

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 799**

Introduced by Louden, 49.

Read first time January 10, 2008

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend section 46-291,  
2 Revised Statutes Cumulative Supplement, 2006; to change  
3 provisions relating to applications for transfer of  
4 appropriations; and to repeal the original section.

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

1           Section 1. Section 46-291, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           46-291 (1) Upon receipt of an application filed under  
4 section 46-290 for a transfer in the location of use of an  
5 appropriation, the Department of Natural Resources shall review  
6 it for compliance with this subsection. The Director of Natural  
7 Resources may approve the application without notice or hearing  
8 if he or she determines that: (a) The appropriation is used and  
9 will continue to be used exclusively for irrigation purposes; (b)  
10 the only lands involved in the proposed transfer are (i) lands  
11 within the quarter section of land to which the appropriation is  
12 appurtenant, (ii) lands within such quarter section of land and  
13 one or more quarter sections of land each of which is contiguous  
14 to the quarter section of land to which the appropriation is  
15 appurtenant, or (iii) lands within the boundaries or service  
16 area of and capable of service by the same irrigation district,  
17 reclamation district, public power and irrigation district, or  
18 mutual irrigation or canal company; (c) after the transfer, the  
19 total number of acres irrigated under the appropriation will be no  
20 greater than the number of acres that could legally be irrigated  
21 under the appropriation prior to the transfer; (d) all the land  
22 involved in the transfer is under the same ownership or is within  
23 the same irrigation district, reclamation district, public power  
24 and irrigation district, or mutual irrigation or canal company;  
25 (e) the transfer will not result in a change in the point of

1 diversion or the point of diversion will be changed but the  
2 change meets the following requirements: (i) The new point of  
3 diversion is on the same named stream, the same tributary, or  
4 the same river or creek as the approved point of diversion; (ii)  
5 the proposed point of diversion will not move above or below  
6 an existing diversion point owned by another appropriator; and  
7 (iii) the proposed point of diversion is not above or below a  
8 tributary stream or a constructed river return or a constructed  
9 drain; and (f) the transfer will not diminish the water supply  
10 available for or otherwise adversely affect any other surface  
11 water appropriator. If transfer of an appropriation with associated  
12 incidental underground water storage is approved in accordance  
13 with this subsection, the associated incidental underground water  
14 storage also may be transferred pursuant to this subsection as  
15 long as such transfer would continue to be consistent with the  
16 requirements of this subsection. If necessary, the boundaries of  
17 the incidental underground water storage area may be modified to  
18 reflect any change in the location of that storage consistent with  
19 such a transfer. Transfers shall not be approved pursuant to this  
20 subsection until the department has adopted and promulgated rules  
21 and regulations establishing the criteria it will use to determine  
22 whether proposed transfers are consistent with subdivision (1)(f)  
23 of this section.

24 (2) If after reviewing an application filed under section  
25 46-290 the director determines that it cannot be approved pursuant

1 to subsection (1) of this section, he or she shall cause a notice  
2 of such application to be posted on the department's web site,  
3 to be sent by certified mail to each holder of a mortgage or  
4 deed of trust that is identified by the applicant pursuant to  
5 subdivision (1)(b)(v) of section 46-290 and to any entity owning  
6 facilities currently used or proposed to be used for purposes  
7 of diversion or delivery of water under the appropriation, and  
8 to be published at the applicant's expense at least once each  
9 week for three consecutive weeks in at least one newspaper of  
10 general circulation in each county containing lands to which the  
11 appropriation is appurtenant and, if applicable, in at least one  
12 newspaper of general circulation in each county containing lands to  
13 which the appropriation is proposed to be transferred.

14 (3) The notice shall contain: (a) A description of the  
15 appropriation; (b) the number assigned to such appropriation in  
16 the records of the department; (c) the date of priority; (d) if  
17 applicable, a description of the land or stream reach to which  
18 such water appropriation is proposed to be transferred; (e) if  
19 applicable, the type of appropriation to which the appropriation  
20 is proposed to be changed; (f) if applicable, the proposed change  
21 in the purpose of use; (g) whether the proposed transfer or change  
22 is to be permanent or temporary and, if temporary, the duration  
23 of the proposed transfer or change; and (h) any other information  
24 the director deems relevant and essential to provide the interested  
25 public with adequate notice of the proposed transfer or change.

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

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

19           Sec. 2. Original section 46-291, Revised Statutes  
20 Cumulative Supplement, 2006, is repealed.