

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 208

Introduced by Schilz, 47.

Read first time January 13, 2015

Committee:

- 1 A BILL FOR AN ACT relating to water storage reservoirs; to amend sections
- 2 46-242 and 46-2,119, Reissue Revised Statutes of Nebraska, and
- 3 section 46-241, Revised Statutes Cumulative Supplement, 2014; to
- 4 provide a permit application exemption; to harmonize provisions; and
- 5 to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-241, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 46-241 (1) Every person intending to construct and operate a storage
4 reservoir for irrigation or any other beneficial purpose or intending to
5 construct and operate a facility for intentional underground water
6 storage and recovery shall, except as provided in subsections (2), (3),
7 and (4) and ~~(3)~~ of this section and section 46-243, make an application
8 to the department upon the prescribed form and provide such plans,
9 drawings, and specifications as are necessary to comply with the Safety
10 of Dams and Reservoirs Act. Such application shall be filed and
11 proceedings had thereunder in the same manner and under the same rules
12 and regulations as other applications. Upon the approval of such
13 application under this section and any approval required by the act, the
14 applicant shall have the right to construct and impound in such
15 reservoir, or store in and recover from such underground water storage
16 facility, all water not otherwise appropriated and any appropriated water
17 not needed for immediate use, to construct and operate necessary ditches
18 for the purpose of conducting water to such storage reservoir or
19 facility, and to condemn land for such reservoir, ditches, or other
20 facility. The procedure to condemn property shall be exercised in the
21 manner set forth in sections 76-704 to 76-724.

22 (2) Any person intending to construct an on-channel reservoir with a
23 water storage impounding capacity of less than fifteen acre-feet measured
24 below the crest of the lowest open outlet or overflow shall be exempt
25 from subsection (1) of this section as long as there will be (a) no
26 diversion or withdrawal of water from the reservoir for any purpose other
27 than for watering range livestock and (b) no release from the reservoir
28 to provide water for a downstream diversion or withdrawal for any purpose
29 other than for watering range livestock. This subsection does not exempt
30 any person from the requirements of the Safety of Dams and Reservoirs Act
31 or section 54-2425.

1 (3) Any person intending to construct a reservoir, holding pond, or
2 lagoon for the sole purpose of holding, managing, or disposing of animal
3 or human waste shall be exempt from subsection (1) of this section. This
4 subsection does not exempt any person from any requirements of the Safety
5 of Dams and Reservoirs Act or section 46-233 or 54-2425.

6 (4) Any reservoir with a maximum water storage capacity of fifty
7 acre-feet or less and constructed prior to 1973 is exempt from the
8 requirements of subsection (1) of this section if such reservoir is
9 maintained in accordance with departmental safety guidelines, not altered
10 to increase its storage capacity, and not utilized for irrigation
11 purposes. This subsection does not exempt any person from any
12 requirements of the Safety of Dams and Reservoirs Act or section 46-233
13 or 54-2425.

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

17 (6 5) The owner of a storage reservoir or facility shall be liable
18 for all damages arising from leakage or overflow of the water therefrom
19 or from the breaking of the embankment of such reservoir. The owner or
20 possessor of a reservoir or intentional underground water storage
21 facility does not have the right to store water in such reservoir or
22 facility during the time that such water is required downstream in
23 ditches for direct irrigation or for any reservoir or facility holding a
24 senior right. Every person who owns, controls, or operates a reservoir or
25 intentional underground water storage facility, except political
26 subdivisions of this state, shall be required to pass through the outlets
27 of such reservoir or facility, whether presently existing or hereafter
28 constructed, a portion of the measured inflows to furnish water for
29 livestock in such amounts and at such times as directed by the department
30 to meet the requirements for such purposes as determined by the
31 department, except that a reservoir or facility owner shall not be

1 required to release water for this purpose which has been legally stored.
2 Any dam shall be constructed in accordance with the Safety of Dams and
3 Reservoirs Act, and the outlet works shall be installed so that water may
4 be released in compliance with this section. The requirement for outlet
5 works may be waived by the department upon a showing of good cause.
6 Whenever any person diverts water from a public stream and returns it
7 into the same stream, he or she may take out the same amount of water,
8 less a reasonable deduction for losses in transit, to be determined by
9 the department, if no prior appropriator for beneficial use is prejudiced
10 by such diversion.

11 (7 6) An application for storage and recovery of water intentionally
12 stored underground may be made only by an appropriator of record who
13 shows, by documentary evidence, sufficient interest in the underground
14 water storage facility to entitle the applicant to the water requested.

15 Sec. 2. Section 46-242, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 46-242 (1) After the completion to the satisfaction of the
18 department of a storage reservoir for which a permit has been obtained
19 pursuant to section 46-241, any person proposing to apply to beneficial
20 use the water stored shall file with the department an application for a
21 permit particularly describing the use to which the water is to be
22 applied and, if for irrigation, describing the land to be irrigated.

23 (2) Application may be made for a permit to appropriate water for
24 the irrigation of land lying both upstream and downstream from a storage
25 reservoir or intentional underground water storage facility. Under an
26 approved application for a permit to appropriate water stored in a
27 reservoir or facility for use on land upstream from such reservoir or
28 facility, water may be diverted from the stream by the applicant and a
29 compensating amount of water shall be released from the reservoir or
30 facility for the use of downstream appropriators, but the rights of prior
31 appropriators shall not be adversely affected by such exchange of water.

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

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

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

19 Sec. 3. Section 46-2,119, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 46-2,119 Instream appropriations shall be administered in the same
22 manner as prescribed by Chapter 46, article 2, for other appropriations.
23 Reservoirs shall not be required by the director to release, for the
24 benefit of an instream appropriation, water previously impounded in
25 accordance with section 46-241 or 46-243. Reservoirs with storage rights
26 senior to an instream appropriation shall not be required to pass, for
27 the benefit of that instream appropriation, inflows that could be stored
28 by such reservoir if the instream appropriation were not in effect.
29 Notwithstanding subsection ~~(5)~~(6) of section 46-241, a reservoir with
30 storage rights senior to an instream appropriation also shall not be
31 required to pass inflows for downstream direct irrigation if the

1 appropriation for direct irrigation is junior to and would be denied
2 water because of that instream appropriation. Instream appropriations may
3 be canceled as provided in sections 46-229.02 to 46-229.05.

4 Sec. 4. Original sections 46-242 and 46-2,119, Reissue Revised
5 Statutes of Nebraska, and section 46-241, Revised Statutes Cumulative
6 Supplement, 2014, are repealed.