

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

## LEGISLATIVE BILL 209

FINAL READING

Introduced by Langemeier, 23.

Read first time January 13, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to irrigation; to amend section 46-238, Reissue  
2 Revised Statutes of Nebraska, and section 46-1654,  
3 Revised Statutes Cumulative Supplement, 2008; to change  
4 provisions relating to time for construction of works and  
5 dams; to harmonize provisions; and to repeal the original  
6 sections.

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

1                   Section 1. Section 46-238, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   46-238 (1) Within ~~six~~ twelve months after the approval of  
4 any application for water for irrigation, power, or other useful  
5 purpose by the department, the person making such application shall  
6 commence the excavation or construction of the works in which  
7 it is intended to divert the water and the actual construction  
8 of any water power plant and reservoir or reservoirs for  
9 storage in connection therewith and shall vigorously, diligently,  
10 and uninterrupted prosecute such work to completion unless  
11 temporarily interrupted by some unavoidable and natural cause. A  
12 failure to comply with this section shall work a forfeiture of the  
13 appropriation and all rights under the appropriation. The cost of  
14 promotion and engineering work shall not be considered a part of  
15 the cost of construction, and the progress of the construction work  
16 shall be such that one-tenth of the total work shall be completed  
17 within one year from the date of approval of the application.  
18 The construction of all work required in connection with the  
19 proposed project shall be prosecuted in the manner described in  
20 this section and with such a force as shall assure the average  
21 rate of constructional progress necessary to complete such work  
22 or works within the time stipulated in the approval of such  
23 application, notwithstanding the ordinary delays and casualties  
24 that must be expected and provided against. A failure to carry  
25 on the construction of either an irrigation project or a water

1 power project as outlined in this section shall work a forfeiture  
2 of the appropriation and all rights under the appropriation, and  
3 the department shall cancel such appropriation. The department  
4 shall have free access to all records, books, and papers of any  
5 irrigation or water power company, shall have the right to go  
6 upon the right-of-way and land of any such company, shall inspect  
7 the work to see that it is being done according to plans and  
8 specifications approved by the department, and shall also keep a  
9 record of the cost of construction work when deemed advisable for  
10 physical valuation purposes.

11 (2) The department may extend, for reasonable lengths  
12 of time, the time for commencing excavation or construction,  
13 completion of works, the application of water to a beneficial use,  
14 or any of the other requirements for completing or perfecting an  
15 application for flow or storage rights as fixed in the approval of  
16 an application or otherwise for the appropriation of water. Such  
17 extension may be granted upon a petition to the department and the  
18 showing of reasonable cause. The department shall cause a notice  
19 of each petition received to be published at the petitioner's  
20 expense in at least one newspaper of general circulation in the  
21 county or counties of the appropriation once a week for three  
22 consecutive weeks. The department shall hold a hearing on the issue  
23 of extension on its own motion or if requested by any interested  
24 person. If a hearing is held, notice shall be given by certified  
25 mail to the applicant, to any person who requested a hearing,

1 and to any person who requests notification of the hearing. The  
2 department may grant the extension in the absence of a hearing if  
3 no requests for a hearing are received. Any interested person may  
4 be made a party to such action. Any party affected by the decision  
5 on the petition may appeal directly to the Court of Appeals.  
6 Subsequent extensions may be made in the same manner.

7 Sec. 2. Section 46-1654, Revised Statutes Cumulative  
8 Supplement, 2008, is amended to read:

9 46-1654 (1) Approval of applications for which approval  
10 under sections 46-233 to 46-242 is not required shall be issued  
11 within ninety days after receipt of the completed application  
12 plus any extensions of time required to resolve matters diligently  
13 pursued by the applicant. At the discretion of the department, one  
14 or more public hearings may be held on an application.

15 (2) Approval of applications under the Safety of Dams and  
16 Reservoirs Act, for which approval under sections 46-233 to 46-242  
17 is required, shall not be issued until all pending matters before  
18 the department under the Safety of Dams and Reservoirs Act or such  
19 sections have been resolved and approved. Approval under the act  
20 and approval under such sections shall be issued simultaneously.

21 (3) Application approval shall be granted with terms,  
22 conditions, and limitations necessary to safeguard life and  
23 property.

24 (4) If actual construction, reconstruction, enlargement,  
25 alteration, breach, removal, or abandonment of the dam is not

1 commenced within the time established by the department, the  
2 application approval becomes void, except that the department  
3 may, upon written application and for good cause shown, extend  
4 the time for commencing construction, reconstruction, enlargement,  
5 alteration, breach, removal, or abandonment. If approval under  
6 sections 46-233 to 46-242 is also required, the department may not  
7 extend the time for commencing construction without following the  
8 procedures and granting a similar extension under subsection (2) of  
9 section 46-238.

10 (5) Written notice shall be provided to the department  
11 at least ten days before construction, reconstruction, enlargement,  
12 alteration, breach, removal, or abandonment is to begin and such  
13 other notices shall be given to the department as it may require.

14 Sec. 3. Original section 46-238, Reissue Revised Statutes  
15 of Nebraska, and section 46-1654, Revised Statutes Cumulative  
16 Supplement, 2008, are repealed.