

AMENDMENTS TO LB 701

Introduced by Christensen, 44

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Sections 1 to 13 of this act shall be known
4 and may be cited as the Interstate Water Compliance Act.

5 Sec. 2. For purposes of the Interstate Water Compliance
6 Act:

7 (1) Cell means a cell as defined in any official model
8 used in any interstate water compact. If no such model exists for a
9 river basin, then a cell means one square mile. A river basin shall
10 be overlain by a grid of cells;

11 (2) Change in net revenue means the difference in typical
12 revenue minus typical expenses without the required reduction in
13 access to water and the typical revenue minus typical expenses with
14 the required reduction in access to water;

15 (3) Computation year means the year after the usage year;

16 (4) Control year means the year after the computation
17 year and two years after the usage year;

18 (5) Department means the Department of Natural Resources;

19 (6) District means a natural resources district;

20 (7) Net use number means the annual net computed
21 beneficial consumptive use as determined by any official model
22 used in any applicable interstate water compact. If no such model
23 exists for a river basin, the department shall determine net use

1 number;

2 (8) Offset benefit means the amount of water in acre-feet
3 an activity will be recognized as providing for the benefit of an
4 interstate water compact. The offset benefit is for a quantity of
5 water during a specific time frame;

6 (9) Riparian vegetation means any growing plant within
7 the flood plain of a river basin; and

8 (10) Usage year means the year for which the net use
9 number is calculated.

10 Sec. 3. (1) The department shall publish an annual net
11 use number not later than September 30 of each computation year
12 for the usage year's use. The official administration number shall
13 be used if it is available. If the official administration number
14 is not available by September 30, the department shall provide its
15 best estimate by September 30.

16 (2) The department and the residents of any river basin
17 shall reduce the consumptive use or increase the supply of water in
18 the basin in the control year to eliminate the net use number of
19 the usage year if it is a negative number.

20 (3) The department shall determine the percentage of
21 depletion to any stream caused by conservation practices, ground
22 water pumping, riparian vegetation, and surface water use. The
23 department shall commission studies to ascertain the cause of
24 depletions to the stream by each of such causes for each county
25 in a river basin and assign a percentage of cause of streamflow
26 depletions over twenty years to each cause. Until such studies are
27 complete and the actual percentages determined by the department,

1 the following percentages shall be used:

2 (a) Conservation practices, sixty-five percent;

3 (b) Ground water pumping, fifteen percent;

4 (c) Riparian vegetation, fifteen percent; and

5 (d) Surface water use, five percent.

6 (4) The department shall forecast the annual net use
7 number for the next year, the next two years, the next three years,
8 the next five years, the next ten years, and the next twenty years
9 and for dry, normal, and wet years. The net use number shall be
10 further subdivided by the causes listed in subsection (3) of this
11 section. The forecasts shall be made available to the public for
12 planning purposes by September 30 of each year.

13 (5) The department shall publish a schedule of depletions
14 to the stream, by cell, for each of the causes listed in subsection
15 (3) of this section and for the factors used by any official
16 hydrological model used by an interstate water compact commission
17 for each river basin subject to an interstate water compact and for
18 the years listed in subsection (4) of this section. The data shall
19 be made available to the public on the department's web site and be
20 clearly labeled so the public can identify the information for each
21 cell. If such data does not exist, the department shall provide its
22 best estimate for each cell. Until the department publishes such
23 data, the department may not invoke the provisions of subsection
24 (3) of section 46-718.

25 (6) The department shall adopt and promulgate rules and
26 regulations, with the agreement of the districts in the river basin
27 for which the rules and regulations are being adopted, to carry out

1 this section.

2 Sec. 4. (1) For river basins subject to an interstate
3 water compact for which a consumptive beneficial use allowance is
4 calculated each year, in control years in which a reduction in
5 the consumptive use is required, such reduction shall be made as
6 follows:

7 (a) (i) Ground water allocations in the river basin shall
8 be set by county and shall use the certified acres on record with
9 the applicable district on the effective date of this act for the
10 portion of the county within the regulated river basin according to
11 the "Nebraska Irrigation Allowances During an LB 701 Control Year"
12 map on file with the department. The allocations by county shall be
13 adjusted by the Legislature as the need arises;

14 (ii) If land with a surface water appropriation is also
15 served by a regulated water well, any surface water used on that
16 land shall be deducted from the allocation of ground water to the
17 regulated water well serving that land;

18 (iii) An individual ground water user may increase the
19 amount of water used on an individual acre by offsetting the
20 increased use with an equal or greater reduction in quantity used
21 by the individual on another acre owned by the same individual
22 ground water user or by offsetting the increased use with an equal
23 or greater reduction in quantity used by another ground water user
24 that is closer to the stream or tributary. The user selling the
25 water cannot transfer more acre-inches than have been distributed
26 on an acre during any one year in the five years immediately
27 preceding such transfer or more than is permitted to the acre by

1 the district or according to subdivision (a)(i) of this subsection,
2 whichever is less;

3 (iv) Offset programs subject to the provisions of section
4 5 of this act may also permit a user or group of users to increase
5 their water use during a control year. The increase in water
6 usage shall be approved by the district if the increase (A) is
7 no more than one hundred fifty percent of the amount allowed to
8 the individual acre by a district on the effective date of this
9 act and (B) offsets an equivalent or greater number of acre-inches
10 in beneficial consumptive use according to the model used by any
11 applicable interstate water compact;

12 (v) An acre-inch increase in beneficial consumptive use
13 over the amount allowed in subdivision (a)(i) of this subsection
14 requires an equal acre-inch reduction in beneficial consumptive use
15 according to the model used by any applicable interstate water
16 compact. If this results in a greater reduction in beneficial
17 consumptive use than the acre receiving the increased allowance
18 causes in fifty years, the difference shall be credited to the
19 water user causing this benefit for the state;

20 (vi) Water users may buy, sell, or trade beneficial
21 consumptive use credits as credited by the department under section
22 3 of this act;

23 (vii) The total amount of water allowed to a county
24 for ground water pumping shall be the result of a formula
25 multiplying the 2006 certified irrigated acres for the county
26 by the acre-inches allowed per acre according to subdivision (a)(i)
27 of this subsection. The amount allowed to the county excludes all

1 industrial and municipal uses. The district may increase the county
2 allowance subject to subsection (1) of section 5 of this act; and

3 (viii) Each district shall proceed in accordance with
4 rules and regulations adopted by it;

5 (b) The surface water allotment shall be set at
6 seventy-five percent of the estimated supply as determined by the
7 department. The unused twenty-five percent shall be released to the
8 stream for the benefit of the applicable interstate water compact.
9 If the amount of water available to be distributed to the irrigator
10 is four acre-inches or less for each acre, the department may allow
11 the water to be used by the water rights holder or be purchased in
12 its entirety for the change in net revenue;

13 (c) A surface water user may increase the amount of water
14 used on an individual acre by offsetting the increased use with an
15 equal or greater reduction in quantity used by the surface water
16 user on another surface-water-irrigated acre owned or operated by
17 the same surface water user.

18 (d) The department shall contract with private industry
19 to reduce the net consumptive use of riparian vegetation by the
20 percentage of the net use number caused by riparian vegetation as
21 determined pursuant to section 3 of this act; and

22 (e) The department shall reduce computed beneficial
23 consumptive use in the control year with the amount of water
24 required to offset the share of the net use number for the
25 usage year attributable to conservation practices. The department
26 may augment the stream or purchase surface water use rights to
27 accomplish the required net reduction. The department may not

1 require a reduction in surface water or ground water usage beyond
2 the requirements of subdivisions (1) (a) and (b) of this section
3 without compensating the affected landowners for the change in net
4 revenue.

5 (2) If the net use number for a usage year is positive,
6 then no reduction in water use for the year following the usage
7 year shall be required of any ground water or surface water user
8 beyond the rules and regulations adopted by the district for ground
9 water use as of the effective date of this act or by the department
10 for surface water use.

11 Sec. 5. (1) A district may establish programs to collect
12 and store water to offset the district's share of the reduction in
13 a control year. The programs shall result in the ability of the
14 district to offset consumptive use in the control year according
15 to the official model of any applicable interstate water compact.
16 Any credits received in a non-control year that may be applied
17 according to any applicable interstate water compact shall be
18 credited to the district at a time determined by the district.

19 (2) An individual or a group may establish programs to
20 collect and store water to offset his, her, or its share of
21 the reduction in a control year. Any such program shall result
22 in the ability of the individual or group to offset consumptive
23 use in the control year according to the official model of any
24 interstate water compact. The maximum offset for any one acre may
25 not be greater than one hundred fifty percent of the amount of
26 water allowed to the acre in a year when no action is required.
27 Any credits received in a non-control year may be applied up to

1 the amount allowed by any interstate water compact and shall be
2 credited to the individual or group at the time determined by the
3 individual or group.

4 Sec. 6. (1)(a) Any proposed program under section 5 of
5 this act shall be reviewed by the department within sixty days
6 after receipt of the proposal. A one-time nonrefundable fee of two
7 thousand five hundred dollars shall accompany a request under this
8 subsection. The request shall include, but not be limited to, the
9 following information:

10 (i) Name and contact information;
11 (ii) A complete description of the program proposal;
12 (iii) An estimate of the amount of water the program will
13 be able to deliver to the stream;

14 (iv) A description of the source of the water; and
15 (v) A description of how the water would be delivered to
16 the stream.

17 (b) An offset benefit in acre-feet of water shall be
18 provided to the individual or group requesting the program review.
19 The department shall base the offset benefit on the terms of any
20 applicable interstate water compact model. If no interstate water
21 compact model is applicable, the department shall base the offset
22 benefit according to procedures established by the department
23 pursuant to rules and regulations adopted and promulgated by the
24 department.

25 (c) The department shall provide an explanation of the
26 reasons a program is being assigned the offset quantity contained
27 in the decision of the department.

1 (d) An individual or a group may appeal the decision
2 of the department under subsection (1) of this section, and
3 the department shall hold a hearing within forty-five days
4 after the date the appeal is filed. At such hearing, the
5 appellant may seek clarification from the department and present
6 additional information. The department shall decide the appeal
7 within forty-five days after the hearing. Such decision may be
8 appealed to the district court of the judicial district within a
9 river basin in which the program was designed to take effect.

10 (2) Failure of the department to provide an official
11 offset benefit in acre-feet of water within the time limit
12 described in subsection (1) of this section shall result in
13 the applicant's program estimate being accepted as the official
14 amount if the request for review under such subsection included an
15 offset benefit calculated by a certified engineer with hydrology
16 experience.

17 Sec. 7. A district may establish or maintain existing
18 incentive programs to encourage a reduction in water use by
19 allowing a ground water user to average water use over the same
20 time period allowed to the state by any applicable interstate water
21 compact. For irrigated acres more than one mile from any stream or
22 tributary, a water credit earned by reduced water use in a prior
23 year may be permitted by the district to be used during a control
24 year.

25 Sec. 8. Nothing in the Interstate Water Compliance Act
26 shall prevent a district, an individual, a group, or the department
27 from (1) purchasing or leasing surface water, (2) purchasing or

1 leasing ground water, (3) creating storage facilities, (4) managing
2 vegetation, (5) increasing the water supply, or (6) any other
3 activity that can be used to offset consumptive use during a
4 control year if such activity includes a willing seller or property
5 owner.

6 Sec. 9. The department may adjust the net use number
7 down during a control year if the department determines that there
8 is a sufficient increase in the water supply from precipitation
9 in a computation year or control year to offset the net use
10 number without human intervention. The department shall make this
11 determination no later than October 1 of the control year.

12 The department may waive the control year reduction
13 requirements for both surface water users and ground water users
14 if the department determines that there is a sufficient increase
15 in the water supply from precipitation in a computation year
16 or control year to waive such requirements. Notice of this
17 determination shall be made no later than April 1 to each district
18 and in all official publications of record in the applicable river
19 basin.

20 The department shall provide documentation for public
21 review justifying a reduction in the net use number or waiver of
22 control year reduction requirements.

23 If the department reduces the net use number by an amount
24 that leaves the state with an overage or fails to supply its
25 portion of the net beneficial consumptive use requirements, the
26 department shall be responsible for the financial costs associated
27 with rectifying the overage.

1 Sec. 10. The first usage year shall be 2006.

2 Sec. 11. If the department or a district fails to reduce
3 usage or take the required actions as proscribed by the Interstate
4 Water Compliance Act, any resident of Nebraska, any group, or any
5 agency of the state may bring an action in any district court in
6 Nebraska to cause compliance with the terms of the act. The legal
7 costs incurred by the plaintiff in such action may be reimbursed by
8 the defendant at the discretion of the court.

9 Sec. 12. The Legislature shall appropriate \$2,700,000
10 for FY2007-08 to the department for the purposes of implementing
11 the Interstate Water Compliance Act. The department shall annually
12 provide the Legislature with an estimate of the funds necessary for
13 it to comply with the requirements of the act, and the Legislature
14 shall appropriate to the department the funds necessary for it to
15 fulfill the duties as required by the act.

16 Sec. 13. The department may adopt and promulgate rules
17 and regulations to carry out the Interstate Water Compliance Act.

18 Sec. 14. Since an emergency exists, this act takes effect
19 when passed and approved according to law.