

LEGISLATIVE BILL 375

Approved by the Governor March 11, 1982

Introduced by Schmit, 23; Kremer, 34; Koch, 12

AN ACT relating to ground water; to provide intent; to provide for ground water management plans; to provide for the designation of a ground water management area as prescribed; to define terms; to provide for and change provisions relating to controls on ground water use; to provide powers and duties of natural resources districts; to amend section 46-672, Reissue Revised Statutes of Nebraska, 1943, sections 46-660 and 46-663, Revised Statutes Supplement, 1980, and sections 46-656, 46-657, 46-659, 46-666, 46-673, and 46-674, Revised Statutes Supplement, 1981; 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, 1981, 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 finds, 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 ~~in--geographic areas where ground water may be declining, or where shortages or pollution of ground water may occur,~~ 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. ~~To The Legislature recognizes the need to provide for an orderly management systems system, particularly 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 require the designation of control areas with special regulation of future development and use.~~ ~~7-the-legislature-recognizes the-need-for-this-act-~~

Nothing in this 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, 1981, be amended to read as follows:

46-657. As used in this act and in sections 46-601 to 46-613.01, 46-636 to 46-655, 46-659, and 46-602.01, unless the context otherwise requires:

(1) Person shall mean a natural person, partnership, association, corporation, municipality, irrigation district, ~~and~~ or any agency or political subdivision of the state;

(2) Ground water shall mean that water which occurs 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 ~~sections 46-659--to--46-662~~ 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, 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, (b) ~~any well completed at any time before or after August 24, 1975 but~~ not properly registered in accordance with the provisions of sections 46-602 to 46-605, or (c) 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;

(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 of the actual well from which ground water is to be withdrawn; and

(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 3 to 8 of this act;

(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) This act shall mean and include sections 46-656 to 46-674 and sections 3 to 15 of this act.

Sec. 3. In order to initiate designation of a management area within its jurisdictional limits, a district shall prepare a ground water management plan based upon the best available information and submit such plan to the director for review and approval. The plan shall include, but not be limited to, the identification to the extent possible of:

(1) Proposed geographic and stratigraphic boundaries of the management area;

(2) Ground water supplies within the area including transmissivity, saturated thickness maps, and other ground water reservoir information, if available;

(3) Local recharge characteristics and rates from any sources, if available;

(4) Average annual precipitation and the variations within the area;

(5) Crop water needs within the area;

(6) Current ground water data collection programs;

(7) Past, present, and potential ground water use within the area;

(8) Ground water quality concerns within the area;

(9) Proposed water conservation and supply augmentation programs for the area;

(10) The availability of supplemental water supplies, including the opportunity for ground water recharge;

(11) The opportunity to integrate and coordinate the use of water from different sources of supply;

(12) Ground water management objectives, including a proposed ground water reservoir life goal for the area; and

(13) The controls enumerated in sections 10 to 14 of this act proposed to achieve the ground water reservoir life goal, and the impact of such controls on the goal.

Sec. 4. During preparation of a ground water management plan, the district shall actively solicit public comments and opinions, and shall utilize and draw upon existing research, data, studies, or any other information which has been compiled by, or is in the possession of, state or federal agencies, natural resources districts, or any other subdivision of the state. State agencies, districts, and other subdivisions shall furnish information or data upon the request of any district preparing such a plan. A district shall not be required to initiate new studies or data collection efforts, or to develop computer models, in order to prepare a plan.

Sec. 5. The director shall review any ground water management plan submitted by a district to ensure that the best available studies, data, and information were utilized and considered and that such plan is supported by and is a reasonable application of such information. The director shall consult with the Conservation and Survey Division of the University of Nebraska, the Natural Resources Commission, and such other state or federal agencies the director shall deem necessary when reviewing plans. Within ninety days after receipt of a plan, the director shall transmit his or her findings, conclusions, and reasons for approval or disapproval to the district submitting the plan.

Sec. 6. If the director disapproves a ground water management plan, the district which submitted the plan shall, in order to establish a management area, submit to the director either the original or a revised plan with an explanation of how the original or revised plan addresses the issues raised by the director in his or her reasons for disapproval. Once a district has submitted an explanation pursuant to this section, such district may proceed to schedule a hearing pursuant to section 7 of this act.

Sec. 7. If the director has approved the ground water management plan or the district has submitted an explanation of a disapproved plan, the district shall, in order to establish a management area as proposed in the plan, fix a time and place for a public hearing to consider the information supplied by the director and to hear any other evidence. Such hearing shall be held within sixty days after receiving the director's approval or after submitting an explanation. 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 and 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 the text of the control or controls 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 the results of any studies or investigations conducted by the district.

Sec. 8. Within ninety days after the hearing the district shall determine whether a management area shall be designated. If the district determines that no management area shall be established, the district shall issue an order to that effect. If the district determines that a management area shall be established, the district shall by order designate the area as a management area and adopt one or more controls to be utilized within the area in order to achieve the ground water reservoir life goal specified in the plan. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management. In no event shall the controls adopted include controls not set forth in the management plan, nor shall the area designated by the order include any area not included in the plan.

Sec. 9. Notice of any order adopted pursuant to section 8 of this act shall be provided in the manner provided for in subsection (7) of section 46-666. Such order shall become effective ninety days after its issuance.

Sec. 10. 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 consistent with the ground water reservoir life goal and shall adopt controls pursuant to sections 46-656 to 46-674 and sections 3 to 15 of this act to allow the beneficial use of that amount of water.

Sec. 11. A district may manage the use of water in a management area by any of the following means:

(1) Allocating the total permissible withdrawal of ground water;

(2) Rotation of use of ground water; or

(3) Well-spacing requirements pursuant to section 14 of this act. A district may also require the use of flow meters on wells.

Sec. 12. (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 and sections 3 to 15 of this act. 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.

Sec. 13. A district may annually and shall at least once every three years review any allocation or rotation control imposed in a management area and shall adjust allocations or rotations to accommodate new or additional uses or otherwise reflect findings of such review, consistent with the ground water reservoir life goal. Such review shall consider new development or additional ground water uses within the area, more accurate data or information that was not available at the time of the allocation order, the availability of supplemental water supplies, any changes in ground water recharge, and such other factors as the district deems appropriate.

Sec. 14. A district in which a management area has been designated may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651. If such requirements are adopted, the district shall provide a procedure for granting a variance in situations where such requirements would deny a landowner the reasonable and beneficial use of the ground water underlying his or her land.

Sec. 15. 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 or 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. 16. That section 46-659, Revised Statutes Supplement, 1981, 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 director. The director shall make such forms available at each district in which a control or management area is located, in whole or in part, and at such other places as he or she may deem appropriate. The district shall review such application and forward it to the director, with any comments or recommendations the district may have, within thirty days after the application is filed.

(2) The application shall be accompanied by a twenty-five dollar filing fee payable to the director, 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 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 director 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 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 director.

(4) The application for a late permit shall be accompanied by a twenty-five dollar fee payable to the director and a two hundred fifty dollar fee payable to the district and shall contain the same information required in subsection (2) of this section.

(5) Attached to any application for a late permit shall be a statement from the district indicating whether or not the well was in conflict with any rule, regulation, or control of the district in effect at the time the well was constructed, whether such well is in conflict with any rule, regulation, or control in effect at the time application for a late permit is made, and whether, in the opinion of the district, the applicant acted in good faith except for the failure to obtain a timely permit.

Sec. 17. That section 46-660, Revised Statutes Supplement, 1980, be amended to read as follows:

46-660. (1) An application for a permit or late permit for a well in a control or management area shall be denied only if the director shall find, with the advice of the district, (a) 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, (b) that the proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes, or (c) 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 director shall find that the application is incomplete or defective, he or she 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 director of a complete and properly prepared application. A permit issued shall specify all 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 director shall transmit one copy of each permit issued to the district in which the well is to be located.

(2) All procedures set forth in this section shall be conducted in conformance with and subject to the provisions of Chapter 84, article 9.

Sec. 18. That section 46-663, Revised Statutes Supplement, 1980, be amended to read as follows:

46-663. Regardless of whether or not any portion of a district has been designated as a control of management area, ~~pursuant to the provisions of this act,~~ in order to administer and enforce this 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 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 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 and following reasonable opportunity to be heard, to enforce any of the provisions of this act or of orders or permits issued pursuant hereto, and to initiate suits to enforce the provisions of orders issued pursuant to this act, † and to restrain the construction of illegal wells or the withdrawal or use of water from such wells.

~~{6}-issue--cease--and--desist--orders,--following ten-days'-notice--to--the--person--affected--stating--the contemplated-action-and-in-general-the--grounds--therefor and-following-reasonable--opportunity--to-be--heard,--to restrain--the--construction--of--illegal--wells--or--the withdrawal-or-use-of-water-from-such-wells-~~

Sec. 19. That section 46-666, Revised Statutes Supplement, 1981, 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 ~~and-enforce~~ a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in ~~Chapter--467--article--6 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.

(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 10 to 14 of this act, 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 ~~control~~ 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 prior to the issuance of an order approving or disapproving the adoption, amendment, or repeal of such controls. 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 or climatic, hydrologic, geologic, or soil conditions existing within a the 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 in a reasonably effective and equitable manner, the controls adopted by the district pursuant to subsection (1) or (2) of this section or sections 10 to 14 of this act may contain 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 or conditions. The provisions of all controls for different categories of ground water use shall be uniform for all portions of the control 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 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 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 that conditions warrant new permits, at which time the director 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 10 to 14 of this act 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, ~~designated pursuant to section 46-658,~~ encompasses portions of two or more districts, the responsibilities and authorities delegated in this section, and section 46-665, and sections 10 to 14 of this act shall be exercised jointly and uniformly by agreement of the respective boards ~~of directors~~ 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 district or districts encompassed in whole or in part by such a control area have not adopted a 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, adopt by rule and regulation such control or controls as he or she shall deem necessary for carrying out the intent of this 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.

(10) If the power to adopt a control or controls in a control area shall be 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. 20. That section 46-672, Reissue Revised Statutes of Nebraska, 1943, 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 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 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. 21. That section 46-673, Revised Statutes Supplement, 1981, be amended to read as follows:

46-673. Each district encompassed in whole or in part by a control or management area ~~designated--pursuant to subdivision (1) (a) or (1) (b) of section--46-658~~ shall have the power and authority to levy a tax not to exceed one and eight-tenths cents on each one hundred dollars annually on all of the taxable property within the portion of the district encompassed by such ~~control~~ area, except that if any land is designated as a control area under both subdivision (1) (a) and subdivision (1) (b) of section 46-658 the tax levied shall not exceed two and seven-tenths cents on each one hundred dollars annually. Such levy, which shall be in addition to that authorized by section 2-3225, shall be utilized only for the costs of carrying out the provisions of sections 46-656 to 46-674, and section 46-658.01, and sections 3 to 15 of this act within such ~~control~~ 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. 22. That section 46-674, Revised Statutes Supplement, 1981, be amended to read as follows:

46-674. Sections 46-656 to 46-674 and sections 3 to 15 of this act shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Sec. 23. That original section 46-672, Reissue Revised Statutes of Nebraska, 1943, sections 46-660 and 46-663, Revised Statutes Supplement, 1980, and sections 46-656, 46-657, 46-659, 46-666, 46-673, and 46-674, Revised Statutes Supplement, 1981, are repealed.