

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1038**

Introduced by Davis, 43.

Read first time January 19, 2016

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to water appropriations; to amend section
- 2 46-290, Reissue Revised Statutes of Nebraska; to change application
- 3 provisions; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-290, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 46-290 (1)(a) Except as provided in this section and sections  
4 46-2,120 to 46-2,130, any person having a permit to appropriate water for  
5 beneficial purposes issued pursuant to sections 46-233 to 46-235,  
6 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the  
7 use of such appropriation to a location other than the location specified  
8 in the permit, (ii) to change that appropriation to a different type of  
9 appropriation as provided in subsection (3) of this section, or (iii) to  
10 change the purpose for which the water is to be used under a natural-  
11 flow, storage, or storage-use appropriation to a purpose not at that time  
12 permitted under the appropriation shall apply for approval of such  
13 transfer or change to the Department of Natural Resources.

14 (b) The application for such approval shall contain (i) the number  
15 assigned to such appropriation by the department, (ii) the name and  
16 address of the present holder of the appropriation, (iii) if applicable,  
17 the name and address of the person or entity to whom the appropriation  
18 would be transferred or who will be the user of record after a change in  
19 the location of use, type of appropriation, or purpose of use under the  
20 appropriation, (iv) the legal description of the land to which the  
21 appropriation is now appurtenant, (v) the name and address of each holder  
22 of a mortgage, trust deed, or other equivalent consensual security  
23 interest against the tract or tracts of land to which the appropriation  
24 is now appurtenant, (vi) if applicable, the legal description of the land  
25 to which the appropriation is proposed to be transferred, (vii) if a  
26 transfer is proposed, whether other sources of water are available at the  
27 original location of use and whether any provisions have been made to  
28 prevent either use of a new source of water at the original location or  
29 increased use of water from any existing source at that location, (viii)  
30 if applicable, the legal descriptions of the beginning and end of the  
31 stream reach to which the appropriation is proposed to be transferred for

1 the purpose of augmenting the flows in that stream reach, (ix) if a  
2 proposed transfer is for the purpose of increasing the quantity of water  
3 available for use pursuant to another appropriation, the number assigned  
4 to such other appropriation by the department, (x) the purpose of the  
5 current use, (xi) if a change in purpose of use is proposed, the proposed  
6 purpose of use, (xii) if a change in the type of appropriation is  
7 proposed, the type of appropriation to which a change is desired, (xiii)  
8 if a proposed transfer or change is to be temporary in nature, the  
9 duration of the proposed transfer or change, and (xiv) such other  
10 information as the department by rule and regulation requires.

11 (2) If a proposed transfer or change is to be temporary in nature, a  
12 copy of the proposed agreement between the current appropriator and the  
13 person who is to be responsible for use of water under the appropriation  
14 while the transfer or change is in effect shall be submitted at the same  
15 time as the application.

16 (3)(a) ~~(3)~~ Regardless of whether a transfer or a change in the  
17 purpose of use is involved, the following changes in type of  
18 appropriation, if found by the Director of Natural Resources to be  
19 consistent with section 46-294, may be approved subject to the following:

20 (i a) A natural-flow appropriation for direct out-of-stream use may  
21 be changed to a natural-flow appropriation for aboveground reservoir  
22 storage or for intentional underground water storage;

23 (ii b) A natural-flow appropriation for intentional underground  
24 water storage may be changed to a natural-flow appropriation for direct  
25 out-of-stream use or for aboveground reservoir storage;

26 (iii e) A natural-flow appropriation for direct out-of-stream use,  
27 for aboveground reservoir storage, or for intentional underground water  
28 storage may be changed to an instream appropriation subject to sections  
29 46-2,107 to 46-2,119 if the director determines that the resulting  
30 instream appropriation would be consistent with subdivisions (2), (3),  
31 and (4) of section 46-2,115;

1           (iv ~~d~~) A natural-flow appropriation for direct out-of-stream use,  
2 for aboveground reservoir storage, or for intentional underground water  
3 storage may be changed to an appropriation for induced ground water  
4 recharge if the director determines that the resulting appropriation for  
5 induced ground water recharge would be consistent with subdivisions (2)  
6 (a)(i) and (ii) of section 46-235; and

7           (v ~~e~~) The incidental underground water storage portion, whether or  
8 not previously quantified, of a natural-flow or storage-use appropriation  
9 may be separated from the direct-use portion of the appropriation and may  
10 be changed to a natural-flow or storage-use appropriation for intentional  
11 underground water storage at the same location if the historic  
12 consumptive use of the direct-use portion of the appropriation is  
13 transferred to another location or is terminated, but such a separation  
14 and change may be approved only if, after the separation and change, (A  
15 ~~i~~) the total permissible diversion under the appropriation will not  
16 increase, (B ~~ii~~) the projected consequences of the separation and change  
17 are consistent with the provisions of any integrated management plan  
18 adopted in accordance with section 46-718 or 46-719 for the geographic  
19 area involved, and (C ~~iii~~) if the location of the proposed intentional  
20 underground water storage is in a river basin, subbasin, or reach  
21 designated as overappropriated in accordance with section 46-713, the  
22 integrated management plan for that river basin, subbasin, or reach has  
23 gone into effect, and that plan requires that the amount of the  
24 intentionally stored water that is consumed after the change will be no  
25 greater than the amount of the incidentally stored water that was  
26 consumed prior to the change. Approval of a separation and change  
27 pursuant to this subdivision (v ~~e~~) shall not exempt any consumptive use  
28 associated with the incidental recharge right from any reduction in water  
29 use required by an integrated management plan for a river basin,  
30 subbasin, or reach designated as overappropriated in accordance with  
31 section 46-713.

1           **(b)** Whenever any change in type of appropriation is approved  
2 pursuant to this subsection and as long as that change remains in effect,  
3 the appropriation shall be subject to the statutes, rules, and  
4 regulations that apply to the type of appropriation to which the change  
5 has been made.

6           (4) The Legislature finds that induced ground water recharge  
7 appropriations issued pursuant to sections 46-233 and 46-235 and instream  
8 appropriations issued pursuant to section 46-2,115 are specific to the  
9 location identified in the appropriation. Neither type of appropriation  
10 shall be transferred to a different location, changed to a different type  
11 of appropriation, or changed to permit a different purpose of use.

12           **(5)(a)** ~~(5)~~ In addition to any other purposes for which transfers and  
13 changes may be approved, such transfers and changes may be approved if  
14 the purpose is **(i a)** to augment the flow in a specific stream reach for  
15 any instream use that the department has determined, through rules and  
16 regulations, to be a beneficial use or **(ii b)** to increase the frequency  
17 that a diversion rate or rate of flow specified in another valid  
18 appropriation is achieved.

19           **(b)** For any transfer or change approved pursuant to subdivision **(a)**  
20 **(i)** ~~(a)~~ of this subsection, the department shall be provided with a  
21 report at least every five years while such transfer or change is in  
22 effect. The purpose of such report shall be to indicate whether the  
23 beneficial instream use for which the flow is augmented continues to  
24 exist. If the report indicates that it does not or if no report is filed  
25 within sixty days after the department's notice to the appropriator that  
26 the deadline for filing the report has passed, the department may cancel  
27 its approval of the transfer or change and such appropriation shall  
28 revert to the same location of use, type of appropriation, and purpose of  
29 use as prior to such approval.

30           (6) A quantified or unquantified appropriation for incidental  
31 underground water storage may be transferred to a new location along with

1 the direct-use appropriation with which it is recognized if the director  
2 finds such transfer to be consistent with section 46-294 and determines  
3 that the geologic and other relevant conditions at the new location are  
4 such that incidental underground water storage will occur at the new  
5 location. The director may request such information from the applicant as  
6 is needed to make such determination and may modify any such quantified  
7 appropriation for incidental underground water storage, if necessary, to  
8 reflect the geologic and other conditions at the new location.

9 (7) Unless an incidental underground water storage appropriation is  
10 changed as authorized by subdivision ~~(3)(a)(v)~~ ~~(3)(e)~~ of this section or  
11 is transferred as authorized by subsection (6) of this section or  
12 subsection (1) of section 46-291, such appropriation shall be canceled or  
13 modified, as appropriate, by the director to reflect any reduction in  
14 water that will be stored underground as the result of a transfer or  
15 change of the direct-use appropriation with which the incidental  
16 underground water storage was recognized prior to the transfer or change.

17 Sec. 2. Original section 46-290, Reissue Revised Statutes of  
18 Nebraska, is repealed.