

NEBRASKA WHEAT RESOURCES ACT

- Administration: This Act is administered by the Nebraska Wheat Development, Utilization, and Marketing Board, 301 Centennial Mall South, Fourth Floor, Lincoln, NE 68509. Telephone: (402) 471-2358.
- Revisions: This Act was last revised during the 2012 session of the Nebraska Legislature.
- Rules: A regulation has been promulgated under this Act known as Title 483, Chapter 1, Nebraska Administrative Code - Wheat Excise Tax Regulation.

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**2-2301. Act, how cited.**

Sections 2-2301 to 2-2321 shall be known and may be cited as the Nebraska Wheat Resources Act.

**Source:** Laws 1955, c. 5, § 1, p. 59; Laws 2012, LB905, § 1.

**2-2302. Nebraska Wheat Development, Utilization, and Marketing Board; created; members.**

There is hereby established the Nebraska Wheat Development, Utilization, and Marketing Board. Members shall be appointed by the Governor to the board pursuant to section 2-2305.

**Source:** Laws 1955, c. 5, § 2, p. 59; Laws 1981, LB 11, § 21; Laws 2012, LB905, § 2.

**2-2303. Terms, defined.**

For purposes of the Nebraska Wheat Resources Act, unless the context otherwise requires:

(1) Board means the Nebraska Wheat Development, Utilization, and Marketing Board;

(2) Commercial channels means the sale of wheat for any use when sold to any commercial buyer, dealer, processor, cooperative, or any person, public or private, who resells any wheat or product produced from wheat;

(3) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to wheat from a grower and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower when the actual or constructive possession of such wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) Grower means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, and both the owner and the tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business units, devices, and arrangements;

(5) Net market price means the sales price, or other value, per volumetric unit received by a producer for wheat after adjustment for any premium or discount;

(6) Net market value means the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a producer for wheat after adjustments for any premium or discount. For wheat pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, net market value means the principal amount of the loan; and

(7) Sale includes any pledge or mortgage of wheat after harvest to any person, public or private.

**Source:** Laws 1955, c. 5, § 3, p. 59; Laws 1981, LB 11, § 22; Laws 1987, LB 1, § 11; Laws 1993, LB 121, § 64; Laws 2012, LB905, § 3.

**2-2304. Board; membership; qualifications; appointment; districts; enumerated.**

(1) The board shall be composed of seven members who shall (a) be citizens of Nebraska, (b) be at least twenty-one years of age, (c) have been actually engaged in growing wheat in this state

for a period of at least five years, and (d) derive a substantial portion of their income from growing wheat. The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall serve as nonvoting members of the board. With the exception of the nonvoting members, the Governor shall appoint the members to the board.

(2) The seven appointed members shall be appointed from the following districts:

(a) District 1: The counties of Sioux, Scotts Bluff, Dawes, Box Butte, Morrill, Sheridan, and Garden;

(b) District 2: The counties of Kimball, Banner, and Cheyenne;

(c) District 3: The counties of Perkins, Deuel, Keith, Arthur, McPherson, Logan, Grant, Hooker, Thomas, and Cherry;

(d) District 4: The counties of Lincoln, Chase, Dundy, Hayes, Hitchcock, and Frontier;

(e) District 5: The counties of Buffalo, Dawson, Phelps, Custer, Gosper, Kearney, Red Willow, Furnas, Harlan, and Franklin;

(f) District 6: The counties of Adams, Webster, Nuckolls, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, Richardson, Otoe, Cass, Lancaster, Seward, York, Hamilton, Hall, Sherman, Howard, Merrick, Nance, Polk, Butler, Saunders, Sarpy, Douglas, Washington, Dodge, Colfax, Platte, Burt, Cuming, Stanton, Madison, Boone, Valley, Greeley, Antelope, Pierce, Wayne, Thurston, Dakota, Dixon, Cedar, Knox, Wheeler, Garfield, Loup, Blaine, Brown, Rock, Holt, Boyd, Keya Paha, Clay, Fillmore, and Saline; and

(g) District 7: The at-large district.

**Source:** Laws 1955, c. 5, § 4, p. 60; Laws 1969, c. 21, § 1, p. 193; Laws 1981, LB 11, § 23; Laws 1991, LB 685, § 1; Laws 2002, LB 474, § 1.

## **2-2305. Board; transitional provisions; vacancy; how filled; term.**

The member serving former district 1 will assume the role of serving new district 1 on February 28, 2002, and his or her term shall expire on June 30, 2004. The member serving former district 2 will assume the role of serving new district 2 on February 28, 2002, and his or her term shall expire on June 30, 2003. The term of the member serving district 3 shall expire on June 30, 2002. The term of the member serving district 4 shall expire on June 30, 2006. The term of the member serving district 5 shall expire on June 30, 2005. The member serving former district 6 will assume the role of serving new district 6 on February 28, 2002, and his or her term shall expire on June 30, 2004. The member serving former district 7 will assume the role of serving new district 7 on February 28, 2002, and his or her term shall expire on June 30, 2005. As the terms of office of the members serving on February 28, 2002, expire as provided in this section, their successors shall be appointed to serve for terms of five years and until their successors are appointed and qualified. Terms of office shall commence on July 1. A member appointed to fill a vacancy, occurring before the expiration of the term of a member separated from the board for any cause, shall be appointed

for the remainder of the term of the member whose office has been so vacated in the same manner as his or her predecessor.

**Source:** Laws 1955, c. 5, § 5, p. 61; Laws 1969, c. 21, § 2, p. 194; Laws 1981, LB 11, § 24; Laws 1991, LB 685, § 2; Laws 2002, LB 474, § 2.

**2-2306. Board; voting members; expenses.**

All voting members of the board shall be entitled to actual and necessary expenses, as provided for in sections 81-1174 to 81-1177, while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.

**Source:** Laws 1955, c. 5, § 6, p. 61; Laws 1981, LB 11, § 25; Laws 2012, LB905, § 4.

**2-2307. Board; removal of member; grounds.**

A member of the board shall be removable by the Governor for cause. He or she shall first be given a copy of written charges against him or her and also an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he or she was appointed, or (3) be actually engaged in growing wheat in the state shall be deemed sufficient cause for removal from office.

**Source:** Laws 1955, c. 5, § 7, p. 61; Laws 1981, LB 11, § 26.

**2-2308. Board; chairperson; meetings; conduct of business.**

At the first meeting of the board, it shall elect a chairperson from among its members. The board shall meet at least once every three months and at such other times as called by the chairperson or by any three members of the board. The majority of the members of the board shall constitute a quorum for transaction of business. The affirmative vote of the majority of all members of the board shall be necessary for the adoption of rules and regulations.

**Source:** Laws 1955, c. 5, § 8, p. 62; Laws 1981, LB 11, § 27.

**2-2309. Declaration of policy; board; powers and duties.**

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the wheat industry and the economy of the areas producing wheat. The Nebraska Wheat Development, Utilization, and Marketing Board shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, such board shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of wheat grown within the State of Nebraska;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Wheat Resources Act and to enter into such contracts as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the Nebraska Wheat Resources Act. The rules and regulations shall include provisions which prescribe the procedure for adjustment of the excise tax by the board pursuant to section 2-2311;

(5) Conduct, in addition to the things enumerated any other program for the development, utilization, and marketing of wheat grown in the State of Nebraska. Such programs may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(6) Make refunds for overpayments of the excise tax according to rules and regulations adopted and promulgated by the board; and

(7) Employ personnel and contract for services which are necessary for the proper operation of the program.

**Source:** Laws 1955, c. 5, § 9, p. 62; Laws 1959, c. 8, § 1, p. 105; Laws 1981, LB 11, § 28; Laws 1983, LB 505, § 1; Laws 1986, LB 1230, § 17; Laws 1988, LB 963, § 1.

**2-2310. Board; administrative office.**

The board may establish an administrative office in the State of Nebraska at such place as may be suitable for the furtherance of the Nebraska Wheat Resources Act. The board shall not purchase, construct, or otherwise obtain title to its own administrative office, but shall be limited to leasing state or commercial office space.

**Source:** Laws 1955, c. 5, § 10, p. 63; Laws 1981, LB 11, § 29; Laws 1987, LB 1, § 12; Laws 2012, LB905, § 5.

**2-2311. Excise tax; amount; adjustment.**

(1) Commencing July 1, 1990, the board may levy an excise tax of not to exceed one and one-half cents per bushel upon all wheat sold through commercial channels in the State of Nebraska. Commencing on October 1, 2012, there is hereby levied an excise tax of four-tenths percent of the net market value of wheat sold through commercial channels in the State of Nebraska. The tax shall be levied and imposed on the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Nebraska Wheat Resources Act, no wheat shall be subject to the tax more than once.

(2) After October 1, 2014, the board may, whenever it determines that the excise tax levied by this section is yielding more or less than is required to carry out the intent and purposes of the Nebraska Wheat Resources Act, reduce or increase such levy for such period as it deems justifiable, but not less than one year, and such levy shall not exceed five-tenths percent of the net

market value. Any adjustment to the levy shall be by rule and regulation adopted and promulgated by the board in accordance with the Administrative Procedure Act.

**Source:** Laws 1955, c. 5, § 11, p. 63; Laws 1977, LB 390, § 1; Laws 1981, LB 11, § 30; Laws 1983, LB 505, § 2; Laws 1987, LB 1, § 13; Laws 1987, LB 610, § 1; Laws 1988, LB 963, § 2; Laws 2012, LB905, § 6.

## **Cross References**

- **Administrative Procedure Act**, see section 84-920.

### **2-2312. Excise tax; deduct from loan proceeds.**

In the case of a pledge or mortgage of wheat as security for a loan under the federal price support program, the tax shall be deducted from the proceeds of such loan at the time the loan is made.

**Source:** Laws 1955, c. 5, § 12, p. 63.

### **2-2313. Excise tax; stored wheat.**

The tax provided for by section 2-2311 shall be deducted as provided by the Nebraska Wheat Resources Act, whether such wheat is stored in this or any other state.

**Source:** Laws 1955, c. 5, § 13, p. 63; Laws 2012, LB905, § 7.

### **2-2314. Excise tax; federal government; sale; exception.**

The tax, herein levied and imposed by the provisions of section 2-2311, shall not apply to the sale of wheat to the federal government for ultimate use or consumption by the people of the United States, where the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

**Source:** Laws 1955, c. 5, § 14, p. 63.

### **2-2315. Excise tax; purchaser; records; reports; forms; remittance.**

(1) The purchaser, at the time of settlement therefor, shall deduct the wheat excise tax as provided in section 2-2311 and shall maintain the necessary record of the excise tax for each purchase of wheat on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of bushels of wheat sold; and (d) the amount of wheat excise tax collected on each purchase. Such records shall be open for inspection and audit by authorized representatives of the board during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October on forms prescribed by the board, a statement of the number of bushels of

wheat purchased in Nebraska. At the time the statement is filed, the purchaser shall pay and remit to the board the tax as provided for in section 2-2311.

**Source:** Laws 1955, c. 5, § 15, p. 63; Laws 1959, c. 8, § 2, p. 106; Laws 1965, c. 16, § 1, p. 148; Laws 1969, c. 21, § 3, p. 195; Laws 1981, LB 11, § 31.

**2-2316. Repealed. Laws 1981, LB 545, § 52.**

**2-2316.01. Repealed. Laws 1981, LB 11, § 38.**

**2-2317. Nebraska Wheat Development, Utilization, and Marketing Fund; created; use; investment.**

The Nebraska Wheat Development, Utilization, and Marketing Fund is created. All taxes collected by the board pursuant to the Nebraska Wheat Resources Act and any repayments relating to the fund, including license fees or royalties, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to carry out the act. The board shall at each regular meeting review and approve all expenditures made since its last regular meeting. 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.

**Source:** Laws 1955, c. 5, § 17, p. 64; Laws 1969, c. 584, § 30, p. 2359; Laws 1981, LB 11, § 33; Laws 1983, LB 53, § 1; Laws 1987, LB 1, § 14; Laws 1995, LB 7, § 11; Laws 2012, LB905, § 8.

## **Cross References**

- **Nebraska Capital Expansion Act**, see section 72-1269.
- **Nebraska State Funds Investment Act**, see section 72-1260.

**2-2318. Board; restriction on authority; cooperate with University of Nebraska and other organizations.**

The Nebraska Wheat Development, Utilization, and Marketing Board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the Department of Agriculture, University of Nebraska Institute of Agriculture and Natural Resources, or other proper local, state, or national organizations, public or private, in carrying out the Nebraska Wheat Resources Act.

**Source:** Laws 1955, c. 5, § 18, p. 64; Laws 1981, LB 11, § 35; Laws 1987, LB 1, § 15; Laws 2012, LB905, § 9.

**2-2319. Violations; penalty.**

Any person violating the Nebraska Wheat Resources Act shall be guilty of a Class III misdemeanor.

**Source:** Laws 1955, c. 5, § 19, p. 65; Laws 1977, LB 40, § 20; Laws 2012, LB905, § 10.

**2-2320. Repealed. Laws 1987, LB 1, § 16.**

**2-2321. Board; use of funds; restriction.**

No funds collected by the board shall be expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation.

**Source:** Laws 1981, LB 11, § 34; Laws 1985, LB 60, § 1.