

LEGISLATIVE BILL 1071

Approved by the Governor March 19, 1984

Introduced by Schmit, 23

AN ACT relating to ground water; to amend sections 46-667 to 46-671, Reissue Revised Statutes of Nebraska, 1943, sections 46-663, 46-665, 46-672, 46-674, and 46-674.01, Revised Statutes Supplement, 1982, and sections 46-656, 46-657, 46-659 to 46-661, and 46-666, Revised Statutes Supplement, 1983; to change provisions relating to the citation of the Nebraska Ground Water Management and Protection Act and related statutes; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 46-656, Revised Statutes Supplement, 1983, be amended to read as follows:

46-656. The Legislature finds that ground water is one of the most valuable natural resources in the state and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land, subject to the provisions of Chapter 46, article 6, and the correlative rights of other landowners when the ground water supply is insufficient for all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable, consistent with beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, 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 the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the pollution or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally determined ground water reservoir life goals and where available data, evidence, or other information indicates that present or potential

ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

Nothing in ~~this act~~ the Nebraska Ground Water Management and Protection Act relating to the pollution of ground water is intended to limit the powers of the Department of Environmental Control provided in Chapter 81, article 15.

Sec. 2. That section 46-657, Revised Statutes Supplement, 1983, be amended to read as follows:

46-657. As used in ~~this act~~ the Nebraska Ground Water Management and Protection Act and in sections 46-601 to 46-613.01, and 46-636 to 46-655, and ~~46-602-01,~~ unless the context otherwise requires:

- (1) Person shall mean a natural person, partnership, association, corporation, municipality, irrigation district, or any agency or political subdivision of the state;
- (2) Ground water shall mean that water which occurs, ~~ex~~ 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 the Nebraska Ground Water Management and Protection 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~~ excavating, and installing casing, pumps, and other devices for withdrawing or facilitating the withdrawal of ground water;
- (5) Pollution of ground water shall mean degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;
- (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 Nebraska Ground Water Management and Protection Act, (b) any well not in compliance with rules and regulations adopted pursuant to such act, (c) any well not properly registered in accordance with sections 46-602 to 46-605, or ~~(e)~~ (d) 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~~ such laws;

(9) Control area shall mean any area so designated by the director following a public hearing initiated and conducted pursuant to section 46-658;

(10) To commence construction of a well shall mean the beginning of the boring, drilling, jetting, digging, or ~~excavation~~ excavating of the actual well from which ground water is to be withdrawn;

(11) Well driller shall mean any person who constructs, reconstructs, alters, or repairs a well. The term shall not include a person who performs labor or services for a well driller at his or her direction and under his or her supervision;

(12) Management area shall mean any area so designated by a district pursuant to sections 46-673.01 to 46-673.06;

(13) Ground water reservoir life goal shall mean the finite or infinite period of time which a district establishes as its goal for maintenance of the supply of water in a ground water reservoir at the time a ground water management plan is adopted;

(14) Board shall mean the board of directors of a district;

(15) Irrigated acre shall mean any acre that is certified as such pursuant to rules and regulations of the district and that is actually capable of being supplied water through irrigation works, mechanisms, or facilities existing at the time of the allocation;

(16) Acre-inch shall mean the amount of water necessary to cover an acre of land one inch deep; and

(17) Subirrigation or subirrigated land shall mean the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground, and

~~(18) This act shall mean and include sections 46-656 to 46-674.~~

Sec. 3. That section 46-659, Revised Statutes Supplement, 1983, be amended to read as follows:

46-659. (1) Any person who intends to construct a well in a control or management area in this state on land which he or she owns or controls shall, before commencing construction, file with the district in which the well will be located an application for a permit on forms provided by the district. Forms shall be made available at each district in which a control or management area is located, in whole or in part, and at such other places as may be deemed appropriate. The district shall review such application and issue or deny the permit within thirty days after the application is filed.

(2) The application shall be accompanied by a seventeen dollar and fifty cent filing fee payable to the district, except as provided in subsection (9) of section 46-666, 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~~ the 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 district 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~~ section before water is so withdrawn.

(3) Any person who has failed, or in the future fails, to obtain a permit required by subsection (1) of this section shall make application for a late permit on forms provided by the district.

(4) The application for a late permit shall be accompanied by a two hundred fifty dollar fee payable to the district, except as provided in subsection (9) of section 46-666, and shall contain the same information required in subsection (2) of this section.

Sec. 4. That section 46-660, Revised Statutes Supplement, 1983, be amended to read as follows:

46-660. An application for a permit or late permit for a well in a control or management area shall be denied only if the district in which the well is to be located ~~shall find~~ finds (1) 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~~, (2) that the proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes, or (3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit. If the district ~~shall find~~ finds that the application is incomplete or defective, it 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 district of a complete and properly prepared application. A permit issued shall specify all regulations and 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 district shall transmit one copy of each permit issued to the director.

Sec. 5. That section 46-661, Revised Statutes Supplement, 1983, be amended to read as follows:

46-661. The issuance by the district of a permit pursuant to ~~the provisions of this act, section 46-660 or registration of a well by the director pursuant to Chapter 46, article 6, section 46-602~~ 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~~ after such date.

Sec. 6. That section 46-663, Revised Statutes Supplement, 1982, be amended to read as follows:

46-663. Regardless of whether or not any portion of a district has been designated as a control or management area, in order to administer and enforce ~~this act~~ the Nebraska Ground Water Management and Protection 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 46-658,~~ rules and regulations necessary to discharge the administrative duties assigned in ~~this the~~ the 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 the~~ the 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; and

(5) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds ~~therefor~~ for the action and following reasonable opportunity to be heard, to enforce any of the provisions of ~~this the~~ the act or of orders or permits issued pursuant ~~hereto~~ to it, to initiate suits to enforce the provisions of orders issued pursuant to ~~this the~~ the act, and to restrain the construction of illegal wells or the withdrawal or use of water from such wells.

Sec. 7. That section 46-665, Revised Statutes Supplement, 1982, be amended to read as follows:

46-665. (1) 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~~ by section 46-666, the district shall hold a public meeting to determine the type of controls to be imposed within that control area.

(2) Prior to the adoption, amendment, or repeal of any authorized control, the district shall hold one or

more public hearings to consider testimony regarding such adoption, amendment, or repeal. The text of the control ~~or controls~~ proposed for adoption or repeal, or of the amendment ~~or amendments~~, shall be made available to the public at least thirty days prior to any such hearing. The hearings ~~provided for by this subsection~~ shall be held within or in reasonable proximity to the control area. Public notice of the time and place of all such hearings shall be given in the manner provided in section 46-658.

(3) At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Nebraska Natural Resources Commission, and the Department of Environmental Control shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing.

Sec. 8. That section 46-666, Revised Statutes Supplement, 1983, be amended to read as follows:

46-666. (1) A district in which a control area has been designated pursuant to subdivision (1)(a) of section 46-658 shall by order adopt one or more of the following controls for the control area:

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

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from wells; and

(e) It may adopt such other reasonable regulations as are necessary to carry out the ~~intent of this act~~ purpose for which a control area was designated.

(2) A district in which a control area has been designated pursuant to subdivision (1)(b) of section 46-658 shall by order adopt one or more of the following controls for the area:

(a) It may adopt any of the controls listed in subsection (1) of this section; and

(b) It may require water users to implement irrigation scheduling programs to schedule, to the extent reasonably possible, the application of water in amounts which will not move below the root zone.

(3) In adopting, amending, or repealing any control authorized by subsection (1) or (2) of this section or sections 46-673.08 to 46-673.12, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the control or management area, will encourage a high degree of water use efficiency, or will

improve the administration of the area.

(4) The adoption, amendment, or repeal of any authorized control in a control area shall be subject to the approval of the director. The director may hold a public hearing to consider testimony regarding ~~such controls~~ the control prior to the issuance of an order approving or disapproving the adoption, amendment, or repeal of ~~such controls~~ the control. The director shall consult with the district and fix a time, place, and date for such hearing. In approving the adoption, amendment, or repeal of an authorized control in a control area, the director's considerations shall include, but not be limited to, those enumerated in subsection (3) of this section.

(5) If because of varying ground water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a control or management area, the uniform application throughout such area of one or more controls would fail to carry out the intent of ~~this act~~ the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to subsection (1) or (2) of this section or sections 46-673.08 to 46-673.12 may contain different water allocations for different irrigation distribution systems, on the condition that such different water allocations shall be authorized for no more than five years from the time such allocations are adopted, and different provisions for different categories of ground water use or portions of the control or management area. Any differences in such provisions shall recognize and be directed toward such varying ground water uses, distribution irrigation systems, or varying conditions. The provisions of all controls for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(6) If the district determines, following a public hearing conducted pursuant to section 46-665, that depletion or pollution of the ground water supply in the control area or any portion of the control area thereof is so excessive that the public interest cannot be protected solely through implementation of reasonable controls adopted pursuant to subsection (1) or (2) of this section, it may, with the approval of the director, close all or a portion of 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~~ determines that conditions warrant new permits, at which time the district shall consider all previously submitted applications for permits in the order

in which they were received.

(7) The district shall cause a copy of each order adopted pursuant to this section or sections 46-673.08 to 46-673.12 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.

(8) Whenever a control or management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section, section 46-665, and sections 46-673.08 to 46-673.12 shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(9) If, at the end of eighteen months following the designation of a control area pursuant to section 46-658, ~~the a district or districts~~ encompassed in whole or in part by a control area ~~have~~ has not adopted a any specific ~~control or~~ controls pursuant to subsection (1) or (2) of this section, the power to specify ~~such~~ controls shall vest in the director who shall, within ninety days ~~thereafter~~ after the end of the eighteen months, adopt by rule and regulation such ~~control or~~ controls as he or she ~~shall deem~~ deems necessary for carrying out the intent of this act the Nebraska Ground Water Management and Protection Act. Subject to section 46-667, the enforcement of controls adopted pursuant to this section shall be the responsibility of the district ~~or districts~~ involved. When the controls adopted by the director pursuant to this subsection are in effect in a district, all application fees for well permits in such district pursuant to section 46-659 shall be payable to the director.

(10) If the power to adopt a ~~control or~~ controls in a control area ~~shall be~~ is vested in the director, he or she 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 or her discretion, the director may conduct one or more additional public hearings prior to making his or her determination or selection of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-658.

Sec. 9. That section 46-667, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-667. 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 46-666, 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~~ is 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 46-658. The director shall receive evidence at ~~such the~~ hearing to determine whether or not the adopted control ~~or controls are~~ is being enforced uniformly, equitably, and in good faith; and if the director shall ~~determine~~ determines that the control ~~or controls are~~ is not being so enforced, then the enforcement power set out in section 46-666 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~~ section 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. 10. That section 46-668, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-668. All hearings conducted pursuant to ~~this act the Nebraska Ground Water Management and Protection Act~~ shall be of record and available for review.

Sec. 11. That section 46-669, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-669. Any person aggrieved by any order of the district or of the director issued pursuant to the ~~provisions of this act~~ Nebraska Ground Water Management and Protection Act may appeal in the manner provided by Chapter 84, article 9.

Sec. 12. That section 46-670, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-670. 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~~ the director by the Nebraska Ground Water Management and Protection Act. All fees paid to the director in accordance with the terms of ~~this the~~ 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 the~~ fund may be utilized by the director for payments of expenses incurred in the administration of ~~this the~~ act.

Sec. 13. That section 46-671, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-671. In the administration of ~~this act the~~ Nebraska Ground Water Management and Protection Act, all actions of the director and of the districts shall be consistent with the provisions of section 46-613.

Sec. 14. That section 46-672, Revised Statutes Supplement, 1982, be amended to read as follows:

46-672. (1) Whenever the boundaries of a designated control or management 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 46-666, and before adopting methods, rules, and regulations for the enforcement of ~~the~~ any 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~~ section 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. 15. That section 46-674, Revised Statutes Supplement, 1982, be amended to read as follows:

46-674. Sections 46-656 to ~~46-673~~, ~~46-673-01~~ ~~to 46-673-13~~, and 46-674 and section 16 of this act shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Sec. 16. That section 46-674.01, Revised Statutes Supplement, 1982, be amended to read as follows:

~~46-674-01.~~ Any violation of a cease and desist order issued by a district pursuant to ~~sections 46-656 to 46-674~~ section 46-663 shall be a Class IV misdemeanor.

Sec. 17. That original sections 46-667 to 46-671, Reissue Revised Statutes of Nebraska, 1943, sections 46-663, 46-665, 46-672, 46-674, and 46-674.01, Revised Statutes Supplement, 1982, and sections 46-656, 46-657, 46-659 to 46-661, and 46-666, Revised Statutes Supplement, 1983, are repealed.