

LEGISLATIVE BILL 30

Approved by the Governor March 20, 2003

Introduced by Schrock, 38

AN ACT relating to the Nebraska Ground Water Management and Protection Act; to amend section 46-656.10, Reissue Revised Statutes of Nebraska; to provide for enforcement of certain violations; to create a fund; to eliminate a penalty; to repeal the original section; and to declare an emergency.

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

Section 1. Section 46-656.10, Reissue Revised Statutes of Nebraska, is amended to read:

46-656.10. ~~Any violation of a cease and desist order issued by a district pursuant to section 46-656.08 shall be a Class IV misdemeanor~~ (1) Any person who violates a cease and desist order issued by a district pursuant to section 46-656.08 shall be subject to a civil penalty of not less than one thousand dollars and not more than five thousand dollars for each day an intentional violation occurs. In assessing the amount of the civil penalty, the court shall consider the degree and extent of the violation, the size of the operation, whether the violator has been previously convicted or subjected to a civil penalty under this section, and any economic benefit derived from noncompliance. Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The court shall, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

(2) (a) Prior to issuing a cease and desist order against a public water supplier as defined in section 46-638, the district shall consult with the Attorney General. If the Attorney General determines that the district does not have sufficient grounds to issue a cease and desist order, the district shall abide by such determination and shall not issue a cease and desist order. The Attorney General shall have exclusive authority to enforce actions under this subsection.

(b) Any determination as to whether a water well is properly registered under sections 46-602 to 46-604 or whether a water well is properly permitted under the Municipal and Rural Domestic Ground Water Transfers Permit Act shall be made by the Department of Natural Resources.

(3) When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded. Any recovered costs of the action shall be: (a) Remitted to the State Treasurer for credit to the Department of Justice Natural Resources Enforcement Fund if the action is brought by the Attorney General; (b) credited to the applicable county fund if the action is brought by the county attorney; and (c) remitted to the district if the action is brought by the district's private attorney.

(4) The Department of Justice Natural Resources Enforcement Fund is created. The fund shall consist of money credited pursuant to subsection (3) of this section. Money in the fund shall be used to reimburse the office of the Attorney General for the costs incurred in enforcing this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 2. Original section 46-656.10, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.