

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 798**

FINAL READING

Introduced by Louden, 49.

Read first time January 10, 2008

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to relating to water; to amend sections 46-283,  
2 46-287, and 46-299, Reissue Revised Statutes of Nebraska,  
3 and sections 46-286 and 46-291, Revised Statutes  
4 Cumulative Supplement, 2006; to change provisions  
5 relating to irrigation water reuse pits, applications for  
6 transfer of appropriations, and intentional underground  
7 water storage permittees as prescribed; to harmonize  
8 provisions; and to repeal the original sections.

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

1           Section 1. Section 46-283, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           46-283 The Legislature hereby finds and declares that the  
4 practice of reusing ground water from irrigation water reuse pits  
5 on irrigated land contributes to the efficient use and conservation  
6 of the state's water resources and that such reuse may be more  
7 feasible when done from irrigation water reuse pits located within  
8 ephemeral natural streams.

9           Sec. 2. Section 46-286, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11           46-286 ~~Headwater segment of a~~ An ephemeral natural stream  
12 shall mean that portion of a natural stream in which water  
13 flows only after a precipitation event or when augmented by  
14 surface water runoff caused by the pumping of ground water for  
15 irrigation. The ~~that~~ portion of a natural stream that is shown as  
16 an intermittent stream on the most recently published recent United  
17 States Geological Survey topographic quadrangle map published prior  
18 to the effective date of this act shall be considered an ephemeral  
19 natural stream unless the Department of Natural Resources has  
20 investigated the stream and determined that the stream or a reach  
21 of the stream is perennial or intermittent and subject to Chapter  
22 46, article 2. The department's determination for the purposes  
23 of this section shall be adopted and promulgated in rule or  
24 regulation.

25           Sec. 3. Section 46-287, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           46-287 Notwithstanding any other provision of law, any  
3 person intending to or in the process of reusing ground water from  
4 an irrigation water reuse pit located within a ~~headwater segment of~~  
5 a an ephemeral natural stream shall be exempt from the provisions  
6 of Chapter 46, article 2, which would otherwise apply to such pits,  
7 and from the provisions of section 46-637.

8           Sec. 4. Section 46-291, Revised Statutes Cumulative  
9 Supplement, 2006, is amended to read:

10           46-291 (1) Upon receipt of an application filed under  
11 section 46-290 for a transfer in the location of use of an  
12 appropriation, the Department of Natural Resources shall review  
13 it for compliance with this subsection. The Director of Natural  
14 Resources may approve the application without notice or hearing  
15 if he or she determines that: (a) The appropriation is used and  
16 will continue to be used exclusively for irrigation purposes; (b)  
17 the only lands involved in the proposed transfer are (i) lands  
18 within the quarter section of land to which the appropriation is  
19 appurtenant, (ii) lands within such quarter section of land and  
20 one or more quarter sections of land each of which is contiguous  
21 to the quarter section of land to which the appropriation is  
22 appurtenant, or (iii) lands within the boundaries or service  
23 area of and capable of service by the same irrigation district,  
24 reclamation district, public power and irrigation district, or  
25 mutual irrigation or canal company; (c) after the transfer, the

1 total number of acres irrigated under the appropriation will be no  
2 greater than the number of acres that could legally be irrigated  
3 under the appropriation prior to the transfer; (d) all the land  
4 involved in the transfer is under the same ownership or is within  
5 the same irrigation district, reclamation district, public power  
6 and irrigation district, or mutual irrigation or canal company;  
7 (e) the transfer will not result in a change in the point of  
8 diversion or the point of diversion will be changed but the  
9 change meets the following requirements: (i) The new point of  
10 diversion is on the same named stream, the same tributary, or  
11 the same river or creek as the approved point of diversion; (ii)  
12 the proposed point of diversion will not move above or below an  
13 existing diversion point owned by another appropriator; and (iii)  
14 the proposed point of diversion will not move above or below a  
15 tributary stream or a constructed river return or a constructed  
16 drain; and (f) the transfer will not diminish the water supply  
17 available for or otherwise adversely affect any other surface  
18 water appropriator. If transfer of an appropriation with associated  
19 incidental underground water storage is approved in accordance  
20 with this subsection, the associated incidental underground water  
21 storage also may be transferred pursuant to this subsection as  
22 long as such transfer would continue to be consistent with the  
23 requirements of this subsection. If necessary, the boundaries of  
24 the incidental underground water storage area may be modified to  
25 reflect any change in the location of that storage consistent with

1 such a transfer. Transfers shall not be approved pursuant to this  
2 subsection until the department has adopted and promulgated rules  
3 and regulations establishing the criteria it will use to determine  
4 whether proposed transfers are consistent with subdivision (1)(f)  
5 of this section.

6 (2) If after reviewing an application filed under section  
7 46-290 the director determines that it cannot be approved pursuant  
8 to subsection (1) of this section, he or she shall cause a notice  
9 of such application to be posted on the department's web site,  
10 to be sent by certified mail to each holder of a mortgage or  
11 deed of trust that is identified by the applicant pursuant to  
12 subdivision (1)(b)(v) of section 46-290 and to any entity owning  
13 facilities currently used or proposed to be used for purposes  
14 of diversion or delivery of water under the appropriation, and  
15 to be published at the applicant's expense at least once each  
16 week for three consecutive weeks in at least one newspaper of  
17 general circulation in each county containing lands to which the  
18 appropriation is appurtenant and, if applicable, in at least one  
19 newspaper of general circulation in each county containing lands to  
20 which the appropriation is proposed to be transferred.

21 (3) The notice shall contain: (a) A description of the  
22 appropriation; (b) the number assigned to such appropriation in  
23 the records of the department; (c) the date of priority; (d) if  
24 applicable, a description of the land or stream reach to which  
25 such water appropriation is proposed to be transferred; (e) if

1 applicable, the type of appropriation to which the appropriation  
2 is proposed to be changed; (f) if applicable, the proposed change  
3 in the purpose of use; (g) whether the proposed transfer or change  
4 is to be permanent or temporary and, if temporary, the duration  
5 of the proposed transfer or change; and (h) any other information  
6 the director deems relevant and essential to provide the interested  
7 public with adequate notice of the proposed transfer or change.

8 (4) The notice shall state (a) that any interested person  
9 may object to and request a hearing on the application by filing  
10 such objections in writing specifically stating the grounds for  
11 each objection and (b) that any such objection and request shall be  
12 filed in the office of the department within two weeks after the  
13 date of final publication of the notice.

14 (5) Within the time period allowed by this section for  
15 the filing of objections and requests for hearings, the county  
16 board of any county containing land to which the appropriation  
17 is appurtenant and, if applicable, the county board of any county  
18 containing land to which the appropriation is proposed to be  
19 transferred may provide the department with comments about the  
20 potential economic impacts of the proposed transfer or change in  
21 such county. The filing of any such comments by a county board  
22 shall not make the county a party in the application process, but  
23 such comments shall be considered by the director in determining  
24 pursuant to section 46-294 whether the proposed transfer or change  
25 is in the public interest.

1           Sec. 5. Section 46-299, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           46-299 Any person who has obtained a permit for  
4 intentional underground water storage ~~associated with a project not~~  
5 ~~existing on August 26, 1983,~~ and recovery of such water, pursuant  
6 to section 46-233, 46-240, 46-241, 46-242, or 46-297 may, subject  
7 to section 46-2,101, levy a fee or assessment against any person  
8 for the right or probable right to withdraw or otherwise use such  
9 stored water. Such fee or assessment may be levied against any  
10 land in connection with which such underground water storage has  
11 occurred or probably will occur, and may be varied based on the  
12 degree to which underground water storage has occurred or will  
13 occur. No fee or assessment shall represent more than the fair  
14 market value of such recharge, except that a fee or assessment may  
15 include a sum sufficient to amortize the operation, maintenance,  
16 repair, and capital costs of the project, apportioned on the degree  
17 to which recharge has occurred or is likely to occur, and on the  
18 degree to which any surface water is delivered.

19           Sec. 6. Original sections 46-283, 46-287, and 46-299,  
20 Reissue Revised Statutes of Nebraska, and sections 46-286 and  
21 46-291, Revised Statutes Cumulative Supplement, 2006, are repealed.