39-1713 to 39-1719, the county shall not be responsible for future maintenance unless a public road was laid out.~~

(3) Notwithstanding any other provisions of law, an access road provided in accordance with this section shall not be subject to Chapter 39, article 20 or 21. The designation of such an access road shall not impose on the State of Nebraska or any political subdivision any obligation of design, construction, or maintenance for the access road nor give rise to any cause of action against the state or any political subdivision with respect to the access road.

Sec. 8. Section 39-1717, Reissue Revised Statutes of Nebraska, is amended to read:

39-1717. Whenever possible, ~~access provided pursuant to sections 39-1713 to 39-1719~~ an access road provided in accordance with section 39-1716 shall be along section lines. When the most practicable route for the ~~public access as provided in section 39-1716~~ access road is adjacent to a watercourse, the land to be taken for ~~such access~~ the access road shall be measured from the edge of the watercourse.

Sec. 9. Section 39-1718, Reissue Revised Statutes of Nebraska, is amended to read:

39-1718. ~~Upon the providing of public access as provided for by~~ If the county board decides to provide an access road in accordance with section 39-1716, the county board shall make and sign an order describing the same and file it with the county clerk, together with its award of damages which order shall be recorded by the clerk, except that ~~PROVIDED,~~ the amount assessed as damages to the owner or owners of ~~said~~ the real estate shall be paid to the county treasurer before the order providing ~~such access shall be~~ for the access road is filed.

Sec. 10. Section 39-1718.01, Reissue Revised Statutes of Nebraska, is amended to read:

39-1718.01. Sections 39-1713 ~~and 39-1715 to 39-1718 to 39-1719~~ shall not apply if public access has been granted prior to July 17, 1982.

Sec. 11. Section 39-1719, Reissue Revised Statutes of Nebraska, is amended to read:

39-1719. Any party to an award as provided by section 39-1718 may, within sixty days after the filing thereof, appeal therefrom to the district court of the county where the lands lie. The appeal shall be taken by serving upon the adverse party a notice of such appeal and filing such notice and proof of service thereof with the clerk of the court within the sixty days. Thereupon the appeal shall be set down for hearing at the next term of the court. It shall be heard and determined in like manner as appeals from awards in condemnations as provided in sections 76-704 to 76-724. Such appeal shall not affect the right or authority of the petitioner to the use of the ~~roadway~~ access road under the award of the appraisers.

The applicant shall in case of appeal file such additional security as may be required by the county board for such costs and damages as may accrue against him or her by reason of such appeal. If on appeal the appellant does not obtain a more favorable judgment and award than was given by the appraisers, such appellant shall pay all the costs of such appeal. Either party to such suit may appeal from the decision of the district court to the Court of Appeals, and the sum deposited as provided in this section shall remain in the hands of the county treasurer until a final decision is had.

Sec. 12. Section 72-201, Reissue Revised Statutes of Nebraska, is amended to read:

72-201. (1) The Board of Educational Lands and Funds shall consist of five members to be appointed by the Governor with the consent of a majority of the members elected to the Legislature. One member shall be appointed from each of the congressional districts as the districts were constituted on January 1, 1961, and a fifth member shall be appointed from the state at large. One member of the board shall be competent in the field of investments. The initial members shall be appointed to take office on October 1, 1955, and shall hold office for the following periods of time: The member from the first congressional district for one year; the member from the second congressional district for two years; the member from the third congressional district for three years; the member from the fourth congressional district for four years; and the member from the state at large for five years. As the terms of the members expire, the Governor shall appoint or reappoint a member of the board for a term of five years, except members appointed to fill vacancies whose tenures shall be the unexpired terms for which they ~~shall be~~

are appointed. If the Legislature is not in session when such members, or some of them, are appointed by the Governor, such members shall take office and act as recess appointees until the Legislature next thereafter convenes. The compensation of the members shall be forty dollars per day for each day's time actually engaged in the performance of the duties of their office. Each member shall also be paid his or her necessary traveling expenses incurred while upon business of the board as provided in sections 81-1174 to 81-1177. ~~for state employees.~~ The board shall cause all school, university, agricultural college, and state college lands, owned by or the title to which may hereafter vest in the state, to be registered, leased, and sold, as hereinafter provided, and shall have the general management and control of such lands, and make necessary rules not provided by law. The funds arising from these lands shall be disposed of in the manner provided by the Constitution of Nebraska, sections 72-201 to 72-251, and other laws of Nebraska not inconsistent herewith.

(2) No person shall be eligible to membership on the board who is actively engaged in the teaching profession, who holds or has any financial interest in a school land lease, who is a holder of or a candidate for any state office or a member of any state board or commission, or who has not resided in this state for at least three years.

(3) The board shall elect one of its members as chairperson of the Board of Educational Lands and Funds. In the absence of the chairperson, any member of the board may, upon motion duly carried, act in his or her behalf as such chairperson. It shall keep a record of all proceedings and orders made by it. No order shall be made except upon the concurrence of at least three members of the board. It shall make all orders pertaining to the handling of all lands and funds set apart for educational purposes.

(4) The board shall maintain an office in ~~the State Capitol~~ at Lincoln and shall meet in its office not less than once each month.

(5) The board may appoint a secretary for the board. The compensation of the secretary shall be payable monthly, as fixed by the board.

Sec. 13. Section 72-202, Reissue Revised Statutes of Nebraska, is amended to read:

72-202. The Board of Educational Lands and Funds shall notify the state investment officer of the funds derived from the sale of school lands. Any such funds and the interest therefrom shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. ~~The board shall notify the state investment officer as to the amount of funds currently invested from the sale of school lands, and the state investment officer shall direct the reinvestment of such funds as may be required.~~

~~The board shall notify the state investment officer of the funds available from all bonds or notes issued by the government of the United States, or the State of Nebraska or any county, school district, or municipality therein that the board has purchased. The purchased bonds or notes shall be placed in the custody and control of the State Treasurer under the same conditions as other state money. The state investment officer shall manage the funds as follows: (1) When necessary to pay a premium for bonds for such funds, the amount of the premium shall be amortized over the term of the bonds from the interest received on such bonds; and (2) when bonds for such funds are purchased at a discount, the amount of the discount shall be used to purchase additional bonds.~~

Sec. 14. Section 72-204, Reissue Revised Statutes of Nebraska, is amended to read:

72-204. The Board of Educational Lands and Funds shall cause ~~any lands not under a sale contract to be appraised~~ school land to be classified for rental purposes (1) at least once each ~~three~~ five years, (2) each time that the land is leased or that an assignment of a lease is made, and (3) when the board deems it to be in the best interest of the state. The leasing of the land shall be regulated by sections 72-232 to 72-239. When a lease is offered for sale, the new ~~appraised value~~ rental shall be made public. When the board has ordered the ~~appraisement or reappraisement~~ reclassification of any of the ~~educational~~ school lands in any county, it shall prescribe the method and promulgate rules governing the classification of educational lands. It shall have a classification of all the educational lands in the county prepared by a competent person, who shall make a detailed field examination of each forty-acre tract of educational lands for the purpose of obtaining information as to the type and rating of the soil, its adaptability, the topographical character of the land, and the location and number of acres of each type. His or her report of such field examination shall be prepared in the form of a detailed map with complete explanations, and shall be filed with the board. The board may employ private appraisal firms to aid it in

determining the value of educational lands.

Sec. 15. Section 72-205, Reissue Revised Statutes of Nebraska, is amended to read:

72-205. All school land shall be subject to lease at fair market rental as determined by the Board of Educational Lands and Funds. When the Board of Educational Lands and Funds board deems it expedient to raise or lower the rental and the appraised rental valuation of school lands, in any county, the board shall adopt a schedule rental schedules according to classification in such county and schedules of valuations for the counties involved. In arriving at such schedule of valuation rental schedules, the board shall consider the sale price and the average crop production of other lands in the county, the rental value of other lands similarly situated, and any other relevant factors bearing upon the valuation rental of such school lands. The fair market rental as determined by the board shall then be capitalized at an annual rate of four percent to compute the appraised rental valuation.

Sec. 16. Section 72-205.01, Reissue Revised Statutes of Nebraska, is amended to read:

72-205.01. After the adoption of a new rental schedules according to classification and schedules schedule of valuations, as provided by sections 72-205 to 72-205.04, 72-234 to 72-234.02, 72-240.02, 72-240.03, and 72-240.05 section 72-205, such schedule of valuations schedules together with a tabulation of the valuation and the amount of semiannual rental of each lease shall be filed in the office of the county treasurer of such county not less than ninety days prior to the effective date of said new schedule of valuations the new rentals. Notice of such filing shall be given by one publication in a newspaper of general circulation published within the county or, if more than one newspaper of general circulation is published in the county, then in two of such newspapers. If no newspaper is published in the county, it shall be so published in a newspaper of general circulation therein. The board shall further advise each lessee by mailing to his or her last address of record a letter or postal card notifying him or her of the amount of his or her semiannual rental.

Sec. 17. Section 72-205.02, Reissue Revised Statutes of Nebraska, is amended to read:

72-205.02. Such new schedule rental schedules according to classification and schedules of valuations shall become effective upon the first semiannual rental due date, which is ninety days or more from the date of the filing of the schedule schedules in the office of the county treasurer, unless within forty-five days from the date of the publication of notice a petition signed (1) by at least twenty-five percent of the lessees in counties having less than one hundred leaseholders, or (2) twenty-five of the lessees in counties having one hundred or more leaseholders within the county, requesting a hearing be is filed in the office of the Board of Educational Lands and Funds.

Sec. 18. Section 72-205.03, Reissue Revised Statutes of Nebraska, is amended to read:

72-205.03. Upon receipt of a petition bearing the requisite number of signatures as required by sections 72-205 to 72-205.04, 72-234 to 72-234.02, 72-240.02, 72-240.03, and 72-240.05 section 72-205.02, the Board of Educational Lands and Funds shall appoint an examiner who shall hold a meeting in the county seat of the county where such school lands are located to take testimony and to receive evidence as to the value rental of all school lands, according to classification, in such county. Such evidence shall cover the sale price and the average production of other lands in the county, the rental value of other lands similarly situated, and any other relevant factors bearing upon the valuation rental of such school lands. Notice of the time and place of such hearing shall be given by publication in a legal newspaper, published in the county where such school lands are situated, once each week for two consecutive weeks beginning at least twenty days prior to the date of the public hearing. In case no legal newspaper is published in the county, then the notice shall be published in a legal newspaper of general circulation in the county. The examiner conducting such hearing shall have the power to administer oaths.

Sec. 19. Section 72-205.04, Reissue Revised Statutes of Nebraska, is amended to read:

72-205.04. A complete record shall be made of all testimony taken and evidence received at such hearing, which record shall be filed in the office of the Board of Educational Lands and Funds. The examiner conducting such hearing shall make, in writing, complete findings and recommendations to the board as to the value of school lands according to classification. If the board determines that a change in the schedule of valuations rental is

justified it may either raise or lower its ~~schedule of values~~ rental schedules according to classifications and schedules of valuations previously adopted based upon the evidence produced at such hearing as shown by ~~said~~ the record, the effective date to be the time originally fixed.

Sec. 20. Section 72-222.02, Reissue Revised Statutes of Nebraska, is amended to read:

72-222.02. Any public body enumerated in section 72-222 may acquire an easement from the state on any educational land when such easement is for the purpose for which such public body is authorized by law to condemn private lands in this state. It shall not be necessary for the acquiring public body to follow the procedure established in section 72-224.03 to obtain such easement. The public body may obtain such easement by the filing of an application with the Board of Educational Lands and Funds. Such application shall describe the nature and purpose of the easement, shall contain a legal description of the easement, and shall name the public body seeking the easement. Upon receiving the application for easement the Board of Educational Lands and Funds shall either (1) deny the application or (2) grant the easement and place a value on the easement to be paid by the applicant. When placing a value on the easement the Board of Educational Lands and Funds shall take into consideration the board's ~~fiduciary~~ responsibility ~~as trustee for to manage~~ the educational lands in a manner consistent with that of a trustee acting in a fiduciary capacity. The public body applying for the easement shall then either (a) accept the Board of Educational Lands and Funds' value or (b) proceed according to section 72-224.03. Upon the granting of such easement, it shall be the duty of the secretary of the Board of Educational Lands and Funds to transmit a certified copy of the easement to the grantee for filing in the office of the register of deeds in the county or counties where the easement is located.

Sec. 21. Section 72-229, Reissue Revised Statutes of Nebraska, is amended to read:

72-229. ~~The~~ Upon the sale of school lands, the Board of Educational Lands and Funds is directed to ~~certify to the county clerk of each county in Nebraska a list of all the educational lands in their respective counties which have been deeded, and to notify the county clerk when a deed of any educational land in his county is issued state the actual purchase price in the deed so that the amount actually paid will be known when the deed is recorded even though the recording is exempt from the documentary stamp tax.~~ The county clerks of the respective counties are directed to enter such lands upon the tax list of the county upon ~~receipt of such notices~~ the recording of such a deed.

Sec. 22. Section 72-231, Reissue Revised Statutes of Nebraska, is amended to read:

72-231. Money received by the county treasurers of the several counties within the State of Nebraska on account of taxes wrongfully levied on educational lands of the state held under lease ~~or sale contracts,~~ shall be, by the respective county treasurers, repaid without interest to persons who paid the same, or their representatives, upon orders in that behalf made by the county board of the respective counties; but no order shall be made for such repayment except upon the production of the county treasurer's receipt for taxes so paid. The county board of any county where school lands have been wrongfully taxed, and the taxes have not yet been paid, shall order the county treasurer to cancel the same.

Sec. 23. Section 72-232, Reissue Revised Statutes of Nebraska, is amended to read:

72-232. ~~All unsold lands shall be subject to lease at an annual rental of four percent on the appraised rental value. Whenever the four-percent rental is adopted, the unsold lands shall be appraised in accordance with section 72-205, the rental value to be determined by the Board of Educational Lands and Funds.~~ The Board of Educational Lands and Funds shall have authority to adopt such rules and regulations as it shall deem necessary in the leasing of ~~such school~~ lands and to prescribe such terms and conditions of the lease, not inconsistent with sections 72-205, 72-232 to 72-235, 72-240.02 to 72-240.05, and 72-242, as it shall deem necessary to protect the interests of the state. ~~and of the trust.~~ The board shall adopt and enforce a soil conservation program. Failure of the lessee to utilize the land for the purpose for which the land was leased or to observe and carry out soil conservation requirements as provided in the rules and regulations of the board shall be cause for cancellation of the lease. No individual, partnership, limited liability company, or corporation shall be entitled to hold under lease a total of more than six hundred forty acres of state educational lands, whether acquired by direct lease or by assignment. Such limitation shall not apply when the land to be leased is bounded entirely on

one side thereof by lands owned or operated by such applicant or assignee.

Sec. 24. Section 72-233, Reissue Revised Statutes of Nebraska, is amended to read:

72-233. Applications to lease any ~~such~~ school lands shall be made to the Board of Educational Lands and Funds. Each such application shall contain an affidavit that the applicant desires to lease and operate such land for the applicant's own use and benefit and that the applicant will not sublease or otherwise dispose of the same without the written approval of the board and will commit no waste or damage on the land nor permit others to do so. ~~Each application shall be accompanied by the amount due as rental for the first year for which the application is made.~~ The Board of Educational Lands and Funds may, at least once in each year, designate a day and hour for offering, in a public manner at the office of the county treasurer in the respective counties, lease contracts on all the educational lands in each respective county which may be subject to lease at the time of such offering. The offering shall be announced in a public manner by publishing a notice thereof three weeks preceding the auction in one or more of the legal newspapers published or of general circulation in the county in which the unleased land is located. ~~If, after due diligence and effort to lease the land at an annual rental of four percent upon the appraised valuation, the board is unable to lease part or all of the same, it may offer the unleased land for lease at less than the appraised valuation and lease it to the person or persons, partnership, limited liability company, or corporation that will pay an annual rental of four percent on the highest offer valuation if, in the judgment of the board, it is for the best interest of the state to accept such bid, but the board may reject the same and pass the land without leasing at the auction. Such valuation, so determined, shall be considered the appraisement of the land for leasing purposes until the same is reappraised, as provided by law, and shall be entered as such upon the records of the county treasurer and the Board of Educational Lands and Funds. If the board is unable to have a representative attend the offering, the county treasurer may, upon the direction of the board, act for it. Adjournments may be taken from day to day until all of the lands have been offered. No lease shall be sublet or assigned without the written approval of the board.~~

Sec. 25. Section 72-234, Reissue Revised Statutes of Nebraska, is amended to read:

72-234. ~~Upon payment to the Board of Educational Lands and Funds of the rental due upon such application to lease, the~~ The board shall, if the foregoing proceedings appear to be regular, issue to the applicant a ~~receipt for the payment and~~ a lease on the land. Each lease shall contain a covenant or provision (1) that the Board of Educational Lands and Funds may, whenever such board deems it to be for the best interest of the state, ~~reappraise~~ adjust the rental of such lands; (2) that the lessee will not sublease or otherwise dispose of such lands without the written consent of the board and will commit no waste or damage on the land nor permit others to do so; (3) that the lessee will observe and carry out soil conservation requirements according to the rules and regulations of the board; (4) that the lessee will pay for the use of such lands the ~~annual rental of four percent per annum upon the appraised value thereof~~ fair market rental as determined by the board; (5) that, upon a failure to pay any rental for a period of six months from the time the payment becomes due or upon failure to perform any of the covenants of the lease, the lease may be forfeited and fully set aside, as provided for in sections 72-235 to 72-239; (6) that the lessee will promptly pay the rental semiannually in advance; (7) that in the event the lessee shall fail to pay rental in advance by the due date, interest shall be assessed at an annual interest rate of nine percent until such time as the rent is paid; and (8) that the premises will be surrendered at the expiration of the lease, unless renewed, or upon violation of any of the terms of the lease. Leases shall be for periods of five to twelve years less the period intervening between the date of the execution of the lease and December 31 of the previous year. The board may offer a lease for a period of less than five years if a lease failed to generate interest at an auction and if the board agrees that reducing the minimum lease term will attract a bid or bids for such a lease. When ~~PROVIDED, that when~~ two or more contiguous tracts are under separate lease with different expiration dates, the board may, if it is deemed to be in the best interest of the state, offer leases for less than twelve years on tracts having the earlier lease expiration date, to coincide with the last expiring lease, in order that all contiguous lands eventually may be offered under one lease.

Sec. 26. Section 72-235, Reissue Revised Statutes of Nebraska, is amended to read:

72-235. If any lessee of educational lands ~~shall fail~~ fails to

perform any of the covenants of the lease, or is in default of semiannual rental due the state for a period of six months, ~~or if any purchaser is in default of the annual interest due the state for one year,~~ the Board of Educational Lands and Funds may forfeit the lease ~~or sales contract~~ of such person. If the lessee ~~or purchaser~~ is in default in the payment of rental, ~~or interest,~~ the board may cause notice to be given such delinquent lessee ~~or purchaser~~ in accordance with section 72-236 that, if such delinquency is not paid within thirty days from the date of service of such notice by either registered or certified mail or the date of the first publication of such notice, his or her lease ~~or sale contract~~ will be declared forfeited. If the amounts due are not paid within such time, the board may declare the lease ~~or sale contract~~ forfeited and the land described therein shall revert to the state. Before a forfeiture of a lease shall be declared for a failure to perform the covenants of the lease other than the payment of rentals, the board shall give notice of such proposed forfeiture to such lessee, or to his or her personal representative or next of kin if he or she is dead, by either registered or certified mail, setting forth a time such a lessee, or his or her personal representative or next of kin, may show cause and have a hearing as to whether or not such lease shall be forfeited. The order of forfeiture shall be entered upon the records of the board. The board is required to serve such notice of delinquency and proceed with the forfeiture, as stated in such notice, at least once in each year. The provisions of this section and sections 72-236 to 72-239 shall apply to all lands heretofore or hereinafter leased as educational lands of this state.

Sec. 27. Section 72-235.01, Reissue Revised Statutes of Nebraska, is amended to read:

72-235.01. All right, title, and interest in any and all improvements to a lease forfeited for failure to pay rental pursuant to section 72-235 also shall be forfeited to the Board of Educational Lands and Funds until the rental has been paid in full. The board shall have the authority to offer forfeited leases for sale without regard to any improvements and growing crops thereon. ~~Prior to sale of a new lease, the lessee whose lease was forfeited shall have a right to reimbursement for improvements and growing crops owned by him, but only after all rent has been paid in full. Upon payment of all rent due, the improvements shall be inventoried and appraised in the same manner as lessee-owned improvements and growing crops or land being sold pursuant to section 72-257.~~

Sec. 28. Section 72-236, Reissue Revised Statutes of Nebraska, is amended to read:

72-236. The notice required by section 72-235 shall be given by either registered or certified letter or by publication for three weeks in a newspaper published or of general circulation in the county where the land is located. In serving the notice of delinquency the Board of Educational Lands and Funds shall recognize as the lessee ~~or owner of the lease or sale contract,~~ the person or persons whose title name appears last of record in the office of the board.

Sec. 29. Section 72-237, Reissue Revised Statutes of Nebraska, is amended to read:

72-237. The owner of any ~~contract of sale or lease,~~ forfeited as provided in section 72-235, may redeem by paying all delinquencies, fees, and costs of forfeiture at any time before the Board of Educational Lands and Funds completes the advertising of such land for lease at public auction.

Sec. 30. Section 72-238, Reissue Revised Statutes of Nebraska, is amended to read:

72-238. Movable improvements on lands reverting to the state through forfeiture, shall be sold under the direction of the Board of Educational Lands and Funds at public auction, and the proceeds received therefrom shall inure to the holder of the ~~delinquent contract forfeited lease,~~ after payment ~~shall have~~ has been made to the state for delinquent interest or rental, ~~and~~ expenses incurred in holding such auctions, and ~~the payment of~~ irrigation taxes due the irrigation district in which the land is situated.

Sec. 31. Section 72-239, Reissue Revised Statutes of Nebraska, is amended to read:

72-239. The Board of Educational Lands and Funds may extend the time of payment of delinquent interest or rental when it deems it to be in the best interest of the state, and it has full assurance that such delinquent interest or rental will be paid. Such extensions shall be granted, upon proper application to the board, and then only to the record owner of the lease ~~or sale contract~~ who actually uses or occupies educational lands, for periods of one year, and shall bear interest the same as other delinquent rentals, and shall be upon condition the lease ~~or sale contract~~ is assigned to



the state as part assurance of payment. In the event the movable improvements on the land do not constitute sufficient security to justify an extension of time, the lessee may give a lien to the state on the growing crops thereon, if any.

Sec. 32. Section 72-240.02, Reissue Revised Statutes of Nebraska, is amended to read:

72-240.02. If no such application for a new lease is received or if the applicant fails to meet the requirements for a new lease, the Board of Educational Lands and Funds may, at any time within three months after the expiration of the lease, enter into a lease with any other person it deems willing and able to meet the standards prescribed by the board in its rules and regulations at the rental rate for land of such classification. ~~If no application is made within three months after the expiration of the lease by a person willing and able to meet the standards prescribed by the board at the rental rate for land of such classification, the board may in its discretion reduce the classification so that the rental rate will be an amount that will result in a new lease to a tenant who meets those qualifications.~~

Sec. 33. Section 72-240.03, Reissue Revised Statutes of Nebraska, is amended to read:

72-240.03. When the Board of Educational Lands and Funds deems it expedient, due to breaking or retirement of the land, erosion, resodding, or other causes, to reclassify the school land in any county, and at least once in every five-year period, it shall cause reclassification to be made of the land under lease. When this has been accomplished the new ~~appraised valuation rental~~ for each lease shall be computed by applying the new classification of the land to the ~~schedule of values~~ rental schedules according to ~~classification~~ then in effect and which ~~has have~~ been duly adopted by the Board of Educational Lands and Funds for ~~that county~~ the counties involved. Rental shall be paid by the lessee upon the basis of the new ~~appraised valuation classification~~. Not more often than once in every two years the lessee may ~~petition request~~ the board to make a reclassification of the land he or she has under lease and it shall be the duty of the board, within six months after receipt of such ~~petition request~~, to cause a ~~reclassification the classification~~ to be made reviewed.

Sec. 34. Section 72-240.05, Reissue Revised Statutes of Nebraska, is amended to read:

72-240.05. The Board of Educational Lands and Funds shall sit twice each year to hear complaints from lessees as to the ~~valuation rental~~ of their leases, and may take such action as it may find to be right and proper in regard thereto.

Sec. 35. Section 72-240.07, Reissue Revised Statutes of Nebraska, is amended to read:

72-240.07. Before any buildings, wells, irrigation improvements, dams, or drainage ditches are placed upon school lands by a lessee, written approval must be obtained from the Board of Educational Lands and Funds, except necessary improvements for the temporary handling and sheltering of livestock, and such improvements where approval is secured shall be called permitted improvements and belong to the lessee and the lessee has the right to be paid a sum of money equal to the value which the improvements add to the value of the land by the buyer of the land or the new lessee in accordance with procedures as given in sections ~~72-240.11 to 72-240.24~~ 72-240.10 to 72-240.23 and 72-258. The value to the land of each permitted improvement shall not exceed its replacement cost less depreciation. Any such improvements placed upon school lands before September 14, 1953, and any improvements which were bought by new lessees during an involvement by the state in the transferring of leases after September 14, 1953, shall be considered as authorized or permitted improvements whether or not approval has been secured from the board and shall belong to the lessee unless there has been a provision in the lease to the contrary or unless there has been some written agreement between the lessee and the board to the contrary. Any improvements placed upon school lands after September 14, 1953, where written approval for such improvements was not obtained from the board and where there was no involvement by the state in the transferring of leases or other written agreement with such lessees to the contrary, shall be called nonpermitted improvements and considered as owned by the lessee, whether or not the nonpermitted improvements are attached to the land, unless there has been a provision in the lease to the contrary, and, the lessee shall have the right either (1) to remove such improvements from the land any time during the term of the lease or within six months after the land is sold or leased to a new lessee, and ~~+~~ PROVIDED, that when the nonpermitted improvements are removed the old lessee shall clean up the debris caused thereby or bury it at least three feet below the surface of the land and any basements or holes caused by

the nonpermitted improvements shall be filled such that cultivated crops can be grown on the land or (2) to sell the nonpermitted improvements to the buyer of the land, or the new lessee at prices agreed upon by the old lessee and the buyer or new lessee. ~~If , AND PROVIDED FURTHER, that if~~ the parties cannot agree upon the prices of the nonpermitted improvements, or if the improvements are not removed from the land within six months after the land is sold or leased to a new lessee other than the old lessee, the improvements shall become the property of the state. The board shall notify the old lessee by certified letter of the name and address of the purchaser of the land or the new lessee within ten days after the land has been sold or leased to a party other than the old lessee. The board shall, at the same time, notify the old lessee how much money the old lessee shall have to place in escrow with the county treasurer of the county in which the land is located for each nonpermitted improvement if the old lessee takes the option to remove any or all nonpermitted improvements to guarantee removal of debris and to do other things required by the board so as not to damage the land. The old lessee shall within thirty days after receipt of such certified letter notify the board which improvements he or she intends to remove from the land and which shall be left on the land and show proof of deposit of escrow money. If the debris is not removed and if other things required by the board are not done within the six-month period after the land is sold or leased, the old lessee shall forfeit the money placed in escrow to the state, and the board shall hire a contractor to do the things required of the old lessee in order that there not be damage to the land. Any money left in the escrow fund after being depleted by making payment to the contractor for the work done shall be remitted to the old lessee. The board shall have authority to sell any improvement left on the land.

Sec. 36. Section 72-240.10, Reissue Revised Statutes of Nebraska, is amended to read:

72-240.10. The Board of Educational Lands and Funds shall have the authority and duty, as specified in sections 72-240.10 to ~~72-240.24~~ 72-240.23 and 72-258, to determine the value to the land of permitted improvements and growing crops, owned by the lessee of record, on educational lands of the State of Nebraska, prior to the sale or lease of such lands. The value to the land of permitted improvements shall not exceed their replacement cost less depreciation. In making such determinations, the board shall notify the lessee that it intends to inspect the premises and shall attempt to so inspect at the convenience of the lessee.

Sec. 37. Section 72-240.21, Reissue Revised Statutes of Nebraska, is amended to read:

72-240.21. (1) When the land is put up for sale, the minimum sale price shall be determined as in section 72-258.

(2) At the time of sale or lease, but prior to the commencement of bidding, a representative of the board shall announce to all present the value to the land of the permitted improvements and growing crops for which the purchaser of the land or lease must pay the lessee as determined under sections 72-240.10 to ~~72-240.24~~ 72-240.23 and 72-258 or by agreement, and shall clearly state that the payment for these permitted improvements and growing crops shall be in addition to the price paid for the land or the lease.

(3) In making the publications required by section 72-233 or 72-258, the board shall include in those publications the determined value to the land of the permitted improvements and growing crops owned by the lessee of the land and shall clearly indicate that this amount is to be paid in addition to the price paid for the land or the lease.

(4) When the land is sold, the purchaser shall be instructed by the board that he or she must, within thirty days of the date of the sale, deposit the amount of value of the permitted improvements with the county treasurer of the county wherein the land is situated with instructions to the treasurer that the money be paid to the lessee upon notification of issuance of the deed or lease. The state shall have a lien upon the funds so paid to the amount of any unpaid rent and interest on such lands due and owing to the state from the former lessee.

Sec. 38. Section 72-240.22, Reissue Revised Statutes of Nebraska, is amended to read:

72-240.22. The permitted improvements and growing crops covered by sections 72-240.10 to ~~72-240.24~~ 72-240.23 and 72-258 shall be deemed to be separate permitted improvements and if the board and the lessee agree as to the value of some permitted improvements but disagree as to the value of others, only those on which they do not agree need be appraised under the appraisal provisions of sections 72-240.10 to ~~72-240.24~~ 72-240.23 and 72-258.

Sec. 39. Section 72-240.23, Reissue Revised Statutes of Nebraska,

is amended to read:

72-240.23. If land is not sold under the provisions of sections 72-240.10 to ~~72-240.24~~ 72-240.23, 72-257, and 72-258 and is leased according to section 72-258.01, the new lessee shall pay to the old lessee the value of his or her permitted improvements as determined for sale purposes.

Sec. 40. Section 72-241, Reissue Revised Statutes of Nebraska, is amended to read:

72-241. ~~No~~ An assignment of a school land lease ~~or sale contract~~ shall not be valid until recorded in the office of the Board of Educational Lands and Funds, and shall not be eligible to such record if there are any payments of interest or rental due at the time the assignment is offered for record. ~~The provisions of sections 72-201 to 72-251 shall apply to conditional assignments of sale contracts. Forthwith upon receipt of the conditional assignments of such sale contracts, the assignee shall record the conditional assignments of the sale contracts in the same manner as original assignments are recorded with the board, with the same provisions as to fees. Whenever the assignor of a conditional sale contract has paid the debt to secure which such conditional assignment was made, the assignee to whom such assignment was made, upon being paid the reasonable and necessary expense incurred in executing such release, shall execute and deliver to the assignor a release of such assignment. If the conditional assignment of any sale contract is foreclosed, and a sale of the land covered by such assignment is had therein, and such sale is confirmed, the clerk of the court in which the decree of foreclosure is rendered, shall, upon request, furnish the purchaser at such sale with a certificate setting forth the fact that such sale was had by virtue of a decree rendered in such action and that the sale has been confirmed. The certificate shall also state the name of the purchaser at such sale. The clerk of the court shall be entitled to a fee of twenty-five cents, and the board shall be entitled to a like fee for filing and recording such certificate, and for filing and recording a release of a conditional assignment of a sale contract.~~

Sec. 41. Section 72-246, Reissue Revised Statutes of Nebraska, is amended to read:

72-246. All ~~lease contracts~~ leases executed after May 3, 1935, with respect to educational lands shall contain a covenant to the effect that no prairie lands shall be broken without written permission authorized by the Board of Educational Lands and Funds.

Sec. 42. Section 72-253, Reissue Revised Statutes of Nebraska, is amended to read:

72-253. (1) The Board of Educational Lands and Funds is authorized and empowered to enter into agreements with the officers and agents of the United States Government for the exchange of any state educational lands lying within any federal forest or game reserve within this state for other lands of equal areas and value belonging to the United States. The board is authorized to convey any such lands to the United States by deed as provided in section 72-208, upon the execution by the United States Government of a patent to the State of Nebraska for the United States lands so exchanged.

(2) The Board of Educational Lands and Funds is authorized, upon the written approval of the Governor, to enter into agreements with individuals for the exchange of any state educational lands for other lands of equal areas or value. ~~, or areas and value, belonging to such individuals.~~ Before such an exchange shall be made, it shall be shown that the Board of Educational Lands and Funds will likely be benefited by the exchange.

Sec. 43. Section 72-255, Reissue Revised Statutes of Nebraska, is amended to read:

72-255. The Board of Educational Lands and Funds is further authorized to secure from the holders of any leases ~~or sale contract~~ of any educational lands lying in any federal forest reserve, surrenders, relinquishments, or cancellation of such leases. ~~or sale contract.~~ If the board and the holder of any such leases ~~or sale contract~~ cannot agree upon the terms for such surrender, relinquishment, or cancellation, the board may take over the interest of such holder by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Sec. 44. Section 72-302, Reissue Revised Statutes of Nebraska, is amended to read:

72-302. Any person, ~~persons~~ or association of persons, corporate or otherwise, desiring to obtain the right to prospect for and develop the minerals or valuable substances upon or in any of the public lands or waters of the state, except oil and gas, may do so under the provisions of sections 72-301 to 72-314. It shall be unlawful to prospect upon or in any of such public lands or waters without a permit lease or for anyone to interfere with

the functions and duties of the state surveys having in charge the investigations of the natural resources of the state. The Conservation and Survey Division of the University of Nebraska at the request of the Board of Educational Lands and Funds shall make investigations and reports concerning state lands.

Sec. 45. Section 72-303, Revised Statutes Supplement, 1998, is amended to read:

72-303. Any qualified person or association desiring a prospector's right shall make application, giving the designation of the land by legal description, to the Board of Educational Lands and Funds, with the proper fees, and the board shall issue a permit lease therefor. If the applicant is an individual, the application shall include the applicant's social security number. The board may exercise discretionary power, and be guided by best public policy in granting leases, and may adopt rules, regulations, or resolutions necessary to expedite production, and to best preserve the interests and integrity of the state, and to prevent control by monopolies and alien enemies. No person shall be permitted to enter for such mineral purposes more than one section of land, and no development company or association shall be permitted to acquire in the aggregate more than ten thousand acres of state land by assignment or otherwise. Leases shall be for a term of not to exceed three years, subject to renewal as provided in section 72-307.

Sec. 46. Section 72-304, Reissue Revised Statutes of Nebraska, is amended to read:

72-304. The owner of the permit lease shall be required, in the case of potash, salines, silica, volcanic ash, sand, gravel, clay, fuller's earth, and tripoli, to report within thirty days after the issuance of such permit lease, and to begin construction of necessary works or the installation of necessary machinery, for the physical development of the area, within ninety days after the issuance of a lease. In the case of minerals, substances not above enumerated, and coal, the permittee leasee shall report within six months after issuance of permit the lease, and begin development operations within one year from the date of the lease. The lessee shall make reports to the Board of Educational Lands and Funds showing the progress of the work on or before December 1 of each year.

Sec. 47. Section 72-305, Reissue Revised Statutes of Nebraska, is amended to read:

72-305. Failure to progress with due diligence, or failure to make reports regularly as provided, or special reports when requested, or the filing of a statement which is untrue as to material facts, will subject the permit lease to forfeiture, and the termination of the rights of the lessee upon an order of the Board of Educational Lands and Funds.

Sec. 48. Section 72-308, Reissue Revised Statutes of Nebraska, is amended to read:

72-308. A mineral prospector's lease shall be issued to the highest and best bidder. ~~In cases of potash or other substances, the~~ The lease issued shall provide that the royalty shall be not less than five percent, in addition to the bonus rent to be determined by the Board of Educational Lands and Funds after examination and report by the Conservation and Survey Division of the University of Nebraska and before leasing. Such minerals or substances shall be set apart in pipelines, tanks, or other receptacles, suitable for receiving the same, to the credit and benefit of the state or, at the option of the state and by the approval of the board, the lessee shall pay the board each thirty days ~~into the proper educational funds of the state, through the county treasurer of the county in which the land is situated,~~ the gross market value thereof in cash. The state shall reserve the right to fully use and enjoy, for tillage or other agricultural use, the area leased for minerals, except such parts thereof as may be necessary for mining and development purposes, and a right-of-way over and across ~~said the~~ the premises to the place of mining or operating, and for pipelines. The lessee shall pay for all damages to growing crops, caused by such operations, and for the use of the land necessarily occupied. The lessee shall have the privilege of using sufficient water from the premises leased to run necessary boilers and engines incident to and used in the operations of the drills, mines, or development of products covered by the lease, and the right to remove the machinery, fixtures, and buildings placed on ~~said the~~ the premises by ~~said the~~ the lessee or those acting under the lessee. The state, or its authorized agent, may pay for and retain any structures or improvements sought to be removed by the lessee upon the abandonment, expiration, or cancellation of the lease.

Sec. 49. Section 72-907, Reissue Revised Statutes of Nebraska, is amended to read:

72-907. No lease shall be sold except at public auction, to be held

at the office of the Board of Educational Lands and Funds, ~~in the State Capitol,~~ after notice of the time and place of such sale by publication two consecutive weeks in a newspaper of general circulation in the State of Nebraska, and such other notice, if any, as the board may require. Proof of such publication shall be made by an affidavit of the publisher, manager, or foreman of such newspaper, to be filed in the office of the board. Subject to the board's right to reject all bids, such lease shall be sold to the highest and best bidder. The purchaser of such lease shall pay the cost of publishing the notice herein provided for. Should the lease not be sold following the publishing of such notice, the one who filed application for lease shall pay the publication costs, and, to secure the payment thereof, the board may require the applicant to furnish satisfactory security therefor.

Sec. 50. Original sections 31-601, 31-602, 33-104, 39-1713 to 39-1719, 72-201, 72-202, 72-204 to 72-205.04, 72-222.02, 72-229, 72-231, 72-232, 72-233, 72-234, 72-235 to 72-239, 72-240.02, 72-240.03, 72-240.05, 72-240.07, 72-240.10, 72-240.21 to 72-240.23, 72-241, 72-246, 72-253, 72-255, 72-302, 72-304, 72-305, 72-308, and 72-907, Reissue Revised Statutes of Nebraska, and section 72-303, Revised Statutes Supplement, 1998, are repealed.

Sec. 51. The following sections are outright repealed: Sections 72-209, 72-210, 72-211, 72-232.01, and 72-240.24, Reissue Revised Statutes of Nebraska.