

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 404

Introduced by Davis, 43.

Read first time January 16, 2015

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to water; to amend section 46-233, Reissue
- 2 Revised Statutes of Nebraska; to provide for evidentiary hearings
- 3 relating to applications as prescribed; and to repeal the original
- 4 section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-233, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 46-233 (1) The United States and every person intending to
4 appropriate any of the public waters of the State of Nebraska shall,
5 before (a) commencing the construction, enlargement, or extension of any
6 works for such purpose, (b) performing any work in connection with such
7 construction, enlargement, or extension, or (c) taking any water from any
8 constructed works, make an application to the department for a permit to
9 make such appropriation. A permit may be obtained to appropriate public
10 waters for intentional underground water storage and recovery of such
11 water. A public water supplier may make application to appropriate public
12 waters for induced ground water recharge.

13 (2) The application shall be upon a form prescribed and furnished by
14 the department without cost to an applicant. Such application shall set
15 forth (a) the name and post office address of the applicant, (b) the
16 source from which such appropriation shall be made, (c) the amount of the
17 appropriation desired, as nearly as it may be estimated, (d) the location
18 of any proposed work in connection with the appropriation, (e) the
19 estimated time required for its completion, which estimated time shall
20 include the period required for the construction of ditches, pumps, and
21 other features or devices, (f) the time estimated at which the
22 application of the water for the beneficial purposes shall be made, which
23 time shall be limited to a reasonable time following the estimated time
24 of completion of the work when prosecuted with diligence, (g) the purpose
25 for which water is to be applied and (i) if for induced ground water
26 recharge by a public water supplier, a statement of the times of the year
27 when and location along a stream where flows for induced ground water
28 recharge are proposed and (ii) if for irrigation, a description of the
29 land to be irrigated by the water and the amount, and (h) such facts and
30 supporting documentation as are required by the department which shall
31 include, but not be limited to, the depth of all wells, the extent of the

1 underlying aquifer, the expected rate of recharge, the minimum flow or
2 flows necessary to sustain the well field throughout the reach
3 identified, and the period of time that a well field would continue to
4 meet minimal essential needs of the public water supplier when there is
5 no flow as those factors relate to and are part of an evaluation of
6 pertinent hydrologic relationships.

7 A public water supplier making application for induced ground water
8 recharge may submit with its application a statement of the amount of
9 induced ground water recharge water which the public water supplier
10 presently uses as well as the amount of induced ground water recharge
11 water it anticipates using in the next twenty-five-year period. Such
12 statement shall also quantify the total amount of water the public water
13 supplier presently uses from the well field as well as the total amount
14 of water it anticipates using from the well field in the next twenty-
15 five-year period.

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

1 application or upon its approval, the department, upon proper
2 authorization and request of the applicant, may assign the application a
3 later priority date.

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

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

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

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

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

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

21 (5) Prior to taking action on an application for induced ground
22 water recharge, the director shall publish notice of such application at
23 the applicant's expense at least once each week for three consecutive
24 weeks in a newspaper of general circulation in the area of the stream
25 segment and also in a newspaper of statewide circulation. The notice
26 shall state that any person having an interest may, in writing, object to
27 the application. Any such objection shall be filed with the department
28 within two weeks after the final publication of the notice.

29 (6) After the director has accepted the application made under
30 subsection (2) of this section as a completed application and published
31 notice as required under subsection (5) of this section, the director

1 shall, if he or she determines that a hearing is necessary, set a time
2 and place for a public hearing on the application. The hearing shall be
3 held within reasonable proximity to the area in which the wells are or
4 would be located. At the hearing the applicant shall present all
5 hydrological data and other evidence supporting its application. All
6 interested parties shall be allowed to testify and present evidence
7 relative to the application.

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

11 (8) Application may be made to the department for a temporary permit
12 to appropriate water. The same standards for granting a permanent
13 appropriation shall apply for granting such temporary permit except when
14 the temporary permit is for road construction or other public use
15 construction and the amount of water requested is less than ten acre-feet
16 in total volume. For temporary permits for public-use construction, the
17 applicant shall include on the application the location of the diversion,
18 the location of use, a description of the project, the amount of water
19 requested, and the person to contact. Temporary permits for public-use
20 construction and for less than ten acre-feet in total volume may be
21 granted without any determination of unappropriated water and shall be
22 considered to be in the public interest. The requirement of filing a map
23 or plans with the application for a temporary permit may be waived at the
24 discretion of the director. In granting a temporary permit, the director
25 shall specify a date on which the right to appropriate water under the
26 permit shall expire. Under no circumstances shall such date be longer
27 than one calendar year after the date the temporary permit was granted.
28 Temporary permits shall be administered during times of shortage based on
29 priority. The right to appropriate water shall automatically terminate on
30 the date specified by the director on the temporary permit without
31 further action by the department.

1 (9) Water may be diverted from any stream, reservoir, or canal by
2 any fire department or emergency response services for the purpose of
3 extinguishing a fire in progress in an emergency without obtaining a
4 permit from the department. The installation of a dry well for this
5 purpose is allowed without the prior permission of the department, but
6 the department shall be informed of any such installation, its location,
7 and the party responsible for its installation and maintenance within
8 thirty days after the installation.

9 (10)(a) Except as otherwise required pursuant to subsection (5) of
10 this section, prior to taking action on an application for an
11 appropriation or a permit subject to this section or sections 46-2,108 to
12 46-2,119, the department shall publish notice of such application on its
13 web site for three consecutive weeks. Within sixty days after the last
14 date the notice of an application described in this section appears on
15 such web site, a public water manager or user may file with the
16 department a written analysis that has been prepared by one or more
17 qualified experts explaining why granting the application will (i) reduce
18 or diminish the amount of water that will be available to the public
19 water manager or user or its constituents and (ii) be contrary to the
20 public interest.

21 (b) The department shall not grant the application without first
22 granting the public water manager or user a hearing to present evidence
23 to demonstrate the positions set forth in the written analysis. The
24 public water manager or user may waive the hearing. By waiving the
25 hearing, the public water manager or user also waives the right to appeal
26 a final order of the department. For each application, the department
27 shall conduct a single evidentiary hearing to adduce evidence from all of
28 the parties who provided a written analysis.

29 (c) For purposes of this subsection, public water manager or user
30 means a natural resources district, a municipality, an irrigation
31 district, a public power and irrigation district, a public power

1 district, a reclamation district, a mutual irrigation company, or a
2 public water supplier that will experience reduced or diminished amounts
3 of water available to it or its constituents if the application is
4 granted.

5 Sec. 2. Original section 46-233, Reissue Revised Statutes of
6 Nebraska, is repealed.