

## LEGISLATIVE BILL 186

Approved by the Governor March 13, 1973

Introduced by Kremer, 34

AN ACT to amend sections 46-208, 46-210, 46-214, 46-223, 46-229.03, 46-229.04, 46-230, 46-254, and 46-277, Reissue Revised Statutes of Nebraska, 1943, and sections 46-241 and 46-257, Revised Statutes Supplement, 1972, relating to general provisions regulating irrigation; to clarify and harmonize provisions; to delete obsolete matter; to make certain acts unlawful; to provide penalties; to provide powers and duties; to provide for the removal or repair of dams; and to repeal the original sections.

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

Section 1. That section 46-208, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-208. The Department of Water Resources shall exercise the powers and perform the duties formerly assigned to the state board of irrigation, highways and drainage.

The Director of Water Resources and his duly authorized assistants shall have access at all reasonable times to all dams, reservoirs, hydroelectric plants and headgates, and other devices for diverting water, for the purpose of performing the duties assigned to the department.

Sec. 2. That section 46-210, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-210. If any county, party or parties interested in irrigation, water power, highways or drainage work affected thereby shall be dissatisfied with the decision or with any order adopted, such dissatisfied county, party or parties may institute proceedings in the Supreme Court of Nebraska to reverse, vacate or modify the order complained of. The procedure to obtain such reversal, modification or vacation of any such decision or order upon which a hearing has been had before the Department of Water Resources shall be governed by the same provisions in force with reference to appeals and error proceedings from the district court to the Supreme

Court of Nebraska. The evidence presented before the department as reported by its official stenographer and reduced to writing, together with a transcript of the record and pleadings upon which the decision is based, duly certified in such case under the seal of the department shall constitute the complete record and the evidence upon which the case shall be presented to the appellate court; Provided, the time for perfecting such appeal shall be limited to one month after the rendition of such decision or order, and the Supreme Court shall advance such appeal to the head of its docket.

Sec. 3. That section 46-214, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-214. The Department of Water Resources shall prepare and render to the Governor, biennially, and oftener if required, full and true reports of the work of the department touching all of the matters and duties devolving upon the department by virtue of its office, ~~which report shall be delivered to the Governor on or before December 1 of the year preceding the regular sessions of the legislature.~~ The department shall have printed as many copies as the Director of Water Resources may determine, and distribute them according to the provisions of law governing the printing of other state reports.

Sec. 4. That section 46-223, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-223. For each district created under section 46-222, the Department Director of Water Resources shall appoint one or more water commissioner commissioners as required, who shall ~~hold his office for a period of two years unless sooner removed by the department~~ serve without term.

Sec. 5. That section 46-229.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-229.03. (1) The notice shall contain the date and place of hearing, a description of the water appropriation, the number thereof upon the books and records of the department, the date of priority, the point of diversion, and a description of the lands which are located under such water appropriation. It shall call upon all persons interested in such water appropriation to show cause why all or part of the same should not be canceled or and annulled. The notice shall

be served personally at least thirty days before the date of hearing upon those owning or controlling the water appropriation and the ditch, canal or reservoir for the purpose of using or storing water for any purpose whatsoever, if they are known to the department to be the owners thereof and maintain an office within the State of Nebraska.

(2) If the persons, named in subsection (1) of this section, do not maintain an office within the State of Nebraska, then such notice shall be served by the publication thereof in some legal newspaper in the county in which the place of diversion of such water appropriation is located, four consecutive weeks prior to the date of hearing, and a copy of such notice shall further be personally served or sent by either registered or certified mail to all persons appearing from the records of the county clerk or register of deeds to be landowners under such appropriation.

Sec. 6. That section 46-229.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-229.04. At such hearing the verified report of the ~~district--superintendent~~, water commissioner or engineers of the department shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no one appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If someone interested appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use, or has ceased to be used for such purpose for more than three years, the same shall be declared canceled and annulled.

Sec. 7. That section 46-230, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-230. As the adjudication of a stream progresses, and as each claim is finally adjudicated, the Director of Water Resources shall make and cause to be entered of record in his office an order determining and establishing the several priorities of right to use the irrigation water of such stream, and the amount of the appropriation of the several persons claiming irrigation water from such stream and the character of use for which each appropriation shall be found to have been made, and the address of the owner of each water appropriation. It shall be the duty of every owner of an appropriation to give notice to the Department of Water Resources of its

address, and any change of its address.

Sec. 8. That section 46-241, Revised Statutes Supplement, 1972, 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~~ 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 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. 9. That section 46-254, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-254. Any person owning or in control of any ditch, reservoir or other device for appropriating or using water who shall willfully open or close, change or interfere with any headgate or controlling gate, or by any method or means take any water from any natural stream, reservoir or other source, through any ditch or canal to any land or lands, or allow the same to be done, or use or allow to be used any water upon any land or lands, or for any other purpose whatsoever, without authority from the Department of Water Resources, or who shall store water in or release water from a reservoir other than in compliance with orders of the Director of Water Resources or his representative, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars and not more than one thousand dollars, or imprisoned in the county jail for a term not exceeding six months, with an additional fine of five hundred dollars for each day the water is allowed to run without authority from the department.

Sec. 10. That section 46-257, Revised Statutes Supplement, 1972, 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~~ 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, the department shall bring such action as is necessary, including proceedings in the district court, to obtain compliance with this section he may order the immediate removal of such dam and, if necessary, he shall institute legal proceedings to obtain compliance with such order.

Sec. 11. That section 46-277, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-277. The owner or owners operator of any dam and appurtenant works heretofore or hereafter constructed for the impounding or diversion of water, which has or will have an impounding capacity of ten acre-feet or

more, shall keep such dam and appurtenant works in a state of repair to be approved by the Department of Water Resources. The department shall make an inspection of such dams and appurtenant works once every year and place in the files of the department a report of such inspections. The owner or operator shall provide the department access to such dams at all reasonable times. When such an inspection reveals a structure in an unsafe condition, the Director of Water Resources shall give notice to the owner or owners, ~~and three months will be given from date of such notice~~ to place such dam and appurtenant works in such state of repair that as will meet the approval of the director. The repair shall be completed in not more than ninety days or such reasonable time as may be determined by the director. Such notice shall be in writing and shall be served in the same manner as court ~~summons~~ summons are served.

Sec. 12. That original sections 46-208, 46-210, 46-214, 46-223, 46-229.03, 46-229.04, 46-230, 46-254, and 46-277, Reissue Revised Statutes of Nebraska, 1943, and sections 46-241 and 46-257, Revised Statutes Supplement, 1972, are repealed.