

LEGISLATIVE BILL 51

Approved by the Governor June 6, 1991

Introduced by Schmit, 23

AN ACT relating to ground water; to amend sections 46-657, 46-673.05, 46-673.08, 46-673.09, 46-673.10, 46-673.13, 46-674, 46-674.06 to 46-674.10, 46-674.12, 46-674.14, 46-674.18, 46-674.19, 46-1201, 46-1203, 46-1223, 46-1231, 46-1238, and 46-1240, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change provisions relating to management areas and special protection areas; to require the amendment of ground water management plans to address water quality as prescribed and authorize management areas for protection of water quality; to provide powers and duties; to require certification of and to provide certain examination requirements for water well monitoring supervisors; to restrict the opening or breaking of the seal of water wells as prescribed; to change penalties as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 46-657, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-657. As used in the Nebraska Ground Water Management and Protection Act and in sections 46-601 to 46-613.01 and 46-636 to 46-655, 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 in 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opening or excavation in the ground through which ground water flows under natural pressure or is artificially withdrawn.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 the Nebraska Ground Water Management and

~~Protection Act~~ 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 excavating and installing casing, pumps, and other devices for withdrawing or facilitating the withdrawal of ground water;

(5) Contamination or contamination of ground water shall mean nitrate nitrogen or other material which enters the ground water due to action of any person and causes 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 Nebraska Ground Water Management and Protection Act act. (b) any well not in compliance with rules and regulations adopted and promulgated pursuant to such the act, (c) any well not properly registered in accordance with sections 46-602 to 46-604, or (d) any well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to 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 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 and quality 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;

(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;

(18) Best management practices shall mean schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper timing of fertilizer and pesticide application, and other fertilizer and pesticide management programs;

(19) Special ground water quality protection area shall mean any area designated as such by the Director of Environmental Control following a public hearing, with boundaries approved by the Director of Environmental Control, in which contamination of ground water is occurring; and

(20) Point source shall mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or any other conveyance, over which the Department of Environmental Control has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(21) Allocation shall mean the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time not to exceed five years; and

(22) Rotation shall mean a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, or monthly basis or of irrigated acres on an annual basis.

Sec. 2. That section 46-673.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.05. Prior to proceeding toward establishing a management area, a management plan shall have been approved by the director or the district shall have completed the requirements of section 46-673.04. In order to establish a management area, the district shall fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. The hearing shall be located within, or in reasonable proximity to, the area proposed for designation as a management area. Notice of the hearing shall be given in accordance with section 46-658, shall provide a general description of the contents of the plan and of the area which will be considered for inclusion in the management area, and shall provide the text of the control proposed for adoption by the district. All interested persons shall be allowed to appear and present testimony. The hearing shall include testimony of a representative of the Department of Water Resources and, if the primary purpose of the proposed management area is protection of water quality, of the Department of Environmental Control and shall include the results of any studies or investigations conducted by the district.

Sec. 3. That section 46-673.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.08. A district in which a management area has been designated shall determine the total amount of water which may be withdrawn from the ground water reservoir and, if the primary purpose of the management area is protection of water quality, the actions necessary to stabilize or reduce the level, increase, or spread of ground water contamination, consistent with the ground water reservoir life goal, and shall adopt controls pursuant to sections 46-656 to 46-674 to allow the beneficial use of that amount of water or to implement the actions.

Sec. 4. That section 46-673.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.09. A district may manage the use of water in a management area for water quantity or quality purposes or both by any of the following means:

- (1) Allocating the total permissible withdrawal of ground water;
- (2) Rotation of use of ground water;
- (3) Well-spacing requirements pursuant to section 46-673.12;
- (4) Requiring - A district may also require

the use of flow meters on wells;

~~(4)~~ (5) Best management practices;

(6) Requiring the analysis of water or deep soils for fertilizer and chemical content; or

~~(5)~~ (7) Educational programs designed to protect water quality.

Sec. 5. That section 46-673.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.10. (1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the permissible withdrawal of ground water shall be allocated equally per irrigated acre. Such allocation shall specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time not to exceed five years. A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies.

(2) A ground water user in a management area shall not be prevented from increasing the number of acres which he or she irrigates, or otherwise adding new or additional acres or uses of ground water, but all such new or additional acres or uses shall be subject to the controls adopted pursuant to sections 46-656 to 46-674. A person who increases the number of acres which he or she irrigates, or otherwise adds new or additional uses of ground water, shall be entitled to the same allocation as existing acres or uses.

(3) If annual rotation is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

Sec. 6. That section 46-673.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.13. Modification of a district's ground water management plan, management area boundaries, or ground water reservoir life goal, or dissolution of a management area may be accomplished utilizing the procedure established for the initial adoption of a plan or the initial designation of such an

area as a management area, but hearings for modification other than the amendment required by section 7 of this act or for dissolution may not be initiated more often than once a year. Modification of controls may be accomplished using the procedure in section 46-665.

Sec. 7. Prior to July 1, 1993, each district shall amend its ground water management plan to identify to the extent possible the levels and sources of ground water contamination within the area, ground water quality goals, long-term solutions necessary to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards, and practices recommended to stabilize, reduce, and prevent the occurrence, increase, or spread of ground water contamination. If a special ground water quality protection area has been designated in a district as of the effective date of this act, the district shall not be required to amend its plan for the geographical area encompassed by the special protection area.

Sec. 8. That section 46-674, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674. Sections 46-656 to 46-674 and 46-674.02 to 46-674.20 and section 7 of this act shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Sec. 9. That section 46-674.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.06. If the Director of Environmental Control determines from the study conducted pursuant to section 46-674.04 that one or more sources of contamination are not point sources and if a management area, the primary purpose of which is protection of water quality, has been established which includes the affected area, the director shall consider whether to require the district which established the management area to adopt an action plan as provided in sections 46-674.07 to 46-674.11.

If the director determines that one or more of the sources are not point sources and if such a management area has not been established, he or she shall, within thirty days after completion of the report required by section 46-674.04, consult with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a special

ground water quality protection area should be designated. The hearing shall be held within one hundred twenty days after completion of the report, shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the report. Notice of the hearing shall be published in such newspapers as are necessary to provide for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the special ground water quality protection area.

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 Department of Health, the Department of Water Resources, the Nebraska Natural Resources Commission, and the appropriate district shall offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environmental Control as he or she deems necessary, he or she shall determine whether a special ground water quality protection area shall be designated.

Sec. 10. That section 46-674.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.07. (1) When determining whether to designate a special ground water quality protection area or to require a district which has established a management area, the primary purpose of which is protection of water quality, to adopt an action plan for the affected area, the Director of Environmental Control shall consider whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future, whether ground water users, including, but not limited to, domestic, municipal, industrial, and agricultural users, are experiencing or will experience within the foreseeable future substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to contamination of ground water, whether methods are available to stabilize or reduce the level of contamination, and administrative factors directly affecting the ability to implement and carry out regulatory activities.

(2) If the Director of Environmental Control

determines that no such area should be established, he or she shall issue an order declaring that no special ground water quality protection area shall be designated.

(3) If the Director of Environmental Control determines that a special ground water quality protection area shall be established or that such a district shall be required to adopt such an action plan, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection. The report by the Director of Environmental Control shall include the specific reasons for the creation of the ground water quality protection area or the requirement of such an action plan and a full disclosure of the possible causes.

(4) When the boundaries of an area have been determined, the Director of Environmental Control shall issue an order designating the area as a special ground water quality protection area or requiring such an action plan. Such an order shall include a geographic and a stratigraphic definition of the area.

Sec. 11. That section 46-674.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.08. (1) Within one hundred eighty days after the designation of a special ground water quality protection area or the requiring of an action plan for a management area, the primary purpose of which is protection of water quality, the district or districts within whose boundaries the area is located shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of ground water contamination. Whenever a special ground water quality protection area or the affected area of such a management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within thirty days after an action plan has been prepared, a public hearing on such plan shall be held by the district in reasonable proximity to the area to be affected. Notice of the hearing shall be published in such newspapers as are necessary to provide

for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas to be affected by the proposed action plan. The text of the proposed action plan shall be made available to the public at least thirty days prior to the hearing.

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the department.

Sec. 12. That section 46-674.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.09. An action plan filed by a district pursuant to section 46-674.08 shall include the specifics of an educational program to be instituted by the district to inform persons of methods available to stabilize or reduce the level or prevent the increase or spread of ground water contamination. The action plan shall include one or more of the following protective measures for such area:

(1) A requirement that water users participate in educational programs;

(2) A requirement that the best management practices be used; and

(3) Such other reasonable requirements as are necessary to carry out the purpose for which a special ground water quality protection area was designated or for which an action plan was required for a management area.

Sec. 13. That section 46-674.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.10. (1) In adopting or amending an action plan authorized by subsection (2) of this section, 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 special ground water quality protection area or the requirement of an action plan for a management area or will improve the administration of the area.

(2) The Director of Environmental Control shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action plan prior to the issuance of an

order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section.

(3) If because of varying ground water uses or varying climatic, hydrologic, geologic, or soil conditions existing within a special ground water quality protection area or management area the uniform application throughout such area of one or more protective measures would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the measures adopted by the district pursuant to subsection (1) of this section may vary. Any differences in such protective measures shall recognize and be directed toward such varying ground water uses or conditions. All protective measures 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.

(4) If the Director of Environmental Control denies approval of an action plan by the district, the order shall list the reason the action plan was not approved. A district may submit a revised action plan within sixty days to the Director of Environmental Control for approval.

Sec. 14. That section 46-674.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.12. (1) The power to specify protective measures shall vest in the Director of Environmental Control if (a) at the end of one hundred eighty days following the designation of a special ground water quality protection area or requiring of an action plan for a management area pursuant to section 46-674.07, a district encompassed in whole or in part by a special ground water quality protection area or such a management area has not completed an action plan, (b) a district does not submit a revised action plan within sixty days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the Director of Environmental Control.

(2) If the power to specify protective measures in a special ground water quality protection area or such a management area is vested in the Director of Environmental Control, he or she shall within ninety days adopt and promulgate by rule and regulation such measures as he or she deems necessary for carrying out

the intent of the Nebraska Ground Water Management and Protection Act. He or she shall conduct one or more public hearings prior to the adoption of protective measures. Notice of any such additional hearings shall be given in the manner provided in section 46-674.06. The enforcement of protective measures adopted pursuant to this section shall be the responsibility of the Department of Environmental Control.

Sec. 15. That section 46-674.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.14. A district may petition the Director of Environmental Control to remove the designation of the area as a special ground water quality protection area or the requirement of an action plan for a management area. If the Director of Environmental Control determines that the level of contamination in a special ground water quality protection area or such a management area has stabilized at or been reduced to a level which is not detrimental to beneficial uses of ground water, he or she may remove the designation.

Sec. 16. That section 46-674.18, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.18. Each district in which a special ground water quality protection area has been designated or an action plan for a management area has been required pursuant to sections 46-674.02 to 46-674.20 shall, in cooperation with the Department of Environmental Control, establish a program to monitor the quality of the ground water in the area and shall if appropriate provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.

Sec. 17. That section 46-674.19, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674.19. A district may annually levy a tax of not to exceed two cents on each one hundred dollars on all of the taxable property within the boundaries of the special ground water quality protection area or the affected area of the management area for which an action plan has been required. Such levy, which shall be in addition to that authorized by sections 2-3225 and 46-673, shall be utilized only for the costs of carrying out sections 46-674.02 to 46-674.20 within such area. Certification and collection of such levy shall be

administered by the district and by the county or counties involved in the same manner as the levy authorized by section 2-3225.

Sec. 18. That section 46-1201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1201. Sections 46-1201 to 46-1241 and sections 20 and 23 of this act shall be known and may be cited as the Water Well Standards and Contractors' Licensing Act.

Sec. 19. That section 46-1203, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1203. For the purposes of the Water Well Standards and Contractors' Licensing Act, unless the context otherwise requires, the definitions found in sections 46-1204 to 46-1216 and section 20 of this act shall be used.

Sec. 20. Water well monitoring supervisor shall mean any individual engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices. The term shall not include: (1) An individual who constructs a water well or installs or repairs pumps or pumping equipment or a water well; or (2) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode.

Sec. 21. That section 46-1223, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1223. (1) The department with the assistance of the board shall cause examination to be made of applicants for initial licensure or certification. The board shall determine the type, categories, contents, and required passing grade of examinations to be administered to applicants for licensing or certification. Examinations shall be held at such times and places as the department, with the advice of the board, may determine. The department shall act within ninety days upon all completed applications for licensure or certification.

(2) Examinations for water well monitoring supervisors shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the

geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. All other examinations ~~Examinations~~ shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation practices and techniques, and such other knowledge as deemed appropriate by the board. The board may adopt any nationally developed standard examinations as constituting part or all of the Nebraska examinations.

(3) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within four months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved. Failure of an applicant to pass upon retaking the examination shall disqualify him or her from making further application for a period of six months.

(4) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Sec. 22. That section 46-1231, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1231. Each water well drilling supervisor, and pump installation supervisor, and water well monitoring supervisor shall make application for a certificate of competence in his or her respective trade. Such application shall be made to the department which shall charge an application fee set by the board pursuant to section 46-1224 for the filing of such application, and the department shall not act upon any application until the application fee for such certificate has been paid. A certificate shall be issued to every applicant who successfully passes the examination for such certificate, pays the appropriate certification fee, and otherwise complies with the Water Well Standards and Contractors' Licensing Act and all standards, rules, and regulations adopted and promulgated pursuant to such act. Any individual

employed by a water well contractor or a pump installation contractor who is not deemed to qualify as a water well drilling supervisor or pump installation supervisor may make application for a certificate of competence in his or her respective trade in the same manner as the water well drilling supervisor or the pump installation supervisor.

Sec. 23. Except as provided in section 46-1233, after the effective date of this act, no water well shall be opened or the seal broken by any person other than an owner of the water well unless the opening or the breaking of the seal is carried out by a certified water well monitoring supervisor.

Sec. 24. That section 46-1238, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1238. Any person who engages (1) in the construction of water wells, (2) ~~or~~ in the installation of pumps and pumping equipment, or (3) in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices without first obtaining a license or certificate for such activities from the department as provided in the Water Well Standards and Contractors' Licensing Act or rules and regulations adopted and promulgated pursuant to the act, in addition to the other penalties provided in the act, may be enjoined from continuing such activities.

Sec. 25. That section 46-1240, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1240. Any person who engages (1) in the construction of water wells, (2) ~~in or~~ the installation of pumps and pumping equipment, or (3) in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices or who fails to plug or plugs an abandoned well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Licensing Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Sec. 26. That original sections 46-657, 46-673.05, 46-673.08, 46-673.09, 46-673.10, 46-673.13,

46-674, 46-674.06 to 46-674.10, 46-674.12, 46-674.14, 46-674.18, 46-674.19, 46-1201, 46-1203, 46-1223, 46-1231, 46-1238, and 46-1240, Reissue Revised Statutes of Nebraska, 1943, are repealed.