

LEGISLATIVE BILL 619

Approved by the Governor April 16, 2003

Introduced by Jones, 43; Burling, 33; Cudaback, 36; Kremer, 34; Louden, 49;
McDonald, 41; Schrock, 38; Stuhr, 24; Stuthman, 22

AN ACT relating to natural resources; to amend sections 46-656.01, 46-656.02, and 46-683, Reissue Revised Statutes of Nebraska, and sections 2-1575, 46-122, 46-241, 46-242, 46-257, 46-613.01, 46-642, 46-656.12, 46-691, 54-2401, 54-2412, and 66-1701, Revised Statutes Supplement, 2002; to provide for payments from the Nebraska Soil and Water Conservation Fund for water use; to provide for nondelivery of water in certain circumstances and limit liability as prescribed; to change provisions relating to water storage facilities, livestock waste control facilities, and ground water management; to provide powers and duties; to extend a termination date for the Biopower Steering Committee; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 2-1575, Revised Statutes Supplement, 2002, is amended to read:

2-1575. Sections 2-1575 to 2-1585 and section 2 of this act shall be known and may be cited as the Nebraska Soil and Water Conservation Act.

Sec. 2. Payments may be made from the Nebraska Soil and Water Conservation Fund to the owners of private land for the purpose of adopting or implementing practices or measures to reduce the consumptive use of water in river basins in which an interstate agreement, compact, or decree could require reduction in water usage.

Payments made pursuant to this section may be made as part of research, cost-sharing, or other programs implemented by natural resources districts, irrigation districts, or other entities to develop incentive-based practices or measures to reduce the consumptive use of water.

Payments made pursuant to this section shall be in accordance with terms and conditions established by the commission. The commission may establish terms and conditions for receipt of payments under this section which are different than those established for receipt of payments pursuant to section 2-1579.

Sec. 3. Section 46-122, Revised Statutes Supplement, 2002, is amended to read:

46-122. (1) 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 46-2,127 to 46-2,129 or by the Department of Natural Resources pursuant to section 46-294 or sections 46-2,122 to 46-2,126.

(2) 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.

(3) In times of reduced water supply, when the volume of water is not adequate to be beneficially used when equitably apportioned to all landowners in the district, the board may, after providing notice to landowners in a portion of the district and upon receiving no objections from the majority of such landowners, elect not to deliver water to that portion of the district. Such election shall not subject the district to liability under section 46-160 and shall not affect the rights of landowners in that portion of the district to water deliveries in the future. Any election to not deliver water to a portion of the district shall be made on a year-to-year basis, not to exceed ten years, and such election shall not subject any landowner to adjudication of his or her water right under section 46-229. The board may adjust the tolls or charges made to landowners within the district to reflect the decrease in supply to those landowners in the portion of the district not receiving water pursuant to such election by the board.

Sec. 4. Section 46-241, Revised Statutes Supplement, 2002, is amended to read:

46-241. (1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in ~~sections 46-243 and 46-257~~ subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with section 46-257. 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 under this section and any approval required by section 46-257, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all ~~waters~~ water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and 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) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir and (b) no release of water from the reservoir for the purpose of downstream diversion or withdrawal. This subsection does not exempt any person from the requirements of section 46-257 or 54-2412.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of section 46-233, 46-257, or 54-2412.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) 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~~ does not have the right to store water 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 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 section 46-257, and the outlet works shall be installed in ~~such a manner~~ so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns 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, if no prior appropriator for beneficial use is prejudiced by such diversion.

~~(3)~~ (6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Sec. 5. Section 46-242, Revised Statutes Supplement, 2002, is amended to read:

46-242. (1) After the completion to the satisfaction of the department of a storage reservoir for which a permit has been obtained pursuant to section 46-241, any person proposing to apply to beneficial use the water stored shall file with the department an application for a permit particularly describing the use to which the water is to be applied and, if for irrigation, describing the land to be irrigated.

(2) Application may be made for a permit to appropriate water for

the irrigation of land lying both upstream and downstream from a storage reservoir or intentional underground water storage facility. Under an approved application for a permit to appropriate water stored in a reservoir or facility for use on land upstream from such reservoir or facility, water may be diverted from the stream by the applicant and a compensating amount of water shall be released from the reservoir or facility for the use of downstream appropriators, but the rights of prior appropriators shall not be adversely affected by such exchange of water.

(3) The owner of a storage reservoir shall have a preferred right to make such application for a period of six months from the time limited for the completion of such reservoir. The date of the expiration of such period shall be endorsed upon the application when allowed. If an application is made by ~~any~~ a person other than ~~such~~ the owner of a reservoir at any time, the ~~same~~ application shall not be approved by the department until the applicant shows, by documentary evidence, sufficient interest in such storage reservoir to entitle the applicant to enough water for the purpose set forth in the application.

(4) Application may be made for a permit to appropriate water from a storage reservoir, subject to subsection (3) of this section, or an intentional underground water storage facility, subject to subsection ~~(3)~~ (6) of section 46-241, for instream use of water for recreation or fish and wildlife if the appropriation will not prejudice the rights of any prior appropriator for a beneficial use.

(5) An unapproved application for a permit pursuant to this section which is pending on August 26, 1983, may be amended to include use of stored water for intentional underground water storage.

Sec. 6. Section 46-257, Revised Statutes Supplement, 2002, is amended to read:

46-257. (1) ~~(a)~~ Except as provided in ~~subsections (2) and~~ subsection (3) of this section, any person intending to construct, modify, or rehabilitate a dam for any purpose, including, but not limited to, providing a reservoir for temporary or permanent storage of surface water, well water, human or animal waste effluent, and or mine tailings and sediments, shall submit an application for approval along with plans, drawings, and specifications of the same project to the Department of Natural Resources and at the same time submit an application to comply with section 46-241, when applicable, before beginning such construction, modification, or rehabilitation. When applicable, the applicant shall at the same time submit an application to comply with section 46-241. Except as provided in subsection (3) of this section, any person intending to abandon an existing dam through breaching or removal or as otherwise defined by the department shall submit to the department such plans and drawings as are requested by the department before beginning such abandonment. No dam shall be constructed, modified, rehabilitated, or abandoned until the required plans, drawings, and specifications have been approved by the department.

~~(b)~~ (2) An applicant for a permit for a livestock waste control facility which includes a dam, holding pond, or lagoon for which approval by the Department of Natural Resources is not otherwise required by this section, but is required by the Department of Environmental Quality in conjunction with the Department of Natural Resources to obtain approval for any dam or lagoon under section 54-2412, shall submit an application for approval along with plans, drawings, and specifications to the Department of Natural Resources and obtain approval before beginning construction. The Department of Natural Resources shall approve or deny the dam, holding pond, or lagoon within sixty days after the request is made.

~~(2)~~ Any person intending to construct (3) Subsection (1) of this section does not apply to the construction, modification, rehabilitation, or abandonment of a dam which (a) is a low-hazard dam, as defined in the rules and regulations of the department, (b) is less than twenty-five feet high, measured from the natural bed of the stream or watercourse lowest elevation of the natural ground at the downstream toe of the dam to the top of the dam, with a water storage impounding capacity of less than fifteen acre-feet, measured below the crest of the lowest open outlet or overflow, and with (c) has a total storage capacity, including surcharge storage through any emergency spillway, below the top of the dam of less than fifty acre-feet, shall be exempt from subsection (1) of this section and also shall be exempt from subsection (1) of section 46-241 as long as there will be no diversion or withdrawal of water from the reservoir.

(3) Any person intending to construct on a dry watercourse a low-hazard dam, as defined in the rules and regulations of the department, less than twenty-five feet high, measured from the natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam, for the

sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section and also shall be exempt from subsection (1) of section 46-241 if surface water runoff, except incidental runoff from the upstream area, is adequately diverted around the structure and is not permitted to enter the reservoir area and if the total storage capacity below the top of the dam is less than fifty acre-feet. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm must be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials between the lowest elevation of the downstream toe of the dam and the top of the dam, and (d) is not subject to subsection (1) or (4) of section 46-241.

(4) ~~Subsections (2) and~~ Within sixty days after completion of any dam, holding pond, or lagoon subject to subsection (1) or (2) of this section, a certification in the form required by the Department of Natural Resources that the dam, holding pond, or lagoon has been constructed in accordance with the plans, drawings, and specifications approved by the department shall be filed with the department for review and approval. The department may, in coordination with the Department of Environmental Quality, provide for the filing with both departments of a single certification of completion that will satisfy the applicable requirements of both departments when the dam, holding pond, or lagoon is part of a livestock waste control facility. The Department of Natural Resources shall approve or disapprove the certification and notify the owner or other responsible party within thirty days after the date of such filing, except that if the department determines that the certification is incomplete it shall so notify the owner or other responsible party and shall approve or disapprove the certification within thirty days after the date the owner or other responsible party files a complete certification. Neither the applicant nor any other person shall store water in any reservoir created by a dam, holding pond, or lagoon subject to subsection (1) or (2) of this section or otherwise operate such dam, holding pond, or lagoon if the department disapproves the certification as provided in this subsection.

(5) Subsection (3) of this section ~~de~~ does not waive any requirements of the Department of Environmental Quality.

~~(5)~~ (6) Whenever the Director of Natural Resources determines that a dam, holding pond, or lagoon has been constructed or operated in violation of subsection (1), (2), or (4) of this section, he or she may order the immediate removal of such dam, holding pond, or lagoon and if necessary may institute legal proceedings to obtain compliance with such order.

~~(6)~~ (7) Any person constructing a dam, holding pond, or lagoon without having complied with subsection (1), (2), or (4) of this section shall be guilty of a Class V misdemeanor, and every day such dam, holding pond, or lagoon is maintained shall be considered a separate offense.

Sec. 7. Section 46-613.01, Revised Statutes Supplement, 2002, is amended to read:

46-613.01. The Legislature recognizes and declares that the maintenance of an adequate source of ground water within this state is essential to the social stability of the state and the health, safety, and welfare of its citizens and that reasonable restrictions on the transportation of ground water from this state are a proper exercise of the police powers of the state. The need for such restrictions, which protect the health, safety, and general welfare of the citizens of this state, is hereby declared a matter of legislative determination.

Any person, firm, city, village, municipal corporation, or other entity intending to withdraw ground water from any water well located in the State of Nebraska and transport it for use in another state shall apply to the Department of Natural Resources for a permit to do so. In determining whether to grant or deny such permit, the Director of Natural Resources shall consider:

(1) ~~Whether~~ The nature of the proposed use and whether it is a beneficial use of ground water;

(2) The availability to the applicant of alternative sources of surface or ground water;

(3) Any negative effect of the proposed withdrawal on surface or ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement; and

(4) Any negative effect of the proposed withdrawal on surface water

supplies needed to meet present or reasonable future demands within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(5) Any adverse environmental effect of the proposed withdrawal or transportation of ground water;

(6) The cumulative effect of the proposed withdrawal and transfer relative to the matters listed in subdivisions (3) through (6) of this section when considered in conjunction with all other transfers subject to this section; and

(7) Any other factors consistent with the purposes of this section that the director deems relevant to protect the ~~interests~~ health, safety, and welfare of the state and its citizens.

Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn. The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the district or the department.

The director may include such reasonable conditions on the proposed use as he or she deems necessary to carry out the purposes of this section.

Sec. 8. Section 46-642, Revised Statutes Supplement, 2002, is amended to read:

46-642. (1) If the Director of Natural Resources finds that the withdrawal and transportation of ground water requested by the applicant are reasonable, are not contrary to the conservation and beneficial use of ground water, and are not otherwise detrimental to the public welfare, he or she shall grant a permit to the applicant to withdraw and transport water in the amount applied for or in a lesser amount. The permit so granted shall have a priority date as of the time when the application is filed with the director.

(2) In determining whether to grant or deny a permit under subsection (1) of this section, the director shall consider the factors set forth in subdivisions (1) through (7) of section 46-613.01.

Sec. 9. Section 46-656.01, Reissue Revised Statutes of Nebraska, is amended to read:

46-656.01. Sections 46-656.01 to 46-656.67 and section 11 of this act shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Sec. 10. Section 46-656.02, Reissue Revised Statutes of Nebraska, is amended to read:

46-656.02. The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient for all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers

of the Department of Environmental Quality provided in Chapter 81, article 15.

Sec. 11. (1) Whenever a natural resources district pursuant to subsection (16) of section 46-656.28 has temporarily suspended the drilling of new wells in all or part of the district, ground water withdrawn outside the affected area shall not be transported for use inside such area unless (a) such withdrawal and transport began before the temporary suspension took effect, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district imposing the temporary suspension and, if the water is withdrawn in another natural resources district, by the other district.

(2) Whenever a natural resources district pursuant to subdivision (1)(k) of section 46-656.25 has closed all or part of the district to the issuance of additional well permits, ground water withdrawn outside the affected area shall not be transported for use inside such area unless (a) such withdrawal and transport began before the affected area was closed to the issuance of additional well permits, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district that closed the affected area to additional well permits and, if the water is withdrawn in another natural resources district, by the other district.

Sec. 12. Section 46-656.12, Revised Statutes Supplement, 2002, is amended to read:

46-656.12. Each district shall prepare a ground water management plan based upon the best available information and submit such plan to the Director of Natural Resources for review and approval.

The plan shall include, but not be limited to, the identification to the extent possible of:

(1) Ground water supplies within the district including transmissivity, saturated thickness maps, and other ground water reservoir information, if available;

(2) Local recharge characteristics and rates from any sources, if available;

(3) Average annual precipitation and the variations within the district;

(4) Crop water needs within the district;

(5) Current ground water data-collection programs;

(6) Past, present, and potential ground water use within the district;

(7) Ground water quality concerns within the district;

(8) Proposed water conservation and supply augmentation programs for the district;

(9) The availability of supplemental water supplies, including the opportunity for ground water recharge;

(10) The opportunity to integrate and coordinate the use of water from different sources of supply;

(11) Ground water management objectives, including a proposed ground water reservoir life goal for the district. For management plans adopted or revised after July 19, 1996, the ground water management objectives may include any proposed integrated management objectives for hydrologically connected ground water and surface water supplies but a management plan does not have to be revised prior to the adoption or implementation of a joint action plan pursuant to section 46-656.28;

(12) Existing subirrigation uses within the district;

(13) The relative economic value of different uses of ground water proposed or existing within the district; and

(14) The geographic and stratigraphic boundaries of any proposed management area.

If the expenses incurred by a district preparing a ground water management plan exceed twenty-five percent of the district's current budget, the district may make application to the Nebraska Resources Development Fund for assistance.

If a control area, management area, or special ground water quality protection area has been designated in a district prior to July 19, 1996, the area shall be designated a management area but the district shall not be required to adopt or amend its existing rules, regulations, action plan, or ground water management plan, due to that change in designation, for the geographical area of the district included in such control area, management area, or special ground water quality protection area. A district may change references from control area or special ground water quality protection area to management area without holding a public hearing. Before taking any action described in the remainder of this section, a district shall hold a public hearing within the district. Notice of the hearing shall be given as provided

in section 46-656.19. If the changes made by Laws 1996, LB 108, require substantive changes to the district's rules, regulations, or plans, the district shall enact appropriate amendments to such rules, regulations, or plans. A district in which a special ground water quality protection area was designated prior to July 19, 1996, shall insure compliance with section 46-656.29. A district in which a control area, management area, or special ground water quality protection area was designated prior to July 19, 1996, may adopt any of the controls permitted by section 46-656.25.

Sec. 13. Section 46-683, Reissue Revised Statutes of Nebraska, is amended to read:

46-683. (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) The effects on interstate compacts or decrees and the fulfillment of the provisions of any other state contract or agreement; and

(h) 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. 14. Section 46-691, Revised Statutes Supplement, 2002, is amended to read:

46-691. (1) Any person who withdraws ground water for agricultural purposes, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, from aquifers located within the State of Nebraska may transfer the use of the ground water off the overlying land if the ground water is put to a reasonable and beneficial use within the State of Nebraska and is used for an agricultural purpose, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, after transfer, and if such withdrawal, transfer, and use (a) will not significantly adversely affect any other water user, (b) is consistent with all applicable statutes and rules and regulations, and (c) is in the public interest. The determination made by a natural resources district under subsection (2) of this section or the Director of Natural Resources under subsection (3) of this section shall include consideration of the factors set forth in subdivisions (1) through (7) of section 46-613.01. For purposes of this section, domestic has the same meaning as in section 46-613.

(2) Any affected party may object to the transfer of ground water by filing written objections, specifically stating the grounds for such objection, in the office of the natural resources district containing the land from which the ground water is withdrawn. Upon the filing of such objections or on its own initiative, the natural resources district shall conduct a preliminary investigation to determine if the withdrawal, transfer, and use of ground water is consistent with the requirements of subsection (1) of this section. Following the preliminary investigation, if the district has reason to believe that the withdrawal, transfer, or use may not comply with any rule or regulation of the district, it may utilize its authority under the Nebraska Ground Water Management and Protection Act to prohibit such withdrawal, transfer, or use. If the district has reason to believe that the withdrawal, transfer, and use is consistent with all rules and regulations of the district

but may not comply with one or more other requirements of subsection (1) of this section, the district shall request that the Department of Natural Resources hold a hearing on such transfer.

(3) At the hearing, all interested persons may appear and present testimony. Agencies or political subdivisions of this state and the appropriate natural resources districts shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing. After the hearing, if the Director of Natural Resources finds that the withdrawal, transfer, or use of ground water is contrary to the requirements of subsection (1) of this section, he or she shall issue a cease and desist order prohibiting the withdrawal and transfer.

(4) The director may adopt and promulgate rules and regulations to carry out this section.

Sec. 15. Section 54-2401, Revised Statutes Supplement, 2002, is amended to read:

54-2401. Sections 54-2401 to 54-2414 and section 17 of this act shall be known and may be cited as the Livestock Waste Management Act.

Sec. 16. Section 54-2412, Revised Statutes Supplement, 2002, is amended to read:

54-2412. (1) An applicant for a permit for a livestock waste control facility under the Livestock Waste Management Act shall, before issuance of a permit by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under section 46-257 and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure, ~~the failure of which would not otherwise require approval under subsection (1) of section 46-257 but which in the event of a failure could result in a significant discharge into waters of the state and have a significant impact on the environment. When such approval is required, the Department of Natural Resources shall approve or deny the dam or lagoon structure within sixty days after the request is made.~~ The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2408.

(2) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for an existing livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an existing livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Notwithstanding the Engineers and Architects Regulation Act, new class I livestock waste control facilities are exempt from the Engineers and Architects Regulation Act.

Sec. 17. (1) Except as provided in this section, no new livestock waste control facility shall be constructed on or after the effective date of this act unless surface water runoff from the upstream area, except incidental runoff, is adequately diverted around the structure and is not permitted to enter the reservoir area. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm shall be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials.

(2) The Department of Natural Resources shall permit a requested increase in the twenty-five-acre limitation for a new livestock waste control facility for a livestock operation for which an inspection was requested prior to January 1, 2000, in accordance with section 54-2406 unless the department determines that the detriment to existing water users that would result from permitting the acreage increase would outweigh the detriment to the operator of the livestock operation if the increase were not permitted.

(3) For other new livestock waste control facilities, the Department of Natural Resources may permit an increase in the twenty-five-acre limitation if it determines that (a) the applicant has no reasonable way to limit the amount of the additional runoff acreage to twenty-five acres or less at the proposed location of the livestock waste control facility, (b) the applicant has no reasonable alternative for relocating the livestock waste control facility so that the additional runoff acreage would not exceed twenty-five

acres, and (c) either (i) an increase in the permitted runoff acreage would not reduce water supplies to the detriment of existing water users or (ii) (A) the requested facility is for a proposed expansion of a livestock operation in existence and in compliance with the Livestock Waste Management Act as of January 1, 2003, (B) the amount of the runoff acreage permitted in excess of the twenty-five-acre limitation is not more than fifteen percent of total permitted feedlot area, and (C) any detriment to existing water users that would result from permitting the acreage increase would be outweighed by the detriment to the operator of the livestock operation if the increase were not permitted.

Sec. 18. Section 66-1701, Revised Statutes Supplement, 2002, is amended to read:

66-1701. The Biopower Steering Committee is established. The committee may study the feasibility of generating electricity from the use of biomass and agricultural crops and of supporting a demonstration project which may include a gasification component. The project would include, but not be limited to, use of biomass fuel which is farm-grown biomass or residue from agricultural or wood-product activities. The committee may collect information which may be used by all of Nebraska's public utilities to develop biopower electricity projects, including, but not limited to, the exploration of how the use of instate resources for electricity production might benefit the rural economy, an economic analysis of benefits to Nebraska from the use of instate rather than out-of-state resources, and the potential to reduce gaseous emissions.

The committee shall be appointed by ~~September 15, 1999~~, and shall consist of: (1) Three representatives from the Nebraska Power Association, one public interest representative, and one environmental interest representative, all appointed by the Governor; (2) two agricultural representatives appointed by the Governor; (3) a representative of the State Energy Office appointed by the Governor; (4) the Director of Economic Development or his or her designee; (5) a representative of the Game and Parks Commission appointed by the Governor; (6) the chairperson of the Committee on Agriculture as an ex officio, nonvoting member; and (7) the chairperson of the Committee on Natural Resources as an ex officio, nonvoting member. Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

The Biopower Steering Committee shall seek federal and other grant funds and resources from Nebraska's public utilities and from other public and private sources to carry out any study and to implement any demonstration project which may be undertaken. The Biopower Development Cash Fund is created. Funds received by the committee shall be remitted to the State Treasurer for credit to the Biopower Development Cash Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The committee shall report its findings to the Committee on Natural Resources by December 1 each year.

The Biopower Steering Committee terminates on December 31, ~~2003~~ 2008.

Sec. 19. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 20. Original sections 46-656.01, 46-656.02, and 46-683, Reissue Revised Statutes of Nebraska, and sections 2-1575, 46-122, 46-241, 46-242, 46-257, 46-613.01, 46-642, 46-656.12, 46-691, 54-2401, 54-2412, and 66-1701, Revised Statutes Supplement, 2002, are repealed.

Sec. 21. Since an emergency exists, this act takes effect when passed and approved according to law.