

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 985

Introduced by Davis, 43.

Read first time January 17, 2014

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend section 46-233, Reissue
2 Revised Statutes of Nebraska; to grant standing to
3 natural resources districts; to provide requirements for
4 certain water appropriation applications; to provide a
5 duty for the Revisor of Statutes; and to repeal the
6 original section.

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

1 Section 1. Because the purposes for which natural
2 resources districts were created include the development, management,
3 utilization, and conservation of ground water and surface water
4 within their jurisdiction, each natural resources district shall have
5 the power and authority to bring, defend, or intervene in judicial
6 and quasi-judicial actions to protect and conserve the quantity or
7 quality of ground water and surface water resources within the
8 district.

9 Sec. 2. Section 46-233, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 46-233 (1) The United States and every person intending
12 to appropriate any of the public waters of the State of Nebraska
13 shall, before (a) commencing the construction, enlargement, or
14 extension of any works for such purpose, (b) performing any work in
15 connection with such construction, enlargement, or extension, or (c)
16 taking any water from any constructed works, make an application to
17 the department for a permit to make such appropriation. A permit may
18 be obtained to appropriate public waters for intentional underground
19 water storage and recovery of such water. A public water supplier may
20 make application to appropriate public waters for induced ground
21 water recharge.

22 (2) The application shall be upon a form prescribed and
23 furnished by the department without cost to an applicant. Such
24 application shall set forth (a) the name and post office address of
25 the applicant, (b) the source from which such appropriation shall be

1 made, (c) the amount of the appropriation desired, as nearly as it
2 may be estimated, (d) the location of any proposed work in connection
3 with the appropriation, (e) the estimated time required for its
4 completion, which estimated time shall include the period required
5 for the construction of ditches, pumps, and other features or
6 devices, (f) the time estimated at which the application of the water
7 for the beneficial purposes shall be made, which time shall be
8 limited to a reasonable time following the estimated time of
9 completion of the work when prosecuted with diligence, (g) the
10 purpose for which water is to be applied and (i) if for induced
11 ground water recharge by a public water supplier, a statement of the
12 times of the year when and location along a stream where flows for
13 induced ground water recharge are proposed and (ii) if for
14 irrigation, a description of the land to be irrigated by the water
15 and the amount, and (h) such facts and supporting documentation as
16 are required by the department which shall include, but not be
17 limited to, the depth of all wells, the extent of the underlying
18 aquifer, the expected rate of recharge, the minimum flow or flows
19 necessary to sustain the well field throughout the reach identified,
20 and the period of time that a well field would continue to meet
21 minimal essential needs of the public water supplier when there is no
22 flow as those factors relate to and are part of an evaluation of
23 pertinent hydrologic relationships.

24 A public water supplier making application for induced
25 ground water recharge may submit with its application a statement of

1 the amount of induced ground water recharge water which the public
2 water supplier presently uses as well as the amount of induced ground
3 water recharge water it anticipates using in the next twenty-five-
4 year period. Such statement shall also quantify the total amount of
5 water the public water supplier presently uses from the well field as
6 well as the total amount of water it anticipates using from the well
7 field in the next twenty-five-year period.

8 (3) Upon receipt of an application containing the
9 information set forth in this section, the department shall (a) make
10 a record of the receipt of the application, (b) cause the application
11 to be recorded in its office, and (c) make a careful examination of
12 the application to ascertain whether it sets forth all the facts
13 necessary to enable the department to determine the nature and amount
14 of the proposed appropriation. If such an examination shows the
15 application in any way defective, it shall be returned to the
16 applicant for correction, with a statement of the correction
17 required, within ninety days after its receipt. Ninety days shall be
18 allowed for the refiling of the application, and in default of such
19 refiling, the application shall stand dismissed. Except as provided
20 in subsection (4) of this section, if so filed and corrected as
21 required within such time, the application shall, upon being accepted
22 and allowed, take priority as of the date of the original filing,
23 subject to compliance with the future provisions of the law and the
24 rules and regulations thereunder. During the pendency of any
25 application or upon its approval, the department, upon proper

1 authorization and request of the applicant, may assign the
2 application a later priority date.

3 (4) For public water supplier wells in existence on
4 September 9, 1993, the priority date assigned to an application for
5 induced ground water recharge made by a public water supplier shall
6 be:

7 (a) June 27, 1963, for water supply wells and facilities
8 constructed and placed in service on or before June 27, 1963;

9 (b) January 1, 1970, for water supply wells and
10 facilities constructed and placed in service on or after June 28,
11 1963, and on or before December 31, 1969;

12 (c) January 1, 1980, for water supply wells and
13 facilities constructed and placed in service on or after January 1,
14 1970, and on or before December 31, 1979;

15 (d) January 1, 1990, for water supply wells and
16 facilities constructed and placed in service on or after January 1,
17 1980, and on or before December 31, 1989; and

18 (e) January 1, 1993, for water supply wells and
19 facilities constructed and placed in service on or after January 1,
20 1990, and on or before September 9, 1993.

21 (5) Prior to taking action on an application for induced
22 ground water recharge, the director shall publish notice of such
23 application at the applicant's expense at least once each week for
24 three consecutive weeks in a newspaper of general circulation in the
25 area of the stream segment and also in a newspaper of statewide

1 circulation. The notice shall state that any person having an
2 interest may, in writing, object to the application. Any such
3 objection shall be filed with the department within two weeks after
4 the final publication of the notice.

5 (6) After the director has accepted the application made
6 under subsection (2) of this section as a completed application and
7 published notice as required under subsection (5) of this section,
8 the director shall, if he or she determines that a hearing is
9 necessary, set a time and place for a public hearing on the
10 application. The hearing shall be held within reasonable proximity to
11 the area in which the wells are or would be located. At the hearing
12 the applicant shall present all hydrological data and other evidence
13 supporting its application. All interested parties shall be allowed
14 to testify and present evidence relative to the application.

15 (7) An unapproved application pending on August 26, 1983,
16 may be amended to include appropriation for intentional underground
17 water storage and recovery of such water.

18 (8) Application may be made to the department for a
19 temporary permit to appropriate water. The same standards for
20 granting a permanent appropriation shall apply for granting such
21 temporary permit except when the temporary permit is for road
22 construction or other public use construction and the amount of water
23 requested is less than ten acre-feet in total volume. For temporary
24 permits for public-use construction, the applicant shall include on
25 the application the location of the diversion, the location of use, a

1 description of the project, the amount of water requested, and the
2 person to contact. Temporary permits for public-use construction and
3 for less than ten acre-feet in total volume may be granted without
4 any determination of unappropriated water and shall be considered to
5 be in the public interest. The requirement of filing a map or plans
6 with the application for a temporary permit may be waived at the
7 discretion of the director. In granting a temporary permit, the
8 director shall specify a date on which the right to appropriate water
9 under the permit shall expire. Under no circumstances shall such date
10 be longer than one calendar year after the date the temporary permit
11 was granted. Temporary permits shall be administered during times of
12 shortage based on priority. The right to appropriate water shall
13 automatically terminate on the date specified by the director on the
14 temporary permit without further action by the department.

15 (9) Water may be diverted from any stream, reservoir, or
16 canal by any fire department or emergency response services for the
17 purpose of extinguishing a fire in progress in an emergency without
18 obtaining a permit from the department. The installation of a dry
19 well for this purpose is allowed without the prior permission of the
20 department, but the department shall be informed of any such
21 installation, its location, and the party responsible for its
22 installation and maintenance within thirty days after the
23 installation.

24 (10) Before granting any application to appropriate
25 surface water for nonmunicipal purposes, the department shall consult

1 with each natural resources district through which the stream from
2 which water will be appropriated flows. Each natural resources
3 district shall make a written determination as to whether granting
4 the appropriation is contrary to the public interest. If a natural
5 resources district finds that granting the appropriation is contrary
6 to the public interest, the department shall not grant the
7 appropriation without first allowing the natural resources district a
8 hearing unless the natural resources district waives such hearing.

9 Sec. 3. The Revisor of Statutes shall assign section 1 of
10 this act to Chapter 2, article 32.

11 Sec. 4. Original section 46-233, Reissue Revised Statutes
12 of Nebraska, is repealed.