

LEGISLATIVE BILL 56

Approved by the Governor April 7, 1981

Introduced by Cullan, 49

AN ACT relating to ground water; to adopt the Industrial Ground Water Regulatory Act; to amend section 33-105, Revised Statutes Supplement, 1980; to provide fees; and to repeal the original section.

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

Section 1. The Legislature finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users in situations where industrial users withdraw significant quantities of ground water from the aquifers of the state and in situations where such ground water is transferred from the well site for use at another location.

Sec. 2. For purposes of sections 1 to 16 of this act the definitions found in section 46-657 shall be used.

Sec. 3. After the effective date of this act, any person who desires to withdraw a total of three thousand or more acre-feet of ground water, per year, from aquifers located within the State of Nebraska for industrial purposes shall, prior to commencing construction of any wells, obtain from the director a permit to authorize the withdrawal and any transfer of such ground water. As used in this section, industrial purposes shall include manufacturing, commercial, and power generation uses of water.

Sec. 4. (1) Applications for permits required by section 3 of this act shall be on forms provided by the director and shall contain:

(a) A statement of the amount of ground water which the applicant proposes to use;

(b) A statement of the proposed use and whether the ground water will be transferred for use at a location other than the well site;

(c) A hydrologic evaluation of the impact of the proposed use on the surrounding area;

(d) The date when the applicant expects to first use the ground water; and

(e) Such other relevant information as the director may deem necessary or desirable.

(2) Such applications shall be accompanied by an exhibit of maps showing the location, depth, and capacity of the proposed wells.

Sec. 5. Within thirty days of the receipt of an application made under section 3 of this act, the director shall accept the application as a completed application or return the application to the applicant as an incomplete application. If the application is deemed to be incomplete, the director shall inform the applicant as to the deficiencies in the application.

Sec. 6. After the director has accepted the application made under section 3 of this act as a completed application, the director shall set a time and place for a public hearing on the application. The hearing shall be held within or in reasonable proximity to the area in which the wells would be located. The hearing shall be scheduled within ninety days after the application is accepted by the director.

Sec. 7. At the hearing provided for in section 6 of this act, the applicant shall present all hydrological data and other evidence supporting its application. All interested parties shall be allowed to testify and present evidence relative to the application.

Sec. 8. The applicant may negotiate with any user of water in order to obtain an agreement whereby the user waives any cause of action against the applicant for damages or injunctive or other relief for interference with such water use, in exchange for financial payment, substitute water, or other compensation. The applicant shall file copies of any such agreements with the director who shall consider the agreements in determining whether to grant or deny a permit. Nothing in this section shall be construed to limit any power of eminent domain possessed by an applicant.

Sec. 9. (1) The director shall issue a written order containing specific findings of fact either granting or denying a permit. The director shall grant a permit only if he or she finds that the applicant's withdrawal and any transfer of ground water are in the public interest. In determining whether the withdrawal and transfer, if any, are in the public interest, the director's considerations shall include, but not be

limited to:

(a) Possible adverse effects on existing surface or ground water users;

(b) The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal;

(c) The availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed withdrawal or use;

(d) The economic benefit of the applicant's proposed use;

(e) The social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use and any transfer;

(f) Any waivers of liability from existing users filed with the director; and

(g) Other factors reasonably affecting the equity of granting the permit.

(2) The director may grant a permit for less water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the ground water withdrawals and on the manner of any transfer of ground water which the director deems necessary to protect existing users of water. The director shall issue such written order within ninety days of the hearing.

Sec. 10. A permit granted pursuant to section 9 of this act shall, following a hearing conducted in the same manner as hearings conducted pursuant to section 6 of this act:

(1) Be revoked if the director determines that the permit holder has failed to exercise the right to withdraw ground water within three years of the date specified in the permit, or for a period of three consecutive years thereafter;

(2) Be revoked or suspended for a definite period of time if the director determines that the permit holder has withdrawn more ground water than the amount specified in the permit; or

(3) Be revoked or suspended for a definite period of time if the director determines that the permit holder has violated any of the conditions specified in the permit.

Sec. 11. Any affected person aggrieved by any order issued or final decision made by the director pursuant to sections 1 to 16 of this act may appeal in the manner provided by Chapter 84, article 9. As used in this section, the term affected person shall mean the applicant for a permit which is the subject of the director's order or final decision, and any owner of an estate or interest in or concerning land or water whose interest is or may be impacted in a direct and significant manner by the director's order or final decision.

Sec. 12. Any owner of an estate or interest in or concerning land or water, except a person who has signed an agreement filed with the director pursuant to section 8 of this act, may bring an action for damages or injunctive or other relief for any injury done to his or her land or water rights by the holder of a permit issued pursuant to section 9 of this act. Nothing in sections 1 to 16 of this act shall be construed as limiting the right to resort to other means of review, redress, or relief provided by law.

Sec. 13. Any person who withdraws or transfers ground water in violation of the provisions of sections 1 to 16 of this act shall be guilty of a Class I misdemeanor. Each day shall constitute a separate offense in cases of continued violation.

Sec. 14. The director may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with sections 1 to 16 of this act. The director shall by regulation specify the contents and scope of the hydrologic evaluation required by section 4 of this act, taking into account the current state of hydrologic knowledge and techniques, and the factors for permit approval listed in section 9 of this act.

Sec. 15. Nothing in sections 1 to 16 of this act shall be construed to exempt the holder of a permit issued pursuant to section 9 of this act from any regulations adopted by a natural resources district pursuant to sections 46-656 to 46-674 for a control area designated before the permit has been granted.

Sec. 16. Sections 1 to 16 of this act shall be known and may be cited as the Industrial Ground Water Regulatory Act.

Sec. 17. That section 33-105, Revised Statutes Supplement, 1980, be amended to read as follows:

33-105. There shall be paid to the Department of Water Resources in advance for the services of the Director of Water Resources by the party demanding or necessitating the service the following fees: For filing, recording, and examining each application for a storage reservoir, for the first five thousand acre-feet or fraction thereof, twenty-five dollars, and for each additional five thousand acre-feet or fraction thereof, ten dollars; for filing, recording, and examining each application for water for irrigation from a natural stream, for the first one thousand acres proposed for irrigation or fraction thereof, two hundred dollars, and for each additional thousand acres or fraction thereof, one hundred dollars; for filing, recording, and examining each application for water for irrigation from a storage reservoir, for the first one thousand acres proposed for irrigation or fraction thereof, fifty dollars, and for each additional thousand acres or fraction thereof, twenty-five dollars; for filing, recording, and examining each application for water for power purposes, for each theoretical fifty horsepower or fraction thereof, five dollars; for filing, recording, and examining each application for water for each stock water reservoir, fish pond, ice pond, or other useful purpose for which no fee has been fixed, ten dollars; for filing, recording, and examining each application for withdrawal of ground water for industrial purposes, for the first three thousand acre-feet or fraction thereof, one thousand five hundred dollars, and for each additional one thousand acre-feet or fraction thereof, seven hundred fifty dollars; for filing any petition, affidavit, or other paper, ten dollars; for recording any deed or document pertaining to land covered in whole or in part by a water appropriation or any instrument other than an application, ten dollars; for blueprint copy of any map or drawing or for other copy of drawings or photostatic copy of any record, a reasonable sum to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction; for the examination of plans for any new dam and reservoir or enlargement, one dollar for each foot in height of the dam, and actual expenses while visiting and examining the site; for certificate and seal, one dollar, except that for any document filed with the Director of Water Resources in his or her capacity as Secretary to the Nebraska Power Review Board there shall be no charge. The Director of Water Resources shall keep a record of all money thus received. At the end of each calendar month he or she shall pay the same to the State Treasurer for the use of the General Fund and take his or her

receipt therefor and file the same with the records of his or her office.

Sec. 18. That original section 33-105, Revised Statutes Supplement, 1980, is repealed.