

## LEGISLATIVE BILL 309

Approved by the Governor May 10, 1995

Introduced by Wickersham, 49

AN ACT relating to irrigation; to amend sections 46-241, 46-257, and 46-277, Reissue Revised Statutes of Nebraska; to provide for a waiver; to change provisions relating to low-hazard dams; and to repeal the original sections.

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

Section 1. Section 46-241, Reissue Revised Statutes of Nebraska, 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, make an application to the Department of Water Resources upon the prescribed form. 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 in such reservoir, or store in and recover from such underground water storage facility, all waters 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) 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 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 of Water Resources 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 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 shall divert water from a public stream and return 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, providing no prior appropriator for beneficial use shall be prejudiced by such diversion.

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

Sec. 2. Section 46-257, Reissue Revised Statutes of Nebraska, is amended to read:

46-257. (1) Except as provided in subsection (2) subsections (2) and (3) of this section, any person intending to construct a dam for any purpose, including, but not limited to, providing a reservoir for temporary or permanent storage of surface water, well water, animal and human waste effluent, and mine tailings and sediments, shall submit plans, drawings, and specifications of the same to the Department of Water Resources and at the same time submit an application to comply with section 46-241, when applicable, before beginning construction. No dam shall be constructed until the required plans, drawings, and specifications have been approved by the department.

(2) Any person intending to construct a low-hazard dam, as defined in the rules and regulations of the department, having a height of 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, 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 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 the provisions of subsection (1) of this section and also shall be exempt from the provisions of 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 the provisions of subsection (1) of this section and also shall be exempt from the provisions of 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.

(4) Subsections (2) and (3) of this section do not waive any requirements of the Department of Environmental Quality.

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

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

Sec. 3. Section 46-277, Reissue Revised Statutes of Nebraska, is amended to read:

46-277. The owner or 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 a storage capacity of fifty acre-feet or more below the top of the dam, including surcharge storage through any emergency spillway, or will be twenty-five feet in height or more, measured from the natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam and is constructed for impounding or diversion of water or the containment of waste effluent, sediments, or other materials, shall keep such dam and appurtenant works in a state of repair to be approved by the Department of Water Resources. When the Director of Water Resources determines it necessary, the department shall make an inspection of dams and appurtenant works which have an impounding capacity of fifteen acre-feet or more and place in the files of the department a report of such inspections. The Director of Water Resources shall determine the safety inspection requirements, frequency of inspections, and reporting details on the inspections of the dams based on the hazard classification and actual conditions of each dam. The owner or operator shall provide the department access to such dams at all reasonable times. When an inspection reveals a structure in an unsafe condition, the Director of Water Resources director shall give notice to the owner or owners to place such dam and appurtenant works in such state of repair 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 summonses are served.

Sec. 4. Original sections 46-241, 46-257, and 46-277, Reissue Revised Statutes of Nebraska, are repealed.