

LEGISLATIVE BILL 103

Approved by the Governor February 27, 1985

Introduced by Schmit, 23; Beyer, 3; Lamb, 43; DeCamp, 40

AN ACT relating to water resources; to amend sections 33-105, 46-241, and 46-257, Reissue Revised Statutes of Nebraska, 1943; to modify fee provisions and application procedures for water storage facilities; to change an exemption; and to repeal the original sections.

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

Section 1. That section 33-105, Reissue Revised Statutes of Nebraska, 1943, 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:

(1) 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;

(2) For filing, recording, and examining each application for, or application for modification of a permit permits to include, intentional or incidental underground water storage and recovery, five hundred dollars;

(3) 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;

(4) 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;

(5) For filing, recording, and examining each application for water for power purposes, for each theoretical fifty horsepower or fraction thereof, five dollars;

~~(6) 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;~~

(6) ~~(7)~~ 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;

(7) ~~(8)~~ For filing any petition, affidavit, ~~or~~ other paper, or application for which no fee has been fixed, ten dollars;

(8) ~~(9)~~ 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;

(9) ~~(10)~~ 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;

(10) ~~(11)~~ For the examination of plans for any new dam and reservoir or enlargement, one dollar for each foot in height of the dam, and, at the department's discretion, actual expenses incurred while visiting and examining the site; and

(11) ~~(12)~~ For certificate and seal, one dollar.

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. 2. That section 46-241, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-241. (1) Every person, intending to construct and ~~maintain~~ operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and ~~maintain~~ operate a facility for intentional underground water storage and recovery, shall, except as provided in sections 46-243 and 46-257, make an application to the Department of Water Resources upon a the prescribed form, prescribed and furnished to the applicant without cost. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application, the applicant shall have the right to impound in such reservoir, or store in and recover from such underground water storage facility, all waters not otherwise appropriated and any appropriated water not needed for immediate use, to construct and ~~maintain~~ operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom, or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility shall not have the right to store any water ~~whatever~~ in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the Department of Water Resources to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with the provisions of section 46-257, and the outlet works shall be installed in such a manner that water may be released in compliance with the provisions of this section. Whenever any person shall divert water from a public stream and return it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, providing no prior appropriator for beneficial use shall be prejudiced by such diversion.

(3) An application for storage and recovery of water incidentally stored underground may be made only by an appropriator of record who shall show, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Sec. 3. That section 46-257, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-257. (1) Any Except as provided in subsection (2) of this section, any person intending to construct any a dam for reservoir purposes or across the channel of any natural stream; except as provided by subsection (2) of this section; shall, before beginning such construction; submit detailed engineering plans, drawings, and specifications of the same to the Department of Water Resources for examination and approval; and no and at the same time comply with section 46-241 before beginning construction. No dam shall be constructed until the same shall required plans, drawings, and specifications have been so approved by the department.

(2) Any person intending to construct a low-hazard dam, as defined in the rules and regulations of the department, having a height of less than twenty-five

feet with a water storage capacity of less than fifteen acre-feet, measured below the crest of the lowest open outlet, shall be exempt from the provisions of subsection (1) of this section and also shall be exempt from the provisions of subsection (1) of section 46-241 as long as there will be no diversion or withdrawal of water for reservoir purposes across an ordinarily dry watercourse for flood control, erosion control, and water for livestock, or for any of such purposes, having a height of not to exceed thirty feet, having a total storage capacity of not to exceed one hundred fifty acre-feet below the crest of the emergency spillway, including detention storage, and having not to exceed seventy-five acre-feet of permanent storage capacity below the lowest open reservoir outlet shall, before beginning construction, file in the office of the Department of Water Resources on a duplicate form provided by the department, a description of such proposed dam which shall show its location, dimensions, storage capacity, and such other information as the department may reasonably require. The Director of Water Resources shall collect a fee of two dollars for filing each description. The director shall examine such description immediately upon its receipt and, if he finds that said proposed dam will not adversely affect the rights of existing water appropriators or constitute a hazard, he shall endorse the same as approved and forward the duplicate copy, so endorsed, to the owner who shall then be authorized to begin construction. If the director finds that the proposed dam will adversely affect the rights of existing appropriators or constitute a hazard, he shall so endorse the description and return the duplicate copy to the owner. The director may specify certain dimensions and storage capacity which would be acceptable for a proposed dam and return such specifications with the duplicate copy. Such owner may submit a revised description for a proposed dam in the same location. Any person intending to construct a dam on an ordinarily dry watercourse for storing water for livestock purposes or for erosion control with an impounding capacity of not to exceed fifteen acre-feet shall be exempt from the provisions of this section, provided, that where the impounded water is to be used for irrigation, detailed plans of such dam, prepared by an engineer, must be submitted to the department for examination and approval before start of construction.

(3) Whenever the Director of Water Resources determines that a dam has been constructed in violation of subsection (1) of this section, he or she may order the immediate removal of such dam and if necessary may institute legal proceedings to obtain compliance with such order.

(4) Any person constructing a dam for reservoir purposes or across the channel of any natural stream

without having complied with the provisions of subsection (1) or (2) of this section shall be guilty of a Class V misdemeanor, and every day such dam is maintained shall be considered a separate offense.

(4) Whenever the Director of Water Resources determines that a dam has been constructed for reservoir purposes or across any channel of a natural stream without the provisions of subsection (1) or (2) of this section having been complied with, he may order the immediate removal of such dam and, if necessary, he shall institute legal proceedings to obtain compliance with such order.

Sec. 4. That original sections 33-105, 46-241, and 46-257, Reissue Revised Statutes of Nebraska, 1943, are repealed.