

LEGISLATIVE BILL 146

Approved by the Governor May 15, 1981

Introduced by Public Works Committee, Kremer, 34, Chpn.;
Beutler, 28; Lamb, 43; DeCamp, 40; Clark, 47;
Koch, 12; Wesely, 26; Hoagland, 6

AN ACT relating to water; to amend sections 46-146, 46-609, 46-656, and 46-674, Reissue Revised Statutes of Nebraska, 1943, and sections 46-144, 46-657, 46-658, 46-665, 46-666, and 46-673, Revised Statutes Supplement, 1980; to change provisions relating to certain warrants; to change well-spacing provisions; to restate intent; to redefine terms; to change provisions relating to establishment of control areas as prescribed; to authorize additional control measures; to provide duties; to increase an authorized tax; to provide a penalty; to rename an act; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 46-144, Revised Statutes Supplement, 1980, be amended to read as follows:

46-144.. The board of directors may at any time, when in its judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any of the purposes provided for in sections 46-101 to 46-1,111, including the purpose of creating a construction fund to be financed by the issuance of warrants, the principal of which warrants shall be payable, in not to exceed twenty years, with interest paid annually thereon not to exceed ~~seven~~ ten per cent per annum. Such warrants may not be issued in the aggregate to exceed ninety per cent of the fund anticipated to be raised over the years by special assessment authorized in this section. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of said sections. The notice of such election must specify the aggregate amount of money proposed to be raised, the purpose for which it is intended to be raised, the number of years in which such special assessment will be made, and whether or not warrants as

authorized in this section will be to finance the construction fund so that contracts may be let and the project completed before collection of the tax. The ballots shall contain the words Assessment Yes, or Assessment No. If a majority of the votes are Assessment Yes, the board shall at the time of the annual levy thereunder, levy an assessment sufficient to raise the amount paid. The rate of assessment shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate actual value of the property in the district as it appears on the assessment roll for the current year, and then dividing the sum by the remainder of such aggregate actual value. The assessment so levied and computed shall be entered on the assessment roll and upon the tax list by the county clerk and collected at the same time and in the same manner as other assessments, and all revenue laws of this state for the collection and sale of land for taxes are hereby made applicable to the assessment herein provided for; and when collected such assessment shall be paid over by the county treasurer to the district treasurer for the purpose specified in the notice in such special election.

Sec. 2. That section 46-146, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-146. No claim shall be paid by the district treasurer until the same shall have been allowed by the board of directors, and only upon warrants signed by the president, and countersigned by the secretary, and if the district treasurer has not sufficient money on hand to pay such warrant when presented for payment, he or she shall endorse thereon not paid for want of funds, and the date when so presented, over his or her signature, and from the time of such presentation until paid such warrants shall draw interest payable when redeemed, or annually at the discretion of the board of directors. Whenever there is no cash on hand in the district treasury for the payment of general fund warrants when presented, the board of directors may, in its discretion, issue from time to time general fund warrants in denominations not greater than one ten thousand dollars to the aggregate amount required, but in no case in an amount greater than ninety per cent of the general fund levy for the current year, such warrants to be drawn on the general fund levy for the current year and payable to the irrigation district, and sell or discount the same to best advantage possible, but not at a discount to exceed five ten per cent, and deposit the proceeds of such sale in some local bank in the name of the district, subject to the check of the chairman chairperson of such

district, countersigned by the secretary, in payment of any claim or claims ordered paid out of such fund by the board of directors.

Sec. 3. That section 46-609, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-609. (1) After September--20,---1957 the operative date of this section, no irrigation well shall be drilled upon any land in this state within six hundred feet of any other registered irrigation well except any well the water from which is used solely for domestic, culinary, stock use on a ranch or farm, or the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres and except as provided in section 46-610; Provided, that any irrigation well which replaces an irrigation well drilled prior to September 20, 1957, and which is less than six hundred feet from another a registered irrigation well shall be drilled within fifty feet of the old well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered well for a period of thirty days after completion of such well.

Sec. 4. That section 46-656, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-656. The Legislature finds, 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 in geographic areas where ground water may be declining, or where shortages or pollution of ground water may occur, the public interest demands the implementation of management practices to conserve and protect ground water supplies and to prevent the pollution or inefficient or improper use thereof. To provide for an orderly management system, particularly in areas where changing available data, evidence, or other information indicates that present or potential ground water conditions require the designation of control areas with special regulation of future development and use, the Legislature recognizes the need for this act.

Nothing in this act relating to the pollution of ground water is intended to limit the powers of the Department of Environmental Control provided in Chapter 81, article 15.

Sec. 5. That section 46-657, Revised Statutes Supplement, 1980, be amended to read as follows:

46-657. As used in this act and in sections 46-601 to 46-613.01 and sections 46-636 to 46-655, unless the context otherwise requires:

(1) Person shall mean a natural person, partnership, association, corporation, municipality, irrigation district, and any agency or political subdivision of the state;

(2) Ground water shall mean that water which occurs or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Well shall mean any artificial opening or excavation in the ground through which ground water flows under natural pressure or is artificially withdrawn. A series of wells developed and pumped as a single unit shall be considered as one well. For purposes of sections 46-659 to 46-662, well shall not mean any artificial opening or excavation in which a pump of less than one hundred gallons per minute capacity is to be installed and which is to be used solely for supply of ground water for domestic purposes;

(4) Construction of a well shall mean boring, drilling, jetting, digging, or excavation, and installing casing, pumps, and other devices for withdrawing or facilitating the withdrawal of ground water;

(5) ~~Pollution of ground water shall mean contamination or other alteration of the natural quality of such water, however caused, including contamination by salines, minerals, industrial wastes, or sewage~~ degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

(6) District shall mean a natural resources district operating pursuant to Chapter 2, article 32;

(7) Director shall mean the Director of Water Resources;

(8) Illegal well shall mean (a) any well operated or constructed without, or in violation of, a permit required by the provisions of this act, (b) any well completed at any time before or after August 24, 1975, but not properly registered in accordance with the provisions of sections 46-602 to 46-605, or (c) any well not in compliance with any other applicable laws of the

State of Nebraska or with rules and regulations adopted pursuant to this act;

(9) Control area shall mean any area so designated by the director following a public hearing initiated and conducted pursuant to section 46-658; and

(10) To commence construction of a well shall mean the beginning of the boring, drilling, jetting, digging, or excavation of the actual well from which ground water is to be withdrawn.

Sec. 6. That section 46-658, Revised Statutes Supplement, 1980, be amended to read as follows:

46-658. (1) An area may be designated a control area by the director following a hearing initiated in accordance with subsection (3) of this section if it shall be determined, following evaluation of relevant hydrologic and water quality data, history of developments, and projection of effects of current and new development, that: uncontrolled

(a) Development development and utilization of the ground water supply has caused or is likely to cause within the reasonably foreseeable future the existence of either of the following conditions:

(a) (i) An inadequate ground water supply to meet present or reasonably foreseeable needs for beneficial use of such water supply; or

(b) (ii) Dewatering of an aquifer, resulting in a deterioration of the quality of such ground water sufficient to make such ground water unsuitable for the present purposes for which it is being utilized; or

(b) Pollution of ground water has occurred or is likely to occur in the reasonably foreseeable future.

(2) When determining whether to designate a control area because of the existence of either any of the conditions listed in subsection (1) of this section, the director's considerations shall include, but not be limited to, a--finding--that whether conflicts between ground water users are occurring or may be reasonably anticipated, or that whether ground water users are experiencing, or will experience within the foreseeable future, substantial economic hardships as a direct result of current or anticipated ground water development or utilization, or as a direct result of current or reasonably anticipated activities which cause or contribute to pollution of ground water.

(3) A hearing to designate a control area may be initiated by a district whenever it has information, sufficient in the opinion of the board of directors, to require that any portion of such district should be designated as a control area. The board of directors shall report such information to the director with a request that a hearing be held to determine if a control area should be established. The request shall be accompanied by a general description of the area proposed for inclusion in such control area.

(4) (a) Within thirty days after a hearing has been initiated pursuant to subsection (3) of this section, the director shall consult with the district and fix a time and place for a public hearing to consider the information supplied and to hear any other evidence. The hearing shall be held within one hundred twenty days after it has been initiated, shall be open to the public, and shall be located within, or in reasonable proximity to, the area proposed for designation as a control area. If, from information submitted by the district or otherwise available to the director, the director has reason to believe that area other than that identified by the district should be considered for inclusion in any control area which would be established as a result of such request, he or she shall so notify the district or districts whose boundaries encompass such additional area. Notice of the hearing shall be published in such newspapers as are necessary to provide for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all area which will be considered by the director for inclusion in the control area.

(b) At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Nebraska Natural Resources Commission, and the Department of Environmental Control shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing. After the hearing, which shall include testimony of representatives of the Conservation and Survey Division of the University of Nebraska and the Nebraska Natural Resources Commission and the results of and after any studies or investigations conducted by or on behalf of the director as he or she deems necessary, the director shall determine whether a control area shall be designated. If the director determines that no control area shall be established, he or she shall issue an order declaring that no control area shall be designated.

(c) If the director determines that a control area shall be established, he or she shall consult with such relevant state agencies named in subdivision (b) of this subsection and with the district or districts affected, and determine the boundaries of the control area, after taking into account the considerations enumerated in subsection (1) of this section, the effect on political subdivisions and the socio-economic and administrative factors directly affecting the ability to implement and carry out local ground water management, and control, and protection.

(d) If the director determines that contiguous area within the jurisdictional limits of one or more districts other than the district or districts which initiated the hearing is subject to the conditions identified in this section and therefore appropriate for inclusion in such control area, he or she shall so notify such other district or districts prior to issuance of the order designating the control area. Such additional area shall not be included in the control area unless any such other district consents in writing to such inclusion within sixty days of such notification by the director.

(e) When the boundaries of a control area have been determined, the director shall, ~~following consultation with such state agencies as are named in subdivision (b) of this subsection and the district or districts affected,~~ issue an order designating the area as a control area. Such an order shall include a geographic and a stratographic stratigraphic definition of the control area. Notice of the order shall be provided in the same manner as that provided for the hearing.

(5) Modification in control area boundaries or dissolution of a control area may be accomplished utilizing the procedure established in this section for the initial designation of such areas as control areas, but hearings for designation, modification, or dissolution of such control area may not be initiated more often than once a year.

Sec. 7. That section 46-665, Revised Statutes Supplement, 1980, be amended to read as follows:

46-665. (1) Following the designation of any area as a control area, and at such other times as the district desires the adoption, amendment, or repeal of any control authorized in this act, the district shall hold a public meeting to determine the type of controls to be imposed within that control area.

(2) Prior to the adoption, amendment, or repeal of any authorized control, the district shall hold one or more public hearings to consider testimony regarding such adoption, amendment, or repeal. The text of the control or controls proposed for adoption or repeal, or of the amendment or amendments, shall be made available to the public at least thirty days prior to any such hearing. The hearings provided for by this subsection shall be held within or in reasonable proximity to the control area. Public notice of the time and place of all such hearings shall be given in the manner provided in section 46-658.

(3) At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Nebraska Natural Resources Commission, and the Department of Environmental Control shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing.

Sec. 8. Any violation of a cease and desist order issued by a district pursuant to sections 46-656 to 46-674 shall be a Class IV misdemeanor.

Sec. 9. That section 46-666, Revised Statutes Supplement, 1980, be amended to read as follows:

46-666. (1) The A district in which a control area has been designated pursuant to subdivision (1)(a) of section 46-658 shall by order, after a hearing conducted pursuant to subsection (2) of section 46-665, the record of which shall include the testimony of a representative of the Conservation and Survey Division of the University of Nebraska and the Nebraska Natural Resources Commission, adopt one or more of the following controls for the area:

(a) It may determine the permissible total withdrawal of ground water in the designated control area for each day, month, or year, and allocate such withdrawal among the ground water users; ~~within the area;~~

(b) It may adopt and enforce a system of rotation for use of ground water; ~~in the control area;~~

(c) It may adopt well-spacing requirements more restrictive than those found in Chapter 46, article 6; and

(d) It may require the installation of devices for measuring ground water withdrawals from wells; and

~~(e)~~ ~~(d)~~ It may adopt such other reasonable regulations as are necessary to carry out the intent of this act.

(2) A district in which a control area has been designated pursuant to subdivision (1)(b) of section 46-658 shall by order adopt one or more of the following controls for the area:

(a) It may adopt any of the controls listed in subsection (1) of this section; and

(b) It may require water users to implement irrigation scheduling programs to schedule, to the extent reasonably possible, the application of water in amounts which will not move below the root zone.

~~(2)~~ (3) In adopting, amending, or repealing any control authorized by subsection (1) or ~~(2)~~ of this section, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the control area, will encourage a high degree of water use efficiency, or will improve the administration of the control area.

~~(3)~~ (4) The adoption, amendment, or repeal of any authorized control shall be subject to the approval of the director. The director may hold a public hearing to consider testimony regarding such controls prior to the issuance of an order approving or disapproving the adoption, amendment, or repeal of such controls. The director shall consult with the district and fix a time, place, and date for such hearing. In approving the adoption, amendment, or repeal of an authorized control, the director's considerations shall include, but not be limited to, those enumerated in subsection ~~(2)~~ (3) of this section.

~~(4)~~ (5) If because of varying ground water uses or climatic, hydrologic, geologic, or soil conditions existing within the control area, the uniform application throughout such area of one or more controls would fail to carry out the intent of this act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to subsection (1) or ~~(2)~~ of this section may contain different provisions for different categories of ground water use or portions of the control area. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or conditions. The provisions of all controls for different categories of ground water use shall be uniform for all portions of the control area which have substantially

similar climatic, hydrologic, geologic, and soil conditions.

{5} (6) If the district determines, following a public hearing conducted pursuant to section 46-665, that depletion or pollution of the ground water supply in the control area or any portion thereof is so excessive that the public interest cannot be protected solely through implementation of reasonable controls adopted pursuant to subsection (1) or (2) of this section, it may, with the approval of the director, close the control area or portion thereof to the issuance of any additional permits for a period of one calendar year. Such areas may be further closed thereafter by a similar procedure for additional one-year periods. Any such area may be reopened at any time the district shall determine that conditions warrant new permits, at which time the director shall consider all previously submitted applications for permits in the order in which they were received.

{6} (7) The district shall cause a copy of each order adopted pursuant to this section to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten days prior to the date set for the effective date of such order.

{7} (8) Whenever a control area, designated pursuant to section 46-658, encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and section 46-665 shall be exercised jointly and uniformly by agreement of the respective boards of directors of all districts so affected.

{8} (9) If, at the end of eighteen months following the designation of a control area pursuant to section 46-658, the district or districts encompassed in whole or in part by such control area have not adopted a specific control or controls pursuant to subsection (1) or (2) of this section, the power to specify such controls shall vest in the director who shall, within ninety days thereafter, adopt by rule and regulation such control or controls as he or she shall deem necessary for carrying out the intent of this act. Subject to section 46-667, the enforcement of controls adopted pursuant to this section shall be the responsibility of the district or districts involved.

{9} (10) If the power to adopt a control or controls shall be vested in the director, he or she shall

be provided with a copy of all information, testimony, and data available to the district or districts as a result of the public hearing for the adoption of a control or controls. At his or her discretion, the director may conduct one or more additional public hearings prior to making his or her determination or selection of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-658.

Sec. 10. Each district in which a control area has been designated pursuant to subdivision (1)(b) of section 46-658 shall, in cooperation with the Department of Environmental Control, establish a program to monitor the quality of the ground water in the area and shall provide each landowner or operator of an irrigation system with a copy of the current University of Nebraska fertilizer guidesheets for the specific soil types present and cropping patterns used.

Sec. 11. That section 46-673, Revised Statutes Supplement, 1980, be amended to read as follows:

46-673. Each district encompassed in whole or in part by a control area designated pursuant to subdivision (1)(a) or (1)(b) of section 46-658 shall have the power and authority to levy a tax not to exceed nine-tenths--of one-cent one and eight-tenths cents on each one hundred dollars annually on all of the taxable property within the portion of the district encompassed by such control area, except that if any land is designated as a control area under both subdivision (1)(a) and subdivision (1)(b) of section 46-658 the tax levied shall not exceed two and seven-tenths cents on each one hundred dollars annually. Such levy, which shall be in addition to that authorized by section 2-3225, shall be utilized only for the costs of carrying out the provisions of sections 46-656 to 46-674 and section 10 of this act, within such control area. Certification and collection of such levy shall be administered by the district and by the county or counties involved in the same manner as the levy authorized by section 2-3225.

Sec. 12. That section 46-674, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674. Sections 46-656 to 46-674 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Sec. 13. Sections 1, 2, 13, and 14 of this act shall become operative on their effective date. The

remaining sections shall become operative three calendar months after the adjournment of this session.

Sec. 14. That original section 46-146, Reissue Revised Statutes of Nebraska, 1943, and section 46-144, Revised Statutes Supplement, 1980, are repealed.

Sec. 15. That original sections 46-609, 46-656, and 46-674, Reissue Revised Statutes of Nebraska, 1943, and sections 46-657, 46-658, 46-665, 46-666, and 46-673, Revised Statutes Supplement, 1980, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.