

## LEGISLATIVE BILL 45

Approved by the Governor February 10, 1989

Introduced by Bernard-Stevens, 42

AN ACT relating to water; to amend sections 33-105, 46-295, 46-2,100, 46-2,101, and 46-2,102, Reissue Revised Statutes of Nebraska, 1943; to eliminate the authorization to levy fees for withdrawal of incidentally stored underground water; to harmonize provisions; and to repeal the original sections, and also section 46-298, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 33-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-105. There shall be paid to the Department of Water Resources in advance for the services of the Director of Water Resources by the party demanding or necessitating the service the following fees:

(1) For filing, recording, and examining each application for a storage reservoir, for the first five thousand acre-feet or fraction thereof, twenty-five dollars, and for each additional five thousand acre-feet or fraction thereof, ten dollars;

(2) For filing, recording, and examining each application for, or application for modification of permits to include, intentional or incidental underground water storage and recovery, five hundred dollars;

(3) For filing, recording, and examining each application for water for irrigation from a natural stream, for the first one thousand acres proposed for irrigation or fraction thereof, two hundred dollars, and for each additional thousand acres or fraction thereof, one hundred dollars;

(4) For filing, recording, and examining each application for water for irrigation from a storage reservoir, for the first one thousand acres proposed for irrigation or fraction thereof, fifty dollars, and for each additional thousand acres or fraction thereof, twenty-five dollars;

(5) For filing, recording, and examining each application for water for power purposes, for each

theoretical fifty horsepower or fraction thereof, five dollars;

(6) For filing, recording, and examining each application for withdrawal of ground water for industrial purposes, for the first four thousand acre-feet or fraction thereof, one thousand five hundred dollars, and for each additional one thousand acre-feet or fraction thereof, seven hundred fifty dollars;

(7) For filing an application to amend a permit for withdrawal of ground water for industrial purposes, five hundred dollars;

~~(8) For filing, recording, and examining each application for approval of authority to levy fees for withdrawing water stored incidentally underground, five hundred dollars;~~

~~(9)~~ For filing any petition, affidavit, other paper, or application for which no fee has been fixed, ten dollars;

~~(10)~~ (9) For recording any deed or document pertaining to land covered in whole or in part by a water appropriation or any instrument other than an application, ten dollars;

~~(11)~~ (10) For blueprint copy of any map or drawing or for other copy of drawings or photostatic copy of any record, a reasonable sum to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction;

~~(12)~~ (11) For the examination of plans for any dam and reservoir or enlargement, one dollar for each foot in height of the dam and, at the department's discretion, expenses incurred while visiting and examining the site; and

~~(13)~~ (12) For certificate and seal, one dollar.

The Director of Water Resources shall keep a record of all money thus received. At the end of each calendar month he or she shall pay the same to the State Treasurer for the use of the General Fund and take his or her receipt therefor and file the same with the records of his or her office.

Sec. 2. That section 46-295, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-295. The Legislature recognizes that, as a result of water project operations, surface water in some areas of the state has been, is, and will be in the future intentionally and incidentally stored in and withdrawn from underground strata. The Legislature acknowledges that rights to water intentionally or

incidentally stored underground and rights to withdrawal of such water should be formally recognized and quantified and recognizes the propriety of all beneficiaries proportionately sharing, to the extent of measurable economic benefit from incidental underground water storage or for potential benefit from intentional underground water storage, in the financial obligations necessary for construction, operation, and maintenance of water projects which cause intentional or incidental underground water storage.

The Legislature finds that uses of water for incidental and intentional underground water storage are beneficial uses of water which contribute to the recharge of Nebraska's aquifers and that comprehensive, conjunctive management of surface water and intentional or incidental underground water storage is essential for the continued economic prosperity and well-being of the state, serves the public interest by providing an element of certainty essential for investment in water resources development, and will improve Nebraska's standing in the event of interstate dispute.

To facilitate optimum beneficial use of water by the people of Nebraska, the Legislature recognizes the need for authorizing the recognition of incidental underground water storage, for authorizing intentional underground water storage, and for authorizing the levying and collection of fees and assessments on persons who withdraw or otherwise use or benefit from intentional or incidental underground water storage as provided in sections 46-298 46-299 to 46-2,106.

Nothing in sections 33-105, 46-202, 46-226.01, 46-226.02, 46-233, 46-240, 46-241, 46-242, 46-295 to 46-2,106, 46-544, and 46-666.01 shall be construed to alter existing statutes regarding the relationship between naturally occurring surface and ground water.

Sec. 3. That section 46-2,100, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-2,100. No fee or assessment may be levied pursuant to section 46-298 or 46-299 for withdrawals from wells with a capacity of less than one hundred gallons per minute which are solely for domestic purposes as defined in section 46-613.

Sec. 4. That section 46-2,101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-2,101. (1) Any person intending to levy fees or assessments in accordance with section 46-298 or 46-299, or to modify such fees or assessments, shall,

prior to levying such fees, assessments, modified fees, or modified assessments, file with the department an application for approval of authority to levy such fees on a form prescribed and furnished by the department.

(2) Such an application shall include a fee schedule and the following information:

(a) The source of the water stored or to be stored underground;

(b) The underground water storage method;

(c) The relative amounts of water stored or to be stored underground and naturally occurring ground water;

(d) The data or reference studies used by the applicant to determine the underground water storage;

(e) A description of the areas served or to be served by the water stored underground;

(f) The amount of surface water, if any, for which the applicant has an appropriation; and

(g) The manner, use, and location of any such surface water appropriation; and

(h) For an application under section 46-298 only (i) the amount of any surface water directly delivered by the applicant within the five years prior to the date of application; (ii) the amount and location of any land actually served by surface water directly delivered by the applicant within such five years; and (iii) an identification of any land served by water stored underground which was not served with surface water directly delivered by the applicant within the last five years.

The application shall be processed under the applicable rules and regulations of the department adopted and promulgated pursuant to section 46-209.

(3) In developing a fee schedule, the applicant may include the reasonable and necessary costs associated with securing all approvals under section 46-298, except that assessments shall not exceed the maximum fee allowed pursuant to such section.

(4) An application under section 46-298 shall be approved only if the applicant demonstrates (a) the measurable benefits of the underground storage; (b) the economic necessity to recover costs; and (c) that the fees are reasonable and comply with the requirements of section 46-298.

(5) An application under section 46-299 shall be approved if the fees, assessments, modified fees, or modified assessments appear reasonable and comply with the requirements of section 46-299.

(6) (4) The department shall review approved

fee schedules every five years after approval to determine whether the fees should be increased, decreased, or eliminated, except that if the adopted schedules have been pledged to repayment of financing for the project, the department shall only review after repayment is completed.

Sec. 5. That section 46-2,102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-2,102. A fee or assessment levied pursuant to section 46-298 or 46-299 shall become a lien on the property benefited, or to be benefited, thirty days after the due date of such fee or assessment. The person levying the fee or assessment may collect such fee or assessment if it remains unpaid after thirty days after the due date by commencing an action in district court against the owner of the land benefited or to be benefited to foreclose the lien or to recover the amount due, except that no lien shall become effective until notice thereof is filed with the register of deeds in the county in which the benefited property is located and such lien shall relate back only to the date of filing.

Sec. 6. That original sections 33-105, 46-295, 46-2,100, 46-2,101, and 46-2,102, Reissue Revised Statutes of Nebraska, 1943, and also section 46-298, Reissue Revised Statutes of Nebraska, 1943, are repealed.