

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 985**

Introduced by Davis, 43.

Read first time January 17, 2014

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend section 46-233, Reissue  
2 Revised Statutes of Nebraska; to grant standing to  
3 natural resources districts; to provide requirements for  
4 certain water appropriation applications; to provide a  
5 duty for the Revisor of Statutes; and to repeal the  
6 original section.

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

1           Section 1. Because the purposes for which natural  
2 resources districts were created include the development, management,  
3 utilization, and conservation of ground water and surface water  
4 within their jurisdiction, each natural resources district shall have  
5 the power and authority to bring, defend, or intervene in judicial  
6 and quasi-judicial actions to protect and conserve the quantity or  
7 quality of ground water and surface water resources within the  
8 district.

9           Sec. 2. Section 46-233, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           46-233 (1) The United States and every person intending  
12 to appropriate any of the public waters of the State of Nebraska  
13 shall, before (a) commencing the construction, enlargement, or  
14 extension of any works for such purpose, (b) performing any work in  
15 connection with such construction, enlargement, or extension, or (c)  
16 taking any water from any constructed works, make an application to  
17 the department for a permit to make such appropriation. A permit may  
18 be obtained to appropriate public waters for intentional underground  
19 water storage and recovery of such water. A public water supplier may  
20 make application to appropriate public waters for induced ground  
21 water recharge.

22           (2) The application shall be upon a form prescribed and  
23 furnished by the department without cost to an applicant. Such  
24 application shall set forth (a) the name and post office address of  
25 the applicant, (b) the source from which such appropriation shall be

1 made, (c) the amount of the appropriation desired, as nearly as it  
2 may be estimated, (d) the location of any proposed work in connection  
3 with the appropriation, (e) the estimated time required for its  
4 completion, which estimated time shall include the period required  
5 for the construction of ditches, pumps, and other features or  
6 devices, (f) the time estimated at which the application of the water  
7 for the beneficial purposes shall be made, which time shall be  
8 limited to a reasonable time following the estimated time of  
9 completion of the work when prosecuted with diligence, (g) the  
10 purpose for which water is to be applied and (i) if for induced  
11 ground water recharge by a public water supplier, a statement of the  
12 times of the year when and location along a stream where flows for  
13 induced ground water recharge are proposed and (ii) if for  
14 irrigation, a description of the land to be irrigated by the water  
15 and the amount, and (h) such facts and supporting documentation as  
16 are required by the department which shall include, but not be  
17 limited to, the depth of all wells, the extent of the underlying  
18 aquifer, the expected rate of recharge, the minimum flow or flows  
19 necessary to sustain the well field throughout the reach identified,  
20 and the period of time that a well field would continue to meet  
21 minimal essential needs of the public water supplier when there is no  
22 flow as those factors relate to and are part of an evaluation of  
23 pertinent hydrologic relationships.

24 A public water supplier making application for induced  
25 ground water recharge may submit with its application a statement of

1 the amount of induced ground water recharge water which the public  
2 water supplier presently uses as well as the amount of induced ground  
3 water recharge water it anticipates using in the next twenty-five-  
4 year period. Such statement shall also quantify the total amount of  
5 water the public water supplier presently uses from the well field as  
6 well as the total amount of water it anticipates using from the well  
7 field in the next twenty-five-year period.

8 (3) Upon receipt of an application containing the  
9 information set forth in this section, the department shall (a) make  
10 a record of the receipt of the application, (b) cause the application  
11 to be recorded in its office, and (c) make a careful examination of  
12 the application to ascertain whether it sets forth all the facts  
13 necessary to enable the department to determine the nature and amount  
14 of the proposed appropriation. If such an examination shows the  
15 application in any way defective, it shall be returned to the  
16 applicant for correction, with a statement of the correction  
17 required, within ninety days after its receipt. Ninety days shall be  
18 allowed for the refiling of the application, and in default of such  
19 refiling, the application shall stand dismissed. Except as provided  
20 in subsection (4) of this section, if so filed and corrected as  
21 required within such time, the application shall, upon being accepted  
22 and allowed, take priority as of the date of the original filing,  
23 subject to compliance with the future provisions of the law and the  
24 rules and regulations thereunder. During the pendency of any  
25 application or upon its approval, the department, upon proper

1 authorization and request of the applicant, may assign the  
2 application a later priority date.

3 (4) For public water supplier wells in existence on  
4 September 9, 1993, the priority date assigned to an application for  
5 induced ground water recharge made by a public water supplier shall  
6 be:

7 (a) June 27, 1963, for water supply wells and facilities  
8 constructed and placed in service on or before June 27, 1963;

9 (b) January 1, 1970, for water supply wells and  
10 facilities constructed and placed in service on or after June 28,  
11 1963, and on or before December 31, 1969;

12 (c) January 1, 1980, for water supply wells and  
13 facilities constructed and placed in service on or after January 1,  
14 1970, and on or before December 31, 1979;

15 (d) January 1, 1990, for water supply wells and  
16 facilities constructed and placed in service on or after January 1,  
17 1980, and on or before December 31, 1989; and

18 (e) January 1, 1993, for water supply wells and  
19 facilities constructed and placed in service on or after January 1,  
20 1990, and on or before September 9, 1993.

21 (5) Prior to taking action on an application for induced  
22 ground water recharge, the director shall publish notice of such  
23 application at the applicant's expense at least once each week for  
24 three consecutive weeks in a newspaper of general circulation in the  
25 area of the stream segment and also in a newspaper of statewide

1 circulation. The notice shall state that any person having an  
2 interest may, in writing, object to the application. Any such  
3 objection shall be filed with the department within two weeks after  
4 the final publication of the notice.

5 (6) After the director has accepted the application made  
6 under subsection (2) of this section as a completed application and  
7 published notice as required under subsection (5) of this section,  
8 the director shall, if he or she determines that a hearing is  
9 necessary, set a time and place for a public hearing on the  
10 application. The hearing shall be held within reasonable proximity to  
11 the area in which the wells are or would be located. At the hearing  
12 the applicant shall present all hydrological data and other evidence  
13 supporting its application. All interested parties shall be allowed  
14 to testify and present evidence relative to the application.

15 (7) An unapproved application pending on August 26, 1983,  
16 may be amended to include appropriation for intentional underground  
17 water storage and recovery of such water.

18 (8) Application may be made to the department for a  
19 temporary permit to appropriate water. The same standards for  
20 granting a permanent appropriation shall apply for granting such  
21 temporary permit except when the temporary permit is for road  
22 construction or other public use construction and the amount of water  
23 requested is less than ten acre-feet in total volume. For temporary  
24 permits for public-use construction, the applicant shall include on  
25 the application the location of the diversion, the location of use, a

1 description of the project, the amount of water requested, and the  
2 person to contact. Temporary permits for public-use construction and  
3 for less than ten acre-feet in total volume may be granted without  
4 any determination of unappropriated water and shall be considered to  
5 be in the public interest. The requirement of filing a map or plans  
6 with the application for a temporary permit may be waived at the  
7 discretion of the director. In granting a temporary permit, the  
8 director shall specify a date on which the right to appropriate water  
9 under the permit shall expire. Under no circumstances shall such date  
10 be longer than one calendar year after the date the temporary permit  
11 was granted. Temporary permits shall be administered during times of  
12 shortage based on priority. The right to appropriate water shall  
13 automatically terminate on the date specified by the director on the  
14 temporary permit without further action by the department.

15 (9) Water may be diverted from any stream, reservoir, or  
16 canal by any fire department or emergency response services for the  
17 purpose of extinguishing a fire in progress in an emergency without  
18 obtaining a permit from the department. The installation of a dry  
19 well for this purpose is allowed without the prior permission of the  
20 department, but the department shall be informed of any such  
21 installation, its location, and the party responsible for its  
22 installation and maintenance within thirty days after the  
23 installation.

24 (10) Before granting any application to appropriate  
25 surface water for nonmunicipal purposes, the department shall consult

1 with each natural resources district through which the stream from  
2 which water will be appropriated flows. Each natural resources  
3 district shall make a written determination as to whether granting  
4 the appropriation is contrary to the public interest. If a natural  
5 resources district finds that granting the appropriation is contrary  
6 to the public interest, the department shall not grant the  
7 appropriation without first allowing the natural resources district a  
8 hearing unless the natural resources district waives such hearing.

9           Sec. 3. The Revisor of Statutes shall assign section 1 of  
10 this act to Chapter 2, article 32.

11           Sec. 4. Original section 46-233, Reissue Revised Statutes  
12 of Nebraska, is repealed.