

## LEGISLATIVE BILL 99

Approved by the Governor June 1, 1995

Introduced by Wickersham, 49; Bohlke, 33; Bromm, 23; Elmer, 44; Hillman, 48; Jones, 43; Matzke, 47; McKenzie, 34; Schrock, 38

AN ACT relating to water; to amend sections 46-122, 46-229, 46-231, 46-290, 46-541, and 46-1008, Reissue Revised Statutes of Nebraska, sections 46-112 and 46-530, Revised Statutes Supplement, 1994, and section 46-261, Reissue Revised Statutes of Nebraska, as amended by section 1, Legislative Bill 94, Ninety-fourth Legislature, First Session, 1995; to provide that certain districts and canal companies hold water appropriations for the benefit of certain landowners; to authorize the transfer of appropriations between lands within or served by the districts and companies; to provide for notices and hearings; to change provisions relating to registered voters in irrigation districts and reclamation districts; to require reports; to harmonize provisions; and to repeal the original sections.

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

Section 1. Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company using the procedure described in sections 2 to 10 of this act and which is exempt from sections 84-1408 to 84-1414 shall provide notice by mail to each owner of land in the district or served by the company not less than seven days before any meeting or hearing under sections 2 to 10 of this act.

Sec. 2. Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company shall hold all water appropriations filed in the district's or company's name for the benefit of the owners of land to which the water appropriations are attached. Sections 1 to 10 of this act shall not be construed to modify the rights of landowners to any water appropriation.

Sec. 3. (1) Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may file an application for transfer and a map with the Department of Water Resources identifying all tracts of lands that have received water delivered by the district or company and beneficially applied to the tract in at least one of the preceding ten consecutive years. The application for transfer and map shall be prepared and filed in accordance with the rules and regulations of the department.

(2) Any tract of land within the boundaries of the district or served by the company may receive a water appropriation, or portion thereof, transferred from a tract or tracts of land currently under the appropriation on file with the department. The Director of Water Resources shall grant the transfer if:

(a) The owner of the land to which the water appropriation is attached and the owner of the ditch, canal, or other diverting works subject to transfer consent in writing to the department to the transfer of the appropriation from the tract of land;

(b) The water allotment on the receiving tract of land will not exceed the amount that can be beneficially used for the purposes for which the appropriation was made and will not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops;

(c) The water will be applied on the receiving tract to a use in the same preference category as the use on the transferring tract; and

(d) The aggregate water use within the district or company after transfer will not exceed the aggregate water appropriation held by the district or company for the benefit of the owners of land to which the water appropriations are attached.

Sec. 4. The Department of Water Resources may hold a hearing on the application for transfer and map under section 3 of this act if the department determines that a hearing is necessary to determine whether the application for transfer and map are in compliance with such section. The department shall hold a hearing on the application if requested by any owner of land within the district or served by the company. The hearing shall be conducted in accordance with section 46-209 and the rules and regulations of the department.

Sec. 5. Any irrigation district, reclamation district, public power

and irrigation district, rural water district, or mutual irrigation or canal company intending to file an application for transfer and a map with the Department of Water Resources under section 3 of this act shall give notice prior to the meeting at which the application and map will be approved for filing. Notice shall be given in the manner provided in section 9 of this act.

Sec. 6. After an investigation and hearing, if applicable, the Director of Water Resources shall issue an order granting or denying the application for transfer and map under section 3 of this act. The director shall deny the application if the conditions in subsection (2) of such section are not met. An order granting or denying an application for transfer and map shall be in writing and shall specify the following:

- (1) The tracts of land retaining an appropriation;
- (2) The tracts of land receiving an appropriation; and
- (3) The tracts of land transferring an appropriation.

An appeal may be taken from the decision of the department on the application for transfer and map as provided in section 46-210.

Sec. 7. Any water appropriation transferred to a tract of land under sections 3 to 6 of this act shall retain the original priority date for the water appropriation.

Sec. 8. After obtaining approval of an application for transfer and map pursuant to sections 3 to 7 of this act, the board of directors of any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may transfer an appropriation of water distributed for agricultural purposes from a tract or tracts of land within the district or served by the company to another tract or tracts of land within the boundaries of the district or served by the company if:

(1) The district or company finds that the transferring tract of land has received and had water, delivered by the district or company pursuant to a valid water appropriation, beneficially applied in (a) at least one of the preceding three consecutive years or (b) at least one of the preceding ten consecutive years if the district or company finds that there has been sufficient cause for nonuse in the same manner as provided in section 46-229.04;

(2) The owner of the land to which the water appropriation is attached consents in writing to the transfer of the appropriation from his or her tract of land;

(3) The water appropriation, or portion thereof, proposed to be transferred has not been transferred by the board of directors of the district or company in the previous four years;

(4) The water allotment on the receiving tract of land will not exceed the amount that can be beneficially used for the purposes for which the appropriation was made and will not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops; and

(5) After the transfer, the aggregate water use within the district or company will not exceed the aggregate water appropriation held by the district or company for the benefit of owners of land to which the water appropriations are attached.

Sec. 9. Commencing at least six weeks but not more than twelve weeks before transferring any water appropriations under section 8 of this act, the district or company shall cause notice of the proposed transfer to be published at least once a week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands on which the water appropriation is or is proposed to be applied. The district or company shall also provide the notice to the Department of Water Resources. The notice shall contain:

(1) A description of the water appropriation to be transferred;

(2) The number assigned the water appropriation permit in the records of the department under sections 46-233 to 46-235;

(3) The priority date of the water appropriation;

(4) A description of the land to which the water appropriation is proposed to be applied;

(5) A statement that any owner of land within the district or served by the canal company may object to and request a hearing on the proposed transfer within seven calendar days after final publication; and

(6) Any other relevant information.

Sec. 10. (1) The board of directors of the district or company, or the board's designee, may hold a hearing on a proposed transfer under section 8 of this act and shall hold a hearing if requested by any owner of land within the district or served by the canal company. Notice of a hearing under

this subsection shall be published at least seven calendar days prior to the hearing in at least one newspaper of general circulation in each county containing lands upon which the water appropriation is or is proposed to be applied. If the hearing is held by the board's designee, the board's designee shall make a written recommendation to the board within fifteen calendar days after the hearing. The board shall act upon the proposed transfer at the board's next regular or special meeting following receipt of the designee's recommendation.

(2) The board of directors may transfer the water appropriation at a regular or special meeting.

(3) Any water appropriation transferred to a tract of land under section 8 of this act shall retain the original priority date for the water appropriation.

(4) All transfers shall be reported annually to the department pursuant to section 46-261.

Sec. 11. Nothing in sections 1 to 10 of this act shall be construed to limit or restrict the powers of the Department of Water Resources with respect to adjudication of water rights.

Sec. 12. Section 46-112, Revised Statutes Supplement, 1994, is amended to read:

46-112. The officers elected in compliance with section 46-110, upon qualifying as provided in section 46-113, shall hold their respective offices until the next general election for the irrigation district when their successors shall be elected. At such general election the member of the board of directors having the highest number of votes shall hold his or her respective office for a term of three years, the member of the board of directors having the next highest number of votes shall be declared to be elected for a term of two years, and the member of the board of directors having the least number of votes shall be elected for a term of one year. Each year thereafter, one member of the board of directors shall be elected for a term of three years. Each member of the board of directors shall be nominated and elected by a majority vote of the registered voters electors of the division in the irrigation district and shall be a registered voter and elector of the division for which he or she is to serve as such director. If, after the election, it appears that any two or more persons have an equal and the highest number of votes for the same office, the county board shall, in the presence of the candidates or their representatives, determine by lot which of the candidates shall be elected.

An automatic recount shall be held in accordance with sections 32-1119 to 32-1122. The regular election of the district shall be held on the first Tuesday in February.

Sec. 13. Section 46-122, Reissue Revised Statutes of Nebraska, is amended to read:

46-122. It is hereby expressly provided that all water distributed for irrigation purposes shall attach to and follow the tract of land to which it is applied, unless a change of location has been approved by the board of directors pursuant to sections 8 to 10 of this act or by the Department of Water Resources pursuant to section 46-294 or sections 3 to 7 of this act.

The board of directors may by the adoption of appropriate bylaws provide for the suspension of water delivery to any land in such district upon which the irrigation taxes levied and assessed thereon shall remain due and unpaid for two years. It shall be the duty of the directors to make all necessary arrangements for right-of-way for laterals from the main canal to each tract of land subject to assessment, and when necessary the board shall exercise its right of eminent domain to procure right-of-way for the laterals and shall make such rules in regard to the payment for such right-of-way as may be just and equitable.

Sec. 14. Section 46-229, Reissue Revised Statutes of Nebraska, is amended to read:

46-229. All appropriations for water must be for some beneficial or useful purpose and, except as provided in sections 3 to 6 of this act and sections 46-290 to 46-294, when the appropriator or his or her successor in interest ceases to use it for such purpose for more than three consecutive years, the right may be terminated only by the Director of Water Resources following a hearing pursuant to sections 46-229.02 to 46-229.05.

Sec. 15. Section 46-231, Reissue Revised Statutes of Nebraska, is amended to read:

46-231. Each appropriation shall be determined in its priority and amount by the time at which it is made and the amount of water which the works are constructed to carry. An appropriator shall at no time be entitled to the use of more than he or she can beneficially use for the purposes for which the appropriation has been made, and the amount of any appropriation made by means

of enlargement of the distributing works shall be determined in like manner.

No allotment from the natural flow of streams for irrigation shall exceed one cubic foot per second of time for each seventy acres of land nor three acre-feet in the aggregate during one calendar year for each acre of land for which such appropriation shall have been made, and no allotment shall exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops. Such limitations shall not apply to storage waters or to water appropriations transferred pursuant to sections 3 to 6 and 8 to 10 of this act.

When storage water is being used in addition to the natural flow, the person in charge of the ditch or canal shall, upon his or her request and within twenty-four hours thereof, be notified in writing by the user of such storage waters of the time of withdrawal from natural streams to be distributed according to law.

When an appropriation is for irrigation purposes and the amount is so small that a proper distribution and application is impossible, as much water as the applicant can use without waste may be allotted for a limited time so fixed as to give each appropriator his or her just share without violating other rights, so long as the volume of water used in a twenty-four-hour period does not exceed the amount of water that would otherwise have been allowed at the approved fixed continuous rate for a twenty-four-hour period.

Sec. 16. Section 46-261, Reissue Revised Statutes of Nebraska, as amended by section 1, Legislative Bill 94, Ninety-fourth Legislature, First Session, 1995, is amended to read:

46-261. (1) The Department of Water Resources may require an appropriator or his or her agent to furnish the department, by April 1 in any year, a list of all lands to be irrigated, the acreage of each tract, and the names of the owners, controllers, or officers for every ditch, reservoir, or other device for appropriating, diverting, carrying, or distributing water to be used as a basis for the distribution of water until April 1 of the following year, and if so ordered such a list shall be furnished by the appropriator or his or her agent to the department.

(2) By April 1, any district or company which has transferred an appropriation pursuant to sections 8 to 10 of this act in the previous calendar year shall provide the department:

(a) A legal description and map of the tracts of land receiving and transferring an appropriation of water, or portion thereof, within the district or company;

(b) The water appropriation permit number under sections 46-233 to 46-235 and the priority date of the water appropriation;

(c) A statement on whether objections were filed, whether a hearing was held, and how consent was given;

(d) The effective date of the transfer of the appropriation; and

(e) A statement summarizing the water use on the receiving and transferring tracts of land.

(3) The department may require the owner or controller of any canal or ditch to install an approved recording gauge at one or more specific locations to record the amount of water used. The department shall not furnish any water to be delivered to or used by or through any ditch, reservoir, or other contrivance for the appropriation, use, or storage of water until this section has been complied with. The department may construct bars or dams to prevent such delivery or use.

Sec. 17. Section 46-290, Reissue Revised Statutes of Nebraska, is amended to read:

46-290. Any Except as provided in sections 1 to 11 of this act, any person having a permit to appropriate water for beneficial purposes issued pursuant to Chapter 46 who desires to transfer the use of such water appropriation to a different location within the same river basin than that specified in the permit shall apply for approval of such change to the Department of Water Resources.

Sec. 18. Section 46-530, Revised Statutes Supplement, 1994, is amended to read:

46-530. Within thirty days after entering the final order establishing the district, the department shall enter an order appointing the board of directors named in the petition in accordance with subsection (5) of section 46-516. After the selection of the original board of directors of a district as provided for in subsection (5) of section 46-516, their successors shall be elected as provided in section 32-516. Elections shall be conducted as provided in the Election Act and shall take office on the first Thursday after the first Tuesday in January next succeeding their election. Registered voters Qualified electors of the municipality or municipalities within the

territory which composes the territory of a district shall be registered voters qualified electors of such district. A registered voter qualified elector of a subdivision may only cast his or her ballot for a director to be elected from such subdivision.

Sec. 19. Section 46-541, Reissue Revised Statutes of Nebraska, is amended to read:

46-541. The board shall have power on behalf of the district:

(1) To have perpetual succession, except that all districts organized prior to January 1, 1950, which have not entered into a bona fide construction of their works shall, within fifteen years following January 1, 1961, cause to be submitted to the qualified electors of the district the following question:

Shall the district be continued for an additional fifteen years?

.... Yes

.... No

The election shall be held in the same manner set out in section 46-564 relating to submission to qualified electors for the approval of bonded indebtedness.

In the event a majority of the qualified voters voting in such election vote yes, then such district shall be continued for an additional fifteen years. For all districts organized after January 1, 1950, and not having entered into a bona fide construction of their works before January 1, 1961, the directors shall, within fifteen years following January 1, 1961, cause to be submitted the same question to the qualified electors of the district. All districts organized after November 1, 1953, which have not entered into a bona fide construction of their works within fifteen years after the first day of July of the year of assessment of the taxable property of the district shall submit to the qualified electors of the district the question of whether the district shall be continued for an additional fifteen years. If a district has pending before the Congress of the United States a bill for the authorization or reauthorization of its project at the expiration of any one of such fifteen-year periods, the district shall be continued until such authorization or reauthorization is granted by the Congress of the United States and appropriations made for the actual construction of its work, which additional period shall not exceed ten years from the expiration of the fifteen-year period.

If at the end of the fifteen-year period, plus the additional ten-year period granted while its project is pending before the Congress of the United States for authorization or reauthorization and an appropriation for the actual construction of its works, no physical construction of any of its works has been started, then the same question shall again be submitted to the qualified electors. In the event a majority of the qualified voters voting in such election vote yes, then such district shall be continued for an additional fifteen years.

In the event of a failure to receive a majority affirmative vote of the voters voting in such election, the district shall be dissolved and the district shall submit to the department a full and complete audit by a public accountant showing the assets possessed by the district. Thereupon the department shall enter an order providing that within sixty days the assets of such district shall be liquidated, all rights granted by the department shall be canceled, and any assets on hand shall be divided as follows:

(a) All bills payable and all expenses of dissolution shall be deducted from the assets and paid; and

(b) The balance remaining shall be divided proportionately among the operating public school districts of the district in the proportion that the number of acres in each school district bears to the total number of acres of all of the school districts within the boundaries of the district. If the district is confined to one county, distribution shall be made by the county treasurer of such county. If the district extends into more than one county, the funds for disbursement to such school districts shall be paid to the county within which the schoolhouses are located for distribution to such school districts;

(2) To take by appropriation, grant, purchase, bequest, devise, or lease, and to hold and enjoy water rights and waterworks, and any and all real and personal property of any kind within or without the district necessary or convenient to the full exercise of its powers; to purchase, sell, lease, encumber, alienate, or otherwise dispose of waterworks and real and personal property; to enter into contracts for furnishing water service for use within the district; to acquire, construct, operate, control, and use any and all works, facilities, and means necessary or convenient to the exercise of its power, both within and without the district, for the purpose of providing for the use of such water within the district; and to do and perform any and all

things necessary or convenient to the full exercise of the powers granted in this subdivision;

(3) To have and to exercise the power of eminent domain in addition to any other rights and powers conferred in this section upon any district organized under the Reclamation Act, for the purposes and after the manner provided for in sections 76-704 to 76-724, except that when any reclamation district exercises the power of eminent domain as to water being used for power purposes, it shall not include any other properties of any irrigation district, public power district, or public power and irrigation district organized and existing under the laws of the State of Nebraska;

(4) To construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon, or over any vacant public lands, which public lands are now or may hereafter become the property of the State of Nebraska, and to construct works and establish and maintain facilities across any stream of water or watercourse. The district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city, or village where such streets lie concerning excavation and the refilling of excavation, the relaying of pavements, and the protection of the public during periods of construction. The district shall not be required to pay any license or permit fees or file any bonds. The district may be required to pay reasonable inspection fees;

(5) To contract with the government of the United States or any agency thereof for the construction, preservation, operation, and maintenance of tunnels, reservoirs, regulating or reregulating basins, diversion works and canals, dams, power plants, drains, and all necessary works incident thereto, to acquire rights to the use of water from such works, and to enter into contracts for the use of water from such works by persons and corporations, public and private;

(6) To list in separate ownership the lands within the district which are susceptible of irrigation from the district sources, to enter into contracts to furnish water service to all such lands, and to levy assessments as hereinafter provided against the lands within the district to which water service is furnished on the basis of the value per acre-foot of water service furnished to the lands within the district. The board may divide the district into units and fix a different value per acre-foot of water in the respective units and in such case shall assess the lands within each unit upon the same basis of value per acre-foot of water service furnished to lands within such unit;

(7) To fix rates at which water service, not otherwise provided for in this section, may be furnished. Rates shall be equitable although not necessarily equal or uniform for like classes of service throughout the district;

(8) To adopt plans and specifications for the works for which the district was organized, which plans and specifications may at any time be changed or modified by the board. The plans shall include maps, profiles, and such other data and descriptions as may be necessary to set forth the location and character of the works, and a copy thereof shall be kept in the office of the district and open to public inspection. The plans and specifications and any changes shall be approved by the department in accordance with the statutes;

(9) To appropriate and otherwise acquire water rights within or without the state; to develop, store, and transport water; to provide, contract for, and furnish water service for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, metallurgical use, and any and all other beneficial uses and to derive revenue and benefits therefrom; to fix the terms and rates therefor; to make and adopt plans for and to acquire, construct, operate, and maintain dams, reservoirs, canals, conduits, pipelines, tunnels, power plants, transmission lines, and any and all works, facilities, improvements, and property necessary or convenient therefor; and in the doing of all of such things to obligate itself and execute and perform such obligations according to the tenor thereof. The contracts for furnishing of water service for irrigation and domestic purposes shall only be made for use within the district. The board may transfer water appropriations within the district pursuant to sections 8 to 10 of this act;

(10) To invest any surplus money in the district treasury, including such money as may be in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate necessities of the district, in its own bonds or in treasury notes or bonds of

the United States. The investment may be made by direct purchase of any issue of such bonds or treasury notes, or part thereof, at the original sale of the same or by the subsequent purchase of such bonds or treasury notes. Any bonds or treasury notes thus purchased and held may, from time to time, be sold and the proceeds reinvested in bonds or treasury notes as provided in this subdivision. Sales of any bonds or treasury notes thus purchased and held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money with which the bonds or treasury notes were originally purchased was placed in the treasury of the district. The functions and duties authorized by this subdivision shall be performed under such rules and regulations as shall be prescribed by the board;

(11) To refund bonded indebtedness incurred by the district under and pursuant to such rules and regulations as shall be prescribed by the board;

(12) To borrow money, incur indebtedness, and issue bonds or other evidence of such indebtedness;

(13) To adopt bylaws not in conflict with the Constitution of Nebraska and laws of the state for carrying on the business, objects, and affairs of the board and of the district; and

(14) To enter into agreements for water service with agencies of the federal government or the Game and Parks Commission through which water will be made available, at rates determined as provided in subdivision (7) of this section, for hunting, fishing, and recreational development. The water service shall not exceed the amount of water which may be appropriated for such purposes by order of the Department of Water Resources, and such amounts shall be included in the total appropriate right of the district or districts involved.

Sec. 20. Section 46-1008, Reissue Revised Statutes of Nebraska, is amended to read:

46-1008. Every district incorporated under sections 46-1001 to 46-1020 shall:

(1) ~~Have shall have~~ perpetual succession, subject to dissolution as provided by ~~sections 46-1001 to 46-1020; shall such sections;~~

(2) ~~In~~ all cases be presumed to have been legally organized when it shall have exercised the franchises and privileges of a district for the term of one year;

(3) ~~Have shall have~~ the power of eminent domain to acquire land or interests in land within the district for the uses and purposes provided in this section;

(4) ~~Be shall be~~ empowered to sue and be sued;

(5) ~~Be shall be~~ capable of contracting and being contracted with;

(6) ~~Be shall be~~ authorized and empowered to hold such real and personal property as may come into its possession by will, gift, purchase, or otherwise, as authorized by law;

(7) ~~Have shall have~~ power to construct, install, maintain, and operate such ponds, reservoirs, pipelines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water and such appurtenant structures and equipment as may be necessary to carry out the purposes of its organization;

(8) ~~Have power to transfer water within the district pursuant to sections 8 to 10 of this act;~~

(9) ~~Have~~ ~~and shall have~~ power to cooperate with and enter into such agreements as deemed necessary with the Secretary of the United States Department of Agriculture or his or her duly authorized representative and shall have power to accept such financial or other aid which the Secretary of the United States Department of Agriculture is empowered to give pursuant to 16 U.S.C. 590r, 590s, 590x-1, 590x-a and 590x-3 7 U.S.C. 1921 et seq., or amendments thereto; and

(10) ~~Have~~ ~~and shall have~~ power to borrow money for the financing of the cost of the construction or purchase of any project or projects necessary to carry out the purposes for which such district was organized and to execute notes and mortgages in evidence thereof with interest, or combined interest and mortgage insurance charges. ~~Any~~ ~~7 PROVIDED;~~ that any district shall have the same power to borrow money for the refinancing of any such project or projects. Any such loan may be secured by any or all of the physical assets owned by the district, including easements and rights-of-way, except that ~~7 PROVIDED;~~ no district organized under sections 46-1001 to 46-1020 shall have any power or authority to levy any taxes whatsoever.

Sec. 21. Original sections 46-122, 46-229, 46-231, 46-290, 46-541, and 46-1008, Reissue Revised Statutes of Nebraska, sections 46-112 and 46-530, Revised Statutes Supplement, 1994, and section 46-261, Reissue Revised Statutes of Nebraska, as amended by section 1, Legislative Bill 94,