

LEGISLATIVE BILL 146

Approved by the Governor June 3, 1987

Introduced by Schmit, 23; Pappas, 42; Moore, 24

AN ACT relating to water; to amend section 46-233.01, Reissue Revised Statutes of Nebraska, 1943, and section 46-1121, Revised Statutes Supplement, 1986; to state intent; to provide powers and duties for the Water Management Board; to change provisions relating to certain appropriations of surface water; to change the date of expiration of certain permits; to repeal the original sections; and to declare an emergency.

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

Section 1. The Legislature finds that Nebraska ground water and surface water are currently being transferred from the land to which they are appurtenant to users both within and outside the state. Such transfers are likely to increase as other regions of the state and nation continue to experience shortages in local water supplies.

The Legislature further finds that Nebraska enjoys abundant supplies of water and that certain areas of the state suffer from a chronic overabundance of water resulting in drainage problems and flooding which cause damage to homes, businesses, roads, crops, and livestock.

It is a proper and necessary function of state government to provide mechanisms for the orderly transfer of water and water rights from areas of surplus to areas of shortage, to establish a means whereby individual landowners and the public in general are compensated for such transfers, and to ensure that the rights of individual landowners and the welfare of the citizens of this state are balanced against the free market forces that compel the dedication of water to its highest and best use.

Sec. 2. The Legislature hereby directs the Water Management Board, in consultation with the Nebraska Natural Resources Commission, to:

(1) Identify and address current legal, statutory, physical, social, environmental, and economic impediments to transfers of ground water and surface water;

(2) Develop a statutory framework to permit such transfers while protecting the environment and the rights of landowners, the general public, and others directly affected by such transfers;

(3) Develop a statutory framework to provide compensation for such transfers to landowners, water rights holders, persons adversely affected by such transfers, and the State of Nebraska on behalf of the general public;

(4) Identify potential users of and markets for water and water rights transfers;

(5) Identify potential locations and methods for surface water diversion and ground water withdrawals and methods of transporting water of sufficient scale to be economically viable; and

(6) Identify and develop the appropriate state role in facilitating and regulating such water and water rights transfers.

The Water Management Board shall submit a report to the Governor and the Legislature on or before September 30, 1988. Such report shall include findings of the board relating to all factors identified in this section.

Sec. 3. The Water Management Board may request assistance from the Department of Economic Development, the Department of Environmental Control, the Department of Water Resources, the University of Nebraska Institute of Agriculture and Natural Resources, the Conservation and Survey Division of the University of Nebraska, or any other state agency if necessary to carry out its duties pursuant to section 2 of this act.

Sec. 4. That section 46-233.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-233.01. (1) Application may be made to the Department of Water Resources for a permit to appropriate any of the public surface waters of the State of Nebraska to be diverted or stored in Nebraska for use in any adjoining other state, but no applicant shall be entitled to divert or store water for such use without specific authorization by the Legislature of the State of Nebraska and then only in cases where the state in which the water is to be used shall grant reciprocal rights for the use of water in Nebraska.

(2) In determining whether to grant such application, the director shall consider the following factors:

(a) Whether unappropriated water exists in the

source of supply named in the application;

(b) Whether such application and appropriation when perfected are not otherwise detrimental to the public welfare;

(c) Whether denial of the application is demanded by the public interest; and

(d) Whether the proposed use is a beneficial use of water.

(3) When determining whether denial of such application is demanded by the public interest, the director shall consider the following factors:

(a) The economic, environmental, and other benefits of the proposed use;

(b) Any adverse economic, environmental, and other impacts of the proposed use;

(c) Any current beneficial uses being made of the unappropriated water;

(d) The economic, environmental, and other benefits of not allowing the appropriation and preserving the water supply for beneficial uses within the state;

(e) Alternative sources of water supply available to the applicant; and

(f) Any other factors consistent with the purposes of this section that the director deems relevant to protecting the interests of the state and its citizens.

The application shall be deemed in the public interest if the overall benefits to Nebraska are greater than the adverse impacts to Nebraska. The director's order granting or denying an application shall specify the reasons for such action, including a discussion of the required factors for consideration, and shall document such decision by reference to the hearing record, if any, and to any other sources used by the director in making the decision.

Sec. 5. That section 46-1121, Revised Statutes Supplement, 1986, be amended to read as follows:

46-1121. (1) The fee for initial application for a permit shall be thirty dollars payable to the district. Twenty-five dollars of the fee shall be retained by the district and five dollars paid by the district to the department.

After January 1, 1988, the annual fee for renewal of a permit shall be ten dollars paid to the district. Two dollars of the annual fee shall be paid by the district to the department.

All fees shall be used by the district and the

department to administer the Nebraska Chemigation Act. The department's fee shall be deposited in the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be paid into the state treasury and credited by the State Treasurer to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

(2) All permits issued pursuant to section 46-1117 shall be annual permits and shall expire each year on December 31 ~~June 1~~ of the year for which the permit was issued. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

Sec. 6. That original section 46-233.01, Reissue Revised Statutes of Nebraska, 1943, and section 46-1121, Revised Statutes Supplement, 1986, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.