

## LEGISLATIVE BILL 577

Approved by the Governor May 27, 1975

Introduced by Public Works Committee, Kremer, 34, Chmn.;  
Cavanaugh, 9; Mills, 44; Kelly, 35; Moylan, 6;  
Warner, 25; Wiltse, 1; R. Lewis, 38

AN ACT to amend sections 46-602, 46-603, 46-629, and 46-630, Reissue Revised Statutes of Nebraska, 1943, and section 2-3225, Revised Statutes Supplement, 1974, relating to ground water; to place restrictions on the use of ground water under prescribed conditions; to adopt the Nebraska Ground Water Management Act; to provide severability; and to repeal the original sections, and also section 2-3237, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. The Legislature finds, recognizes, and declares that the management and conservation of ground water and the beneficial use thereof are essential to the economic prosperity and future well-being of the state and that in geographic areas where ground water may be declining or where shortages of ground water may occur, the public interest demands the implementation of management practices to conserve ground water supplies and to prevent the inefficient or improper use thereof. To provide for an orderly management system, particularly in areas where changing ground water conditions require the designation of control areas with special regulation of future development and use, the Legislature recognizes the need for this act.

Sec. 2. As used in this act and in sections 46-601 to 46-613.01 and sections 46-636 to 46-655, unless the context otherwise requires:

(1) Person shall mean a natural person, partnership, association, corporation, municipality, irrigation district, and any agency or political subdivision of the state;

(2) Ground water shall mean that water which occurs or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Well shall mean any artificial opening or excavation in the ground through which ground water flows under natural pressure or is artificially withdrawn. A series of wells developed and pumped as a single unit

shall be considered as one well. For purposes of sections 4 to 7 of this act, well shall not mean any artificial opening or excavation in which a pump of less than one hundred gallons per minute capacity is to be installed and which is to be used solely for supply of ground water for domestic purposes:

(4) Construction of a well shall mean boring, drilling, jetting, digging, or excavation, and installing casing, pumps, and other devices for withdrawing or facilitating the withdrawal of ground water:

(5) Pollution of ground water shall mean contamination or other alteration of the natural quality of such water, however caused, including contamination by salines, minerals, industrial wastes, or sewage:

(6) District shall mean a natural resources district operating pursuant to Chapter 2, article 32:

(7) Director shall mean the Director of Water Resources:

(8) Illegal well shall mean (a) any well operated or constructed without, or in violation of, a permit required by the provisions of this act, (b) any well completed at any time before or after the effective date of this act but not properly registered in accordance with the provisions of sections 46-602 to 46-605, or (c) any well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted pursuant to this act; and

(9) Control area shall mean any area so designated by the director following a public hearing initiated and conducted pursuant to section 3 of this act.

Sec. 3. (1) An area may be designated a control area if it shall be determined, following evaluation of relevant hydrologic data, history of developments, and protection of effects of current and new development, that there is an inadequate ground water supply to meet present or reasonably foreseeable needs for beneficial use of such water supply. In determining the adequacy of such ground water supply, the director's considerations shall include, but not be limited to, a finding of the existence of any of the following conditions:

(a) Conflicts between users are occurring or may be reasonably anticipated;

1. The Commission is of the opinion that the Government should  
 take steps to ensure that the public interest is protected in  
 the disposal of the assets of the Government.

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Sec. 4. (1) Any person who intends to construct a well in a control area in this state shall, before commencing construction, file with the director an application for a permit on forms provided by the director. The director shall make such forms available at each district in which a control area is located, in whole or in part, and at such other places as he may deem appropriate.

(2) The application shall be accompanied by a twenty-five dollar filing fee payable to the director, and shall contain (a) the name and post-office address of the applicant or applicants, (b) the nature of the proposed use, (c) the intended location of the proposed well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if said water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, and (h) such other information as the director may require. Before any well having a capacity of less than one hundred gallons per minute is modified to withdraw ground water at a rate equal to or greater than one hundred gallons per minute, an application shall be filed for a permit pursuant to this act before water is so withdrawn.

Sec. 5. (1) An application for a permit for a well in a control area shall be denied only if the director shall find, with the advice of the district, (a) that the location or operation of the proposed well or other work would conflict with any regulations or controls adopted by the district pursuant to this act, or (b) that the proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes. If the director shall find that the application is incomplete or defective, he shall return the application for correction. If the correction is not made within sixty days, the application shall be canceled. All permits shall be issued with or without conditions attached, or denied not later than thirty days after receipt by the director of a complete and properly prepared application. A permit issued shall specify all controls adopted by a district pursuant to this act relevant to the construction or utilization of the proposed well. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. The director shall transmit one copy of each permit issued to the district in which the well is to be located.

(2) All procedures set forth in this section shall be conducted in conformance with and subject to the provisions of Chapter 84, article 9.

Sec. 6. The issuance by the director of a permit pursuant to the provisions of this act, or registration of a well pursuant to Chapter 46, article 6, shall not vest in any person the right to violate any district rule, regulation, or control in effect on the date of issuance of the permit or the registration of such a well, or to violate any rule, regulation, or control thereafter properly adopted pursuant to this act.

Sec. 7. When any permit is approved, the applicant shall commence construction as soon as possible after the date of approval and shall complete the construction and equip the well prior to the date specified in the conditions of approval, which date shall be not more than one year after the date of approval, unless it is clearly demonstrated in the application that one year is an insufficient period of time for such construction. If the applicant shall fail to complete the project under the terms of the permit, the director may withdraw the permit.

Sec. 8. Regardless of whether or not any portion of a district has been designated as a control area pursuant to the provisions of this act, in order to administer and enforce this act and to effectuate the policy of the state to conserve ground water resources, a district may:

- (1) Adopt, following public hearing, notice of which shall have been given in the manner provided in section 3 of this act, rules and regulations necessary to discharge the administrative duties assigned in this act;
- (2) Require such reports from ground water users as may be necessary;
- (3) Conduct investigations, and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of this act;
- (4) Report to and consult with the Department of Environmental Control on all matters concerning the entry of pollution or polluting materials into ground water supplies;
- (5) Issue cease and desist orders to enforce any of the provisions of this act or of orders or permits

issued pursuant hereto, and initiate suits to enforce the provisions of orders issued pursuant to this act; and

(6) Issue cease and desist orders to restrain the construction of illegal wells or the withdrawal or use of water from such wells.

Sec. 9. (1) In order to conserve ground water supplies and to prevent the inefficient or improper runoff of such ground water, after the effective date of this act each person who uses ground water irrigation in an area designated as a control area shall take action to control or prevent the runoff of water used in such irrigation.

(2) Within ninety days after the effective date of this act, each district shall adopt, following public hearing, notice of which shall be given in the manner provided in section 3 of this act, rules and regulations necessary to prohibit surface runoff of water derived from ground water irrigation. Such rules and regulations shall prescribe (a) standards and criteria delineating what constitutes the inefficient or improper runoff of ground water used in irrigation, (b) procedures to prevent, control, and abate such runoff, (c) measures for the construction, modification, extension, or operation of remedial measures to prevent, control, or abate runoff of ground water used in irrigation, and (d) procedures for the enforcement of this section.

(3) Each district may issue cease and desist orders to enforce any of the provisions of this section or rules and regulations issued pursuant to this section.

Sec. 10. Within sixty days following the designation of any area as a control area, and at such other times as the district desires the adoption, amendment, or repeal of any control authorized in this act, the district shall hold a public hearing to determine the type of controls to be imposed within that control area. Public notice of the time and place of all such hearings shall be given in the manner provided in section 3 of this act.

Sec. 11. (1) The district shall by order, after a hearing conducted pursuant to section 10 of this act, the record of which shall include the testimony of a representative of the Conservation and Survey Division of the University of Nebraska and the Nebraska Natural Resources Commission, adopt one or more of the following controls, which shall be subject to approval by the director:

(a) It may determine the permissible total withdrawal of ground water in the designated control area for each day, month, or year, and allocate such withdrawal among the ground water users within the area;

(b) It may adopt and enforce a system of rotation for use of ground water in the control area;

(c) It may adopt well-spacing requirements more restrictive than those found in Chapter 46, article 6; and

(d) It may adopt such other reasonable regulations as are necessary to carry out the intent of this act.

(2) If the district determines, following a public hearing conducted pursuant to section 10 of this act, that depletion of the ground water supply in the control area or any portion thereof is so excessive that the public interest cannot be protected solely through implementation of reasonable controls adopted pursuant to subsection (1) of this section, it may, with the approval of the director, close the control area or portion thereof to the issuance of any additional permits for a period of one calendar year. Such areas may be further closed thereafter by a similar procedure for additional one-year periods. Any such area may be reopened at any time the district shall determine that conditions warrant new permits, at which time the director shall consider all previously submitted applications for permits in the order in which they were received.

(3) The district shall cause a copy of each order adopted pursuant to this section to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten days prior to the date set for the effective date of such order.

(4) Whenever a control area, designated pursuant to section 3 of this act, encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and section 10 of this act shall be exercised jointly and uniformly by agreement of the respective boards of directors of all districts so affected.

(5) If, at the end of one year following a hearing conducted pursuant to section 10 of this act, the district or districts conducting such hearing have not adopted a specific control or controls pursuant to

subsection (1) of this section, the power to specify such controls shall vest in the director who shall, within ninety days thereafter, adopt by rule and regulation such control or controls as he shall deem necessary for carrying out the intent of this act. Subject to section 12 of this act, the enforcement of controls adopted pursuant to this section shall be the responsibility of the district or districts involved.

(6) If the power to adopt a control or controls shall be vested in the director, he shall be provided with a copy of all information, testimony, and data available to the district or districts as a result of the public hearing for the adoption of a control or controls. At his discretion, the director may conduct one or more additional public hearings prior to making his determination or selection of controls. Notice of any such additional hearings shall be given in the manner provided in section 3 of this act.

Sec. 12. If, at any time after a twelve-month period from the date of the order of the district or director, as the case may be, adopting a control or controls pursuant to section 11 of this act, the governing body of any municipal corporation owning wells within the affected control area or five per cent of the well owners in a control area allege by petition to the director that the adopted control or controls are not being enforced uniformly, equitably, or in good faith, the director shall hold a hearing within sixty days, notice of which shall be given in the manner provided in section 3 of this act. The director shall receive evidence at such hearing to determine whether or not the adopted control or controls are being enforced uniformly, equitably, and in good faith, and if the director shall determine that the control or controls are not being so enforced, then the enforcement power set out in section 11 of this act shall vest in the director for a period of twelve months. At the end of the twelve-month period, enforcement shall revert to the district or districts involved. Nothing in this act shall restrict the right of a municipality or five per cent of well owners in a control area to repetition at any time for another hearing for the enforcement of controls.

Sec. 13. All hearings conducted pursuant to this act shall be of record and available for review.

Sec. 14. Any person aggrieved by any order of the district or of the director issued pursuant to the provisions of this act may appeal in the manner provided by Chapter 84, article 9.



Sec. 15. The director may adopt, in accordance with Chapter 84, article 9, such rules and regulations as are necessary to the discharge of duties assigned to him in this act. All fees paid to the director in accordance with the terms of this act shall be paid into the Ground Water Management Fund, which is hereby created, and which shall be administered by the director. Any money credited to such fund may be utilized by the director for payments of expenses incurred in the administration of this act.

Sec. 16. In the administration of this act, all actions of the director and of the districts shall be consistent with the provisions of section 46-613.

Sec. 17. (1) Whenever the boundaries of a designated control area encompass, either wholly or in part, any existing ground water conservation district or districts organized under sections 46-614 to 46-634, it shall be the duty of the district or director, as the case may be, to actively consult with such ground water conservation district or districts before adopting, amending, or repealing any control authorized by section 11 of this act, and before adopting methods, rules, and regulations for the enforcement of the adopted control or controls.

(2) The district shall be directed wherever possible to utilize and draw upon existing research data, studies, data collection, or any other beneficial information which has been compiled by, or is in the possession of, ground water conservation districts, and in the interest of avoiding duplication of effort and the resultant unnecessary burden to the taxpayer, the ground water conservation district shall furnish such information or data upon the request of the district. Nothing in this act shall be interpreted to restrict the power of a ground water conservation district to collect data, undertake studies, or collect other information as prescribed in section 46-629, and such districts are hereby encouraged to actively exercise such authority.

Sec. 18. Each district encompassed in whole or in part by a control area designated pursuant to section 3 of this act shall have the power and authority to levy a tax not to exceed one-fourth of one mill annually on all of the taxable property, except intangible property, within the portion of the district encompassed by such control area. Such levy, which shall be in addition to that authorized by section 2-3225, shall be utilized only for the costs of administration of this act within such control area. Certification and collection of such levy shall be administered by the district and by the county

of counties involved in the same manner as the levy authorized by section 2-3225.

Sec. 19. That section 2-3225, Revised Statutes Supplement, 1974, be amended to read as follows:

2-3225. (4) Each district shall have the power and authority to levy a tax of not to exceed one mill annually on all of the taxable property, except intangible property, within such district unless a higher levy shall be authorized by a majority vote of those voting on the issue at a regular election on a referendum question submitted by resolution of the board of directors and certified to the Secretary of State on or before August 25 of the election year. The proceeds of such tax shall be used, together with any other funds which the district may receive from any source, for the operation of the district, but no funds may be used for constructing or purchasing a headquarters or administration building. When adopted by the board, the levy shall be certified by the secretary to the county clerk of each county which in whole or in part is included within the district. Such levy shall be handled by the counties in the same manner as other levies, and proceeds shall be remitted to the district treasurer. Such levy shall not be considered a part of the general county levy and shall not be considered in connection with any limitation on levies of such counties.

~~(2) Whenever a natural resources district has within its boundaries any area of a reclamation or ground water conservation district, the natural resources district shall pay to the other district or districts that pro-rata share of the ad valorem taxes collected by the natural resources district within these reclamation or ground water conservation districts for those common programs carried out during the same fiscal year by both the natural resources district and the other districts named in this subsection. The annual audit of the accounts of the natural resources district will be used as the basis to determine that portion of the natural resources district's budget collected within the other districts that shall be paid to them. Common programs as defined by this subsection shall be drainage, recreation, water supply and irrigation for a reclamation district and ground water regulation for a ground water conservation district.~~

Sec. 20. That section 46-602, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-602. (1) The owner of each well, except wells used solely for domestic purposes, completed in this state shall register such well with the director complete appropriate registration forms within thirty twenty days after the completion of such well. Registration shall be in such form as the director may direct, and shall contain a statement of (a) the location of such well, (b) the date of its completion, (c) the intended use of such well, (d) the size of such well, (e) the actual capacity of such well expressed in gallons per minute, and (f) the identification, by number, of a permit issued pursuant to section 5 of this act, if applicable, and (g) such additional information conformable to the statement of purpose contained in section 46-601 as the director might require; Provided, that all wells for which a permit has been or in the future is granted by the Department of Water Resources under sections 46-638 to 46-650, shall be exempt from the provisions of this section. Notwithstanding section 46-606, no fee shall be charged for registration of any well for which a permit was obtained pursuant to section 5 of this act.

(2) ~~The~~ If the well has been drilled by any person other than the owner thereof, the registration referred to in subsection (1) of this section, shall be furnished in triplicate and it shall be accompanied by three copies of to the person actually drilling such well, to be forwarded with the certificate of the well driller required by section 46-603.

(3) Whenever any owner of a registered well, or a well required to be registered pursuant to subsections (1) and (2) of this section, shall abandon such well, he shall properly plug or cap the same completely fill the well cavity in accordance with the rules and regulations of the Department of Water Resources, and within sixty days give written notice to the Department of Water Resources of such abandonment. The method specified in such rules and regulations for filling well cavities shall be designed to eliminate any safety hazard created by abandoned wells and to prevent deterioration in the quality of the underlying ground waters. Written notice of any such abandonment shall be provided to the Department of Water Resources within sixty days thereafter.

(4) When any owner of an abandoned well replaces such well he shall, within thirty days after the completion of such replacement well, give notice to the department by filing in the office of the department completed well registration and well driller certificate forms, in triplicate, for the replacement well. No fee shall be collected for filing notice of abandonment or

for the registration of the replacement of a registered well.

(5) When any owner of an abandoned well in a control area desires to replace such well, he shall, prior to commencing construction thereof, obtain a permit pursuant to the provisions of section 4 of this act. The owner of such abandoned well may immediately proceed to dig a replacement well and pump water therefrom without obtaining a permit if the pump installed in the replacement well is to be of a capacity not greater than the pump formerly used in the abandoned well. Following completion of any such well, notice of such completion shall be given in the manner provided by subsection (4) of this section.

Sec. 21. That section 46-603, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-603. Any person actually drilling any well, except wells to be used solely for domestic purposes, either on his own account or for hire, shall keep an accurate log in triplicate, on certificate of well driller forms to be furnished by the Director of Water Resources, of the depth, thickness, and character of the different strata penetrated and the location of water-bearing strata. The certificate of the well driller shall also contain the dates of beginning and completion of work, the length, size, and weight of the casing and the method of its placement, the size of the drilled hole, where the drilled hole is sealed, the type of seal used, the legal description of the land on which the well is drilled, and such other data as the Director of Water Resources may reasonably require. ~~if the well has been drilled for hire, the certificate shall be furnished in triplicate to the owner to accompany the registration required by section 46-602. The certificate of the well driller, which shall be accompanied by three copies of the registration form required by section 46-602, shall be transmitted by the person actually drilling the well to the director within thirty days after the completion of such well. Any certificate so transmitted shall indicate the number of the well permit previously issued by the director if such a permit was required by section 4 of this act.~~

Sec. 22. That section 46-629, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-629. The board of directors shall have authority to:

(1) Maintain and equip an office, and employ such persons as may be needed;

(2) Gather information concerning ground water conservation and supply this information as requested to the three state agencies and to the appropriate natural resources district or districts;

(3) Promulgate and administer policies, ~~rules, and regulations--as--relate~~ relating to ground water, except that responsibility as relates to land treatment programs shall be limited to making recommendations to the appropriate natural resources districts and their subdistricts, with such land treatment programs to be carried out as authorized in sections ~~2-4594--to--2-4567~~ 2-3201 to 2-3262;

(4) Contract with any private individual, association, or corporation, or with any state agency, or subdivision thereof, engaged in ground water conservation, for performance of the activities mentioned in subdivisions (2) and (3) of this section;

(5) In cooperation with the extension service, disseminate technical information concerning ground water conservation;

(6) Adopt, administer, and enforce rules and regulations to ensure the proper conservation of ground water within the district as provided in section 46-630; and

(7) Levy a tax as provided in section 46-631.

Sec. 23. That section 46-630, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-630. Whenever the board of directors shall determine that rules and regulations are necessary in order to ensure the proper conservation of ground water within the district, it shall confer with the three state agencies and ground water users within the district. No rules and regulations shall be adopted until after a public hearing and unless the board of directors finds such rules and regulations to be in the interest of public health, safety, and welfare and in harmony with the state water plan as developed by the Nebraska Natural Resources Commission. Notice of such hearing shall be given as provided in section 46-618, and in addition the publication shall set out in general terms the rules and regulations proposed. The board shall, within seven days after such hearing, announce the rules and regulations

adopted and shall cause notice thereof to be published in a newspaper of general circulation throughout the district. Notice of such rules and regulations shall also be sent to all known ground water users throughout such district by either certified or registered mail. The board shall have authority to compel compliance with such rules and regulations by an action brought in the district court of the county in which any failure to comply is found to exist. Any rules and regulations adopted by such board of directors shall be consistent with the purposes of this act, shall not conflict with rules and regulations adopted pursuant to section 8 or 11 of this act, and shall, prior to adoption, receive concurrent approval by the natural resources district or districts encompassed in whole or in part by the ground water conservation district.

Sec. 24. Sections 1 to 18 of this act and this section shall be known and may be cited as the Nebraska Ground Water Management Act.

Sec. 25. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 26. That original sections 46-602, 46-603, 46-629, and 46-630, Reissue Revised Statutes of Nebraska, 1943, and section 2-3225, Revised Statutes Supplement, 1974, and also section 2-3237, Reissue Revised Statutes of Nebraska, 1943, are repealed.