

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 391

Introduced by Davis, 43; Bloomfield, 17; Carlson, 38; Christensen,
44; Hansen, 42; Larson, 40; Schilz, 47; Wallman, 30.

Read first time January 18, 2013

Committee: Natural Resources

A BILL

- 1 FOR AN ACT relating to water law; to amend section 46-241, Reissue
- 2 Revised Statutes of Nebraska; to change provisions
- 3 relating to storage reservoirs and underground water
- 4 storage; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-241, Reissue Revised Statutes of
2 Nebraska, is amended to read:

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

23 (2) Any person intending to construct an on-channel
24 reservoir with a water storage impounding capacity of less than
25 fifteen acre-feet measured below the crest of the lowest open outlet

1 or overflow shall be exempt from subsection (1) of this section as
2 long as there will be (a) no diversion or withdrawal of water from
3 the reservoir for any purpose other than for watering range livestock
4 and (b) no release from the reservoir to provide water for a
5 downstream diversion or withdrawal for any purpose other than for
6 watering range livestock. This subsection does not exempt any person
7 from the requirements of the Safety of Dams and Reservoirs Act or
8 section 54-2425.

9 (3) Any person intending to construct a reservoir,
10 holding pond, or lagoon for the sole purpose of holding, managing, or
11 disposing of animal or human waste shall be exempt from subsection
12 (1) of this section. This subsection does not exempt any person from
13 any requirements of the Safety of Dams and Reservoirs Act or section
14 46-233 or 54-2425.

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

18 (5) The owner of a storage reservoir or facility shall be
19 liable for all damages arising from leakage or overflow of the water
20 therefrom or from the breaking of the embankment of such reservoir.
21 The owner or possessor of a reservoir or intentional underground
22 water storage facility does not have the right to store water in such
23 reservoir or facility during the time that such water is required
24 downstream in ditches for direct irrigation or for any reservoir or
25 facility holding a senior right. Every person who owns, controls, or

1 operates a reservoir or intentional underground water storage
2 facility, except political subdivisions of this state, shall be
3 required to pass through the outlets of such reservoir or facility,
4 whether presently existing or hereafter constructed, a portion of the
5 measured inflows to furnish water for livestock in such amounts and
6 at such times as directed by the department to meet the requirements
7 for such purposes as determined by the department, except that a
8 reservoir or facility owner shall not be required to release water
9 for this purpose which has been legally stored. Any dam shall be
10 constructed in accordance with the Safety of Dams and Reservoirs Act,
11 and the outlet works shall be installed so that water may be released
12 in compliance with this section. The requirement for outlet works may
13 be waived by the department upon a showing of good cause. Whenever
14 any person diverts water from a public stream and returns it into the
15 same stream, he or she may take out the same amount of water, less a
16 reasonable deduction for losses in transit, to be determined by the
17 department, if no prior appropriator for beneficial use is prejudiced
18 by such diversion.

19 (6) An application for storage and recovery of water
20 intentionally stored underground may be made only by an appropriator
21 of record who shows, by documentary evidence, sufficient interest in
22 the underground water storage facility to entitle the applicant to
23 the water requested.

24 Sec. 2. Original section 46-241, Reissue Revised Statutes
25 of Nebraska, is repealed.