

NEBRASKA ENVIRONMENTAL TRUST BOARD

TITLE 137

RULES AND REGULATIONS GOVERNING ACTIVITIES
OF THE NEBRASKA ENVIRONMENTAL TRUST

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TITLE 137
RULES AND REGULATIONS GOVERNING ACTIVITIES
OF THE NEBRASKA ENVIRONMENTAL TRUST FUND

STATE OF NEBRASKA
NEBRASKA ENVIRONMENTAL TRUST BOARD

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TITLE 137
RULES AND REGULATIONS GOVERNING ACTIVITIES
OF THE NEBRASKA ENVIRONMENTAL TRUST FUND

STATE OF NEBRASKA
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CHAPTER 1 - SCOPE OF ACTIVITIES

001. CONFLICT OF INTEREST.

001.01 AGENCY DIRECTOR ABSTENTIONS. Any board member who is also a director of a state agency shall abstain from voting on applications where more than 50% of the value of grant award accrues to the agency as primary, tangible benefits. Grant funds administered by the agency and passed through to other grant recipients are not considered to accrue value to the agency.

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CHAPTER 2 - ENDOWMENT FUND

001. SOLICITATION OF GIFTS, GRANTS, BEQUESTS, ROYALTIES AND DONATIONS. The Board may establish a fundraising plan and may review the plan at least annually. No solicitation of gifts, grants, bequests, royalties or donations will be conducted outside of this plan, without approval of the Board.

002. RECEIPT OF GIFTS, GRANTS, BEQUESTS, ROYALTIES AND DONATIONS.

002.01 The Board may accept any gift, grant, bequest, royalty or donation specifically designated for restricted purposes or projects which fall within the scope and purpose of the Nebraska Environmental Trust Act, except that the Board will not accept title to or legal interest in real property. The Board may establish a dollar value below which it will not accept specifically designated gifts. The Board may refuse any gift, grant, quest, royalty or donation at its sole discretion. The Board shall seek approval by the Governor of any gift or bequest of personal property in excess of \$10,000.00.

002.02 The Board may establish policies for the management of assets credited to the Funds subject to provisions of statute. Before adopting such policies, the Board shall hold at least one public meeting where the public is offered the opportunity to comment on the policies.

002.03 Gifts of cash, including bank notes, checks, money orders, currency or other legal tender will be credited to the Fund designated by the donor, if any. If the donor does not designate a Fund, the gift will be credited to the Endowment Fund.

002.04 The value of gifts other than cash will be credited to the Fund designated by the donor, if any. If the donor does not designate a fund, the gift will be credited to the Endowment Fund.

002.05 The Executive Director, on behalf of the Trust, may accept any gift of cash broadly designated for the purposes of the Trust. The Executive Director will not accept any specifically designated or restricted gift of cash or any gift other than cash without prior approval of the Board or a committee designated by the Board to act in its stead.

003. ALLOCATION OF RECEIPTS AND PROCEEDS.

003.01 The Executive Director will prepare an annual statement of all gifts, grants, bequests, royalties, and donations to the Funds for the prior fiscal year. The statement will indicate donor Fund designations, if any. The statement will include a report of any earnings on gifts, grants, bequests, royalties, donations or investments available for allocation by the Board.

003.02 The Board may allocate each fiscal year an amount from the Endowment Fund to the Trust Fund for projects which conform to the funding categories of the Board to the extent that the Board determines those projects have merit. The amount of this allocation shall not include the principal of any grants previously made from the Trust Fund to the

Endowment Fund from proceeds originally credited to the Trust Fund pursuant to Nebraska Revised Statute § 9-812.

003.03 The Board may award a grant each fiscal year from the Trust Fund to the Endowment Fund. The grant may not exceed two hundred percent (200%) of all other proceeds credited to the Endowment Fund in that year and may not exceed fifty percent (50%) of the total proceeds credited to the Trust Fund pursuant to Nebraska Revised Statute § 9-812 for that year. Grant awards allocated to the Endowment Fund from the Trust Fund shall remain invested in the Endowment Fund and shall not be reallocated.

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CHAPTER 3 - APPLICATION PROCESS

001. FORM OF APPLICATION AND ACCOMPANYING MATERIALS. An applicant for financial assistance from the Trust shall comply with prevailing application method(s) approved by the Board no later than three (3) months prior to the submission deadline. The application shall be complete in every aspect at the time of submittal and may include additional information to demonstrate the project's eligibility for funding.

001.01 The Executive Director shall review each application submitted and shall determine whether the application is substantially complete for initial review. The Executive Director shall review the eligibility criteria to provide an eligibility recommendation to the Grants Committee. The Grants Committee of the Board shall review each such application and shall make a preliminary recommendation of approval or rejection of the proposal for eligibility based on the recommendation of the Executive Director.

001.02 For any application, the Grants Committee will determine whether further information will be needed to evaluate the eligibility of the proposal. If additional information is needed, the Executive Director will so notify the applicant, and provide a reasonable time period for submission of the additional material.

002. TIMEFRAME FOR FILING AND REVIEW. All applications shall be filed by the dates set by the Board as part of the adopted calendar for the application and review processes. All necessary reviews of each application shall also be completed in accordance with that calendar.

CHAPTER 4 - CRITERIA FOR ELIGIBILITY

001. ELIGIBILITY REQUIREMENTS. To be eligible for consideration in the rating processes for funding, the applicant's proposed project must be consistent with the following criteria for eligibility as described in Sections 001 to 006 of this Chapter.

001.01 PROHIBITION AGAINST FUNDING REGULATORY MANDATES.

001.01(A) Regulatory means to control, direct, or govern.

001.01(B) Regulations means only those rules codified in the Nebraska Administrative Code.

001.02 The fund shall not pay for projects to the extent such projects have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship. For purposes of this section, "direct beneficiaries" shall not be deemed to include a person who receives incidental benefits from a project which primarily benefits the general public. A serious financial hardship may be deemed to exist when the direct beneficiary of the grant funding, which may or may not be the grant sponsor or applicant, needs substantially all of its current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary subsistence expenses during the project period.

001.03 The grants should assist those projects which will make a real contribution to achieving the board's environmental categories. A real contribution is one that is measurable.

001.04 The grants should assist those projects which offer the greatest public benefits; and the public benefit must be greater than an incidental private benefit.

001.05 Grants for land purchases or easements shall not cause the elimination of the property tax liability.

002. ENVIRONMENTAL ACCEPTANCE. A project is considered to be environmentally acceptable when:

002.01 The project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species and shall meet the requirements contained in the Nongame and Endangered Species Conservation Act, Nebraska Revised Statute § 37-801; and

002.02 The plan of development minimizes any adverse impacts on the natural environment, adequately addresses existing cultural resources and results in environmental net gain.

002.03 In addition to any proposed mitigation measures, all aspects of the project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan minimizes adverse impacts. The Board may request

additional information it deems necessary in determining environmental acceptability. The applicant, if required by the Board, will be provided a reasonable period of time to respond to requests for information and such other items as the applicant of the Board identifies as relevant to the issued of environmental acceptance.

003. CLEAR AND DIRECT ENVIRONMENTAL BENEFITS. A project will be considered to have clear and direct environmental benefits if the realization of those benefits can be reasonable expected, as a result of the project and if those benefits will be obvious. The application will need to describe the environmental benefits anticipated as a result of the project and how those benefits will be clearly and directly attained. Environmental benefit can be achieved through the contribution of assets and services that enhance the capability of communities and individuals to conserve, enhance, and restore the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and natural areas of aesthetic or scenic values.

004. CONTRIBUTION TO ACHIEVE THE BOARD'S FUNDING CATEGORIES. Only those projects which contribute to the existing environmental categories established pursuant to the Nebraska Environmental Trust Act shall be eligible for financial assistance.

005. PUBLIC BENEFITS. For a project to be eligible for funding assistance, it must produce public, not just private, benefits. The public benefit must be greater than the private benefit. The project must be implemented and completed in Nebraska. Public access is a public benefit.

006. FINANCIAL AND TECHNICAL FEASIBILITY. Financial and technical feasibility may be evaluated by the use of subcommittees, contractual assistance or advisory groups. Standards for each of these factors are as set out below:

006.01 FINANCIAL FEASIBILITY. A project is financially feasible if sufficient funds will be made available to complete the project as described in the application and to maintain and operate any tangible component of the project for its useful life or until disposal. Each applicant shall submit a project budget identifying the nature and amount of each source of funds to be used to carry out the project; a schedule indicating when such funds will be received; and a schedule indicating when the funds available will be expended to carry out the project. Additional financial data may be supplied by the applicant.

006.02 TECHNICAL FEASIBILITY. A project that is structural in nature shall be considered technically feasible when it can and will be designed, constructed, and operated utilizing accepted engineering and other technical principles and concepts to accomplish the purpose(s) for which it was planned. A project which is nonstructural in nature shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned.

CHAPTER 5 - EVALUATING PROPOSALS FOR ELIGIBILITY

001. ELIGIBILITY REVIEW. Upon receipt of all application material, the Executive Director shall submit the application to the Grants Committee of the Board appointed by the Chairperson and any technical advisory committee(s) established by the Board for final eligibility review. The Grants Committee and Advisory Committees members shall complete their reviews so that the application may be considered in accordance with the calendar established annually by the Board. The Grants Committee or any technical advisory committee member may request the Executive Director to obtain additional information from the applicant.

002. GRANTS COMMITTEE ACTION. After receiving comments from any technical advisory committee reviewing an application, the Grants Committee shall make the following recommendations to the Board:

002.01 Any conditions which the Grants Committee recommends be placed on the project to ensure its consistency with the objectives of the Trust Fund and with other state policies, plans, and programs.

003. REQUIRED FINDINGS. Prior to making any recommendation to the Board for approval of a project for funding eligibility, the Grants Committee shall determine that the project is consistent with the requirements.

004. ELIGIBILITY FINDINGS COMBINED WITH RECOMMENDED RATINGS. The Grants Committee shall make the recommendations to the Board on project eligibility in accordance with this chapter and at the same time provide the Board with a preliminary ranking list for all projects.

005. ACTION BY THE BOARD ON ELIGIBILITY RECOMMENDATIONS. The Board may adopt or revise and adopt the recommendations of the Grants Committee. For each project for which eligibility is established by the Board, the Board shall also establish the total amount of money for which the project is eligible if it receives sufficient ranking for funding. Projects determined eligible for funding by the Board shall not be entitled to any funds until they have been subjected to the ranking processes and have received sufficient ranking for funding given the funds available.

Chapter 6 - PROJECT RANKING SYSTEMS

001. Pursuant to this Chapter and the factors set forth herein, the Executive Director shall prepare Project Ranking Systems to be used to rank all applications which are eligible. The Project Ranking Systems shall be approved by an affirmative vote of the Board after public hearing. Similarly, any subsequent amendments to a Project Ranking System shall be approved by an affirmative vote of the Board after public hearing.

002. The Project Ranking Systems adopted by the Board shall be used by the Grants Committee for ranking of projects.

003. RANKING FACTORS. The Project Ranking Systems shall assign a numeric value to each criterion and combine these values into a total score for each application. Each Ranking System shall include, but is not limited to, criteria to evaluate each application to the extent that the project will accomplish the following:

003.01 HELP THE BOARD ATTAIN A GEOGRAPHIC MIX OF PROJECTS OVER TIME. This does not mean that a strict geographic mix will be sought during each funding cycle but that points may be awarded to projects in specific areas if it becomes apparent that the area is receiving funding for proportionately fewer projects than other areas of the state.

003.02 BE COST EFFECTIVE. Cost effective shall include, as applicable, a comparison of the cost of the project to its expected monetary and non-monetary benefits and whether there is another reasonably available means of accomplishing the same purpose or purposes more economically. A high indirect labor and overhead cost not directly related to the project direct costs is less cost effective than one with a low indirect rate or percentage. Data shall be provided by the applicant detailing the cost effectiveness of all budgeted expenses requested that includes the provided indirect rates.

003.03 HAVE ECONOMIC IMPACTS. Economic impacts resulting from the project may be realized in increased real property valuations, mitigation of environmental hazards to the natural physical and biological environment in Nebraska, an improvement of or increase in habitat, increased recreational opportunities, and other contributions to the wellbeing of the area affected by the project. Data shall be provided by the applicant detailing the proposed economic impacts of the project.

003.04 PRODUCE DIRECT ENVIRONMENTAL IMPACT. Direct environmental impacts are those changes to the natural, physical, and biological environment caused by the project occurring at the time and in the place the project is carried out.

003.05 PRODUCE ENVIRONMENTAL BENEFITS TO THE GENERAL PUBLIC, ESPECIALLY BENEFITS WHICH ARE LONG TERM IN NATURE. A long-term public benefit is defined as public benefits lasting in excess of ten (10) years. A project that is intended to extend beyond three (3) years in duration and can demonstrate that it can continue without NET Board support can be deemed a sustainable general public benefit. Projects less than three (3) years in duration must have a defined general public benefit listed in the application. Public access can be considered a general public benefit.

003.06 PROVIDE A PLAN FOR EVALUATING THE RESULTS OF THE EXPENDITURE OF GRANT FUNDS. An applicant shall provide a baseline measurement, the target improvement, and the real time value of the grant investment. The project goals, objectives and outcomes shall identify the tangible and intangible benefits to the public from achieving the objectives.

003.07 EVALUATE PERFORMANCE. For prior awarded grantees, awarded in the past three years looking back from the current application cycle, compliance with previous contract terms is required, including that any prior project was completed on time, quarterly, annual and final reports were submitted on time, no 15 Day Notice for a prior grant contract violation was issued to the grant Sponsor or Applicant.

004. Projects which are funded as multi-year projects may be exempted from the ranking process by the Board for the duration of the project or for up to the next two annual rankings following the ranking in which the initial commitment to the project is made provided that annual evaluations of progress toward project goals are submitted and accepted by the Executive Director. No commitment may exceed three years without formal action by the board to renew the grant or contract.

005. No application receiving fewer than twenty-five percent (25%) of the maximum points will be funded.

CHAPTER 7 – RANKING ELIGIBLE PROJECTS FOR FUNDING

001. After the evaluation of applications for eligibility, all eligible projects shall be ranked according to the Project Ranking System established and adopted by the Board for the competition to which the application was submitted.

002. Preliminary ranking shall be performed by the Grants Committee of the Board appointed by the Chairperson. In deciding the assignment of points for each eligible project, the Committee shall do so in a manner which provides a fair comparison of projects regardless of cost. More expensive projects shall not receive additional points just because they are larger in scale. Points shall be assigned with consideration of the anticipated effects of the project relative to its costs. The Committee may request assistance from the Executive Director to the extent necessary to evaluate each proposal.

003. The Grants Committee may request additional information from any applicant in written form. All additional supplements shall be in writing and signed by the applicant.

004. The Grants Committee shall report the results of the ranking process to the Chairperson by the date established therefore on the calendar approved annually by the Board. The report shall indicate the results of the ranking process with the highest scoring project at the top of the list along with the number of points scored and the amount of funding recommended to be approved. Lower ranked projects shall follow in sequential order showing the same information for each.

005. Upon receipt of the Grants Committee report, the Chairperson shall call a meeting of the Board to adopt or revise and adopt the Committee report and schedule a public hearing on the proposed funding list.

006. After the public hearing is conducted on the proposed funding list, the Board may take action on actual funding. If the Board decides that any proposed project does not have sufficient merit to justify funding from the Trust, the Board may choose not to fund the project notwithstanding its consistency with eligibility criteria or its final ranking. The proposed list may be revised after the public hearing only with the approval of a majority of Board members present.

007. Notwithstanding ratings determined in this Chapter, no allocation of funds shall be made for remediation in a manner inconsistent with Nebraska Revised Statute § 81-15,176(2)(b).

CHAPTER 8 - GRANT ADMINISTRATION

001. After the Board takes action to award grants to specific projects, the Executive Director shall begin notification procedures. The Executive Director shall also prepare grant documents for disbursement in accordance with this Chapter.

001.01 Grant documents shall include a notice of grant award, a disbursement schedule, standard conditions and any special conditions all of which will be included in a grant contract to be signed by the grantee.

002. The Executive Director shall prepare standard conditions applicable to all grants and shall have discretion to negotiate specific conditions within the limits of the intent specified by the Board.

003. Grant award contracts which bind the Trust Fund shall be signed by the Chairperson and the Executive Director.

004. The grant period shall be a set period of time designated in the grant documents based upon activities approved for grant funding. All grant funds shall be expended in accordance with conditions of the grant. Any unexpended funds remaining after the grant period shall be returned by the grantee to the Fund.

004.01 All interest earned by grant funds shall be considered a part of the grant and, therefore, is subject to all of the requirements of the grant.

005. Any grant contract which includes the transfer or acquisition of real property which is taxable before such transfer or acquisition shall specify a mechanism to address the continued payment of property taxes or payments in lieu of property taxes.

006. Any grant contract which includes a construction project may require, but not be limited to, the following special conditions:

006.01 Final plans and specifications shall be approved by the Executive Director. The Executive Director may require that plans and specifications be stamped by a Professional Engineer registered to practice in the State of Nebraska.

006.02 A construction schedule including commencement of construction; accountability for inspection during construction; construction completion; and initiation of operation (if applicable).

006.03 The Executive Director may provide a contingency within the grant for change orders.

006.03(A) All change orders must be approved by the Executive Director in a manner set out within the grant contract.

006.04 Upon completion of the project, a certification of completion shall be filed with the Board, which certifies that construction was substantially consistent with the approved plans and specifications. The certification shall be signed by the grantee. The Executive Director may also require a certification signed by a Professional Engineer registered to practice in the State of Nebraska.

007. The applicant shall assure the Executive Director that all legal requirements have or can be met prior to the allocation of funds. Legal information may include the following as appropriate for the project, this list is not exclusive to other necessary information:

007.01 If the applicant is a governmental entity, citation(s) to the legal authorities relied upon by the applicant to undertake or participate in the project.

007.02 An explanation, with appropriate documentation of legal authorities, of the applicant's intention to finance that part of the project for which assistance from the fund is not requested.

007.03 A showing that the applicant has or can acquire any necessary land rights or water rights.

007.04 Copies of any available proposed or executed contracts or bids for construction or consultant services necessary for completion of the project which would help document the project's estimated costs.

007.05 A listing of any permits, licenses, or other approvals required for the project, their current status, and the estimated schedule for compliance.

007.06 An explanation of the applicant's plan to require consultants, contractors, and subcontractors to obtain liability insurance or bonding to ensure the proper design and construction of the project, as applicable.

007.07 An analysis of the applicant's potential liability for damages because of the project including failure of structural measures and an explanation of the applicant's plan to protect itself from any such liability.

007.08 Such other information, plans, and specifications as requested by the Executive Director or the Board and are reasonably necessary to confirm the applicant's authority.

008. Funds shall be disbursed to the grantee no more often than once per month in accordance with the grant contract.

009. The grantee shall keep financial records for the project and shall submit periodic progress reports as required to the Executive Director during the grant period. At the end of the grant period, the grantee shall submit a final financial report summarizing the project. If a survivability clause was in the grant award contract, a separate legal instrument for those items identified in the grant contract may be required to close out the grant contract. Failure to submit the progress reports may be considered a violation of the grant contract. The progress report shall include, but not be limited to:

009.01 A comprehensive expenditure report of all grant funds, including any interest earned on grant funding by line item, and all other income utilized to carry out the project.

009.02 Copies of all receipts for expenditures of grant funding and expenditures of all interest earned on grant funding.

009.03 An inventory of all equipment or personal property purchased with grant funding including model number and serial number; and

009.04 Any additional information required.

010. If a grantee wishes to modify a project other than one covered by Section 006 above, the grantee must submit a proposed amendment to the grant contract including a revised line-item budget. The proposed amendment must be submitted to the Executive Director at least thirty (30) days prior to the requested changes with an explanation of need. The Executive Director will then either approve or deny the proposal and inform the grantee in writing of his or her decision. The request will require Nebraska Environmental Trust Board approval if over \$10,000.

010.01 Any expenditure of grant funds not in accordance with the grant contract and not pursuant to the process set out in Section 008 may be considered a violation of the grant requirement.

011. Equipment and other personal property purchased with grant funding shall be used only for purposes of the grant during the term of the grant contract.

012. Failure by the grantee to comply with these regulations or with the grant contract may result in a revocation of the grant, a withholding of grant disbursements or a requirement to reimburse the fund for money already disbursed under the contract.

012.01 Prior to any action under Section 012 by the Executive Director, there shall be a written notice to the grantee explaining the intended action and the reason it may be taken. The grantee shall have fifteen (15) days to respond to the notice and may request an informal meeting with the Executive Director within that time frame. After fifteen (15) days have expired, the Executive Director may proceed with his or her action under Section 012.

013. In addition to financial progress reports as required in Section 009, grantees shall submit annual reports to the Board. The Board shall conduct annual reviews of existing projects for compliance with the project goals and grant requirements through reports provided by grantees and staff. Annual reports shall be due as specified in the grant contract.

014. The Executive Director shall conduct periodic financial audits of projects at a frequency as determined by the Executive Director. Audits shall be performed to ensure proper use of grant funds and to determine compliance with these regulations and with the grant contract.

014.01 Grantees shall retain all records related to a project and shall allow access to the records by the Executive Director or his or her designee during regular business hours or at any reasonable hour of the day.

014.02 The grantee shall allow access for inspection of any equipment, property, or other tangible object for which grant funds were expended to the Executive Director or his or her designee.

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CHAPTER 9 – DEFINITIONS

001. CALENDAR shall mean the calendar established each year by the Board to set out various deadline dates relating to establishment of funding categories, receipt and review of grant applications, and allocation of grants.

002. APPLICANT shall mean any person, or their authorized agent, who submits and signs an application for grant allocations.

003. EXECUTIVE DIRECTOR shall mean the Executive Director of the Nebraska Environmental Trust.

004. PRIMARY, TANGIBLE BENEFITS shall mean a project's net values, expressed in monetary terms, of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries.

005. BOARD shall mean the Nebraska Environmental Trust Board.

006. TRUST FUND shall mean the Nebraska Environmental Trust Fund.

007. ENDOWMENT FUND shall mean the Nebraska Environmental Endowment Fund.

008. FUNDS shall mean both the Nebraska Environmental Trust and the Nebraska Environmental Endowment.