

E AND R AMENDMENTS TO LB 526

Introduced by Larson, 40, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 46-294, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 46-294 (1) Except for applications approved in accordance
6 with subsection (1) of section 46-291, the Director of Natural
7 Resources shall approve an application filed pursuant to section
8 46-290 only if the application and the proposed transfer or change
9 meet the following requirements:

10 (a) The application is complete and all other information
11 requested pursuant to section 46-293 has been provided;

12 (b) The proposed use of water after the transfer or
13 change will be a beneficial use of water;

14 (c) (i) Any requested transfer in the location of use is
15 within the same river basin as defined in section 46-288 or (ii)
16 the river basin from which the appropriation is to be transferred
17 is tributary to the river basin to which the appropriation is to be
18 transferred;

19 (d) Except as otherwise provided in subsection (4) of
20 this section, the proposed transfer or change, alone or when
21 combined with any new or increased use of any other source of water
22 at the original location or within the same irrigation district,
23 reclamation district, public power and irrigation district, or

1 mutual irrigation or canal company for the original or other
2 purposes, will not diminish the supply of water available for or
3 otherwise adversely affect any other water appropriator and will
4 not significantly adversely affect any riparian water user who
5 files an objection in writing pursuant to section 46-291;

6 (e) The quantity of water that is transferred for
7 diversion or other use at the new location will not exceed
8 the historic consumptive use under the appropriation or portion
9 thereof being transferred, except that this subdivision does not
10 apply to (i) a transfer in the location of use if both the current
11 use and the proposed use are for irrigation, the number of acres
12 to be irrigated will not increase after the transfer, and the
13 location of the diversion from the stream will not change or (ii)
14 a transfer or change in the purpose of use of a surface water
15 irrigation appropriation as provided for in subsection (3), (5), or
16 (6) of section 46-290 if the transfer or change in purpose will
17 not diminish the supply of water available or otherwise adversely
18 affect any other water appropriator, adversely affect Nebraska's
19 ability to meet its obligations under a multistate agreement, or
20 result in administration of the prior appropriation system by the
21 Department of Natural Resources, which would not have otherwise
22 occurred;

23 (f) The appropriation, prior to the transfer or change,
24 is not subject to termination or cancellation pursuant to sections
25 46-229 to 46-229.04;

26 (g) If a proposed transfer or change is of an
27 appropriation that has been used for irrigation and is in the name

1 of an irrigation district, reclamation district, public power and
2 irrigation district, or mutual irrigation or canal company or is
3 dependent upon any such district's or company's facilities for
4 water delivery, such district or company has approved the transfer
5 or change;

6 (h) If the proposed transfer or change is of a
7 storage-use appropriation and if the owner of that appropriation is
8 different from the owner of the associated storage appropriation,
9 the owner of the storage appropriation has approved the transfer
10 or change;

11 (i) If the proposed transfer or change is to be
12 permanent, either (i) the purpose for which the water is to
13 be used before the transfer or change is in the same preference
14 category established by section 46-204 as the purpose for which
15 the water is to be used after the transfer or change or (ii) the
16 purpose for which the water is to be used before the transfer or
17 change and the purpose for which the water is to be used after the
18 transfer or change are both purposes for which no preferences are
19 established by section 46-204;

20 (j) If the proposed transfer or change is to be
21 temporary, it will be for a duration of no less than one year
22 and, except as provided in section 46-294.02, no more than thirty
23 years;

24 (k) The transfer or change will not be inconsistent with
25 any applicable state or federal law and will not jeopardize the
26 state's compliance with any applicable interstate water compact or
27 decree or cause difficulty in fulfilling the provisions of any

1 other formal state contract or agreement; and

2 (1) The proposed transfer or change is in the public
3 interest. The director's considerations relative to the public
4 interest shall include, but not be limited to, (i) the economic,
5 social, and environmental impacts of the proposed transfer or
6 change and (ii) whether and under what conditions other sources of
7 water are available for the uses to be made of the appropriation
8 after the proposed transfer or change. The Department of Natural
9 Resources shall adopt and promulgate rules and regulations to
10 govern the director's determination of whether a proposed transfer
11 or change is in the public interest.

12 (2) The applicant has the burden of proving that the
13 proposed transfer or change will comply with subdivisions (1)(a)
14 through (1) of this section, except that (a) the burden is on a
15 riparian user to demonstrate his or her riparian status and to
16 demonstrate a significant adverse effect on his or her use in order
17 to prevent approval of an application and (b) if both the current
18 use and the proposed use after a transfer are for irrigation,
19 the number of acres to be irrigated will not increase after the
20 transfer, and the location of the diversion from the stream will
21 not change, there is a rebuttable presumption that the transfer
22 will be consistent with subdivision (1)(d) of this section.

23 (3) In approving an application, the director may impose
24 any reasonable conditions deemed necessary to protect the public
25 interest, to ensure consistency with any of the other criteria
26 in subsection (1) of this section, or to provide the department
27 with information needed to properly and efficiently administer the

1 appropriation while the transfer or change remains in effect.
2 If necessary to prevent diminution of supply for any other
3 appropriator, the conditions imposed by the director shall require
4 that historic return flows be maintained or replaced in quantity,
5 timing, and location. After approval of any such transfer or
6 change, the appropriation shall be subject to all water use
7 restrictions and requirements in effect at any new location of use
8 and, if applicable, at any new diversion location. An appropriation
9 for which a transfer or change has been approved shall retain
10 the same priority date as that of the original appropriation.
11 If an approved transfer or change is temporary, the location of
12 use, purpose of use, or type of appropriation shall revert to the
13 location of use, purpose of use, or type of appropriation prior to
14 the transfer or change.

15 (4) In approving an application for a transfer, the
16 director may also authorize the overlying of water appropriations
17 on the same lands, except that if any such overlying of
18 appropriations would result in either the authorized diversion
19 rate or the authorized aggregate annual quantity that could be
20 diverted to be greater than is otherwise permitted by section
21 46-231, the director shall limit the total diversion rate or
22 aggregate annual quantity for the appropriations overlain to the
23 rate or quantity that he or she determines is necessary, in the
24 exercise of good husbandry, for the production of crops on the
25 land involved. The director may also authorize a greater number of
26 acres to be irrigated if the amount and rate of water approved
27 under the original appropriation is not increased by the change of

1 location. An increase in the number of acres to be irrigated shall
2 be approved only if (a) such an increase will not diminish the
3 supply of water available to or otherwise adversely affect another
4 water appropriator or (b) the transfer would not adversely affect
5 the water supply for any river basin, subbasin, or reach that has
6 been designated as overappropriated pursuant to section 46-713 or
7 determined to be fully appropriated pursuant to section 46-714 and
8 (i) the number of acres authorized under the appropriation when
9 originally approved has not been increased previously, (ii) the
10 increase in the number of acres irrigated will not exceed five
11 percent of the number of acres being irrigated under the permit
12 before the proposed transfer or a total of ten acres, whichever
13 acreage is less, and (iii) all the use will be either on the
14 quarter section to which the appropriation was appurtenant before
15 the transfer or on an adjacent quarter section.

16 Sec. 2. Original section 46-294, Reissue Revised Statutes
17 of Nebraska, is repealed.

18 Sec. 3. Since an emergency exists, this act takes effect
19 when passed and approved according to law.

20 2. On page 1, line 3, strike "and"; and in line 4 after
21 "section" insert "; and to declare an emergency".