

LEGISLATIVE BILL 823

Approved by the Governor May 19, 1971

Introduced by J. W. Burbach, 19th District

AN ACT to amend sections 46-241 and 46-257, Reissue Revised Statutes of Nebraska, 1943, relating to reservoirs; to provide additional duties; to provide for enforcement; and to repeal the original sections.

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

Section 1. 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 a storage reservoir for irrigation or any other useful purpose, shall make an application to the Department of Water Resources upon a 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 all waters not otherwise appropriated and any appropriated water not needed for immediate use, to construct and maintain necessary ditches for the purpose of conducting water to such storage reservoir, and to condemn land for such reservoir and ditches. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) The owner of such storage reservoir 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 owners or possessors of reservoirs shall not have the right to impound any water whatever in such reservoirs during the time that such water is required in ditches for direct irrigation or for the reservoirs holding senior rights. Every person who owns, controls, or operates a reservoir, except political subdivisions of this state, shall be required to pass through the outlets of such reservoirs, 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 owner shall not be required to release water for this purpose which has been legally stored. The reservoir 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 at all stages of storage in the reservoir. Whenever any person shall divert water from a public stream and return it into the same stream, he 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.

Sec. 2. That section 46-257, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-257. (1) Any person intending to construct any 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 of the same to the Department of Water Resources for examination and approval, and no dam shall be constructed until the same shall have been so approved.

(2) Any person intending to construct a dam 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 fifty acre-feet below the crest of the emergency spillway, including detention storage, and having not to exceed twenty-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. 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) 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 deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars, and every day such dam is maintained shall be considered a separate offense.

(4) When it appears to the Department of Water Resources that any person has constructed a dam or is using water in violation of subsection (1) or (2) of this section, the department shall bring such action as is necessary, including proceedings in the district court, to obtain compliance with this section.

Sec. 3. That original sections 46-241 and 46-257, Reissue Revised Statutes of Nebraska, 1943, are repealed.