

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 31**

Introduced by Langemeier, 23.

Read first time January 06, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend sections 46-240.01 and 46-290,  
2 Reissue Revised Statutes of Nebraska; to change  
3 provisions relating to supplemental agricultural  
4 appropriations; to harmonize provisions; and to repeal  
5 the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 46-240.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           46-240.01 All appropriators of water for agricultural  
4 purposes of less than the statutory limit of direct flow from the  
5 public waters of this state within the drainage basin of the stream  
6 from which such waters originate shall be entitled to such additional  
7 appropriation or appropriations from the direct flow of such stream,  
8 within the statutory limits provided by law, as may be necessary and  
9 required for the production of crops in the practice of good  
10 husbandry. ~~To accomplish such purpose, existing agricultural~~  
11 ~~appropriators within the drainage basin having less than the~~  
12 ~~statutory limit of direct flow shall, as a matter of right, be~~  
13 ~~entitled upon application therefor to the approval and grant of such~~  
14 ~~additional supplemental appropriation or appropriations from the~~  
15 ~~direct flow of such stream as will not make the total appropriations,~~  
16 ~~for the lands upon which such water is to be used, exceed the limits~~  
17 ~~provided by law and as may be necessary and required for the~~  
18 ~~production of crops upon such lands with the practice of good~~  
19 ~~husbandry.—~~Applications for such supplemental additional  
20 appropriations from the direct flow, upon the approval or granting  
21 thereof, shall have priority within the drainage basin as of the date  
22 such applications are filed in the office of the department.

23           Sec. 2. Section 46-290, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           46-290 (1)(a) Except as provided in this section and

1 sections 46-2,120 to 46-2,130, any person having a permit to  
2 appropriate water for beneficial purposes issued pursuant to sections  
3 46-233 to 46-235, ~~46-240.01,~~ 46-241, 46-242, or 46-637 and who  
4 desires (i) to transfer the use of such appropriation to a location  
5 other than the location specified in the permit, (ii) to change that  
6 appropriation to a different type of appropriation as provided in  
7 subsection (3) of this section, or (iii) to change the purpose for  
8 which the water is to be used under a natural-flow, storage, or  
9 storage-use appropriation to a purpose not at that time permitted  
10 under the appropriation shall apply for approval of such transfer or  
11 change to the Department of Natural Resources.

12 (b) The application for such approval shall contain (i)  
13 the number assigned to such appropriation by the department, (ii) the  
14 name and address of the present holder of the appropriation, (iii) if  
15 applicable, the name and address of the person or entity to whom the  
16 appropriation would be transferred or who will be the user of record  
17 after a change in the location of use, type of appropriation, or  
18 purpose of use under the appropriation, (iv) the legal description of  
19 the land to which the appropriation is now appurtenant, (v) the name  
20 and address of each holder of a mortgage, trust deed, or other  
21 equivalent consensual security interest against the tract or tracts  
22 of land to which the appropriation is now appurtenant, (vi) if  
23 applicable, the legal description of the land to which the  
24 appropriation is proposed to be transferred, (vii) if a transfer is  
25 proposed, whether other sources of water are available at the

1 original location of use and whether any provisions have been made to  
2 prevent either use of a new source of water at the original location  
3 or increased use of water from any existing source at that location,  
4 (viii) if applicable, the legal descriptions of the beginning and end  
5 of the stream reach to which the appropriation is proposed to be  
6 transferred for the purpose of augmenting the flows in that stream  
7 reach, (ix) if a proposed transfer is for the purpose of increasing  
8 the quantity of water available for use pursuant to another  
9 appropriation, the number assigned to such other appropriation by the  
10 department, (x) the purpose of the current use, (xi) if a change in  
11 purpose of use is proposed, the proposed purpose of use, (xii) if a  
12 change in the type of appropriation is proposed, the type of  
13 appropriation to which a change is desired, (xiii) if a proposed  
14 transfer or change is to be temporary in nature, the duration of the  
15 proposed transfer or change, and (xiv) such other information as the  
16 department by rule and regulation requires.

17 (2) If a proposed transfer or change is to be temporary  
18 in nature, a copy of the proposed agreement between the current  
19 appropriator and the person who is to be responsible for use of water  
20 under the appropriation while the transfer or change is in effect  
21 shall be submitted at the same time as the application.

22 (3) Regardless of whether a transfer or a change in the  
23 purpose of use is involved, the following changes in type of  
24 appropriation, if found by the Director of Natural Resources to be  
25 consistent with section 46-294, may be approved subject to the

1 following:

2 (a) A natural-flow appropriation for direct out-of-stream  
3 use may be changed to a natural-flow appropriation for aboveground  
4 reservoir storage or for intentional underground water storage;

5 (b) A natural-flow appropriation for intentional  
6 underground water storage may be changed to a natural-flow  
7 appropriation for direct out-of-stream use or for aboveground  
8 reservoir storage;

9 (c) A natural-flow appropriation for direct out-of-stream  
10 use, for aboveground reservoir storage, or for intentional  
11 underground water storage may be changed to an instream appropriation  
12 subject to sections 46-2,107 to 46-2,119 if the director determines  
13 that the resulting instream appropriation would be consistent with  
14 subdivisions (2), (3), and (4) of section 46-2,115;

15 (d) A natural-flow appropriation for direct out-of-stream  
16 use, for aboveground reservoir storage, or for intentional  
17 underground water storage may be changed to an appropriation for  
18 induced ground water recharge if the director determines that the  
19 resulting appropriation for induced ground water recharge would be  
20 consistent with subdivisions (2)(a)(i) and (ii) of section 46-235;  
21 and

22 (e) The incidental underground water storage portion,  
23 whether or not previously quantified, of a natural-flow or storage-  
24 use appropriation may be separated from the direct-use portion of the  
25 appropriation and may be changed to a natural-flow or storage-use

1 appropriation for intentional underground water storage at the same  
2 location if the historic consumptive use of the direct-use portion of  
3 the appropriation is transferred to another location or is  
4 terminated, but such a separation and change may be approved only if,  
5 after the separation and change, (i) the total permissible diversion  
6 under the appropriation will not increase, (ii) the projected  
7 consequences of the separation and change are consistent with the  
8 provisions of any integrated management plan adopted in accordance  
9 with section 46-718 or 46-719 for the geographic area involved, and  
10 (iii) if the location of the proposed intentional underground water  
11 storage is in a river basin, subbasin, or reach designated as  
12 overappropriated in accordance with section 46-713, the integrated  
13 management plan for that river basin, subbasin, or reach has gone  
14 into effect, and that plan requires that the amount of the  
15 intentionally stored water that is consumed after the change will be  
16 no greater than the amount of the incidentally stored water that was  
17 consumed prior to the change. Approval of a separation and change  
18 pursuant to this subdivision (e) shall not exempt any consumptive use  
19 associated with the incidental recharge right from any reduction in  
20 water use required by an integrated management plan for a river  
21 basin, subbasin, or reach designated as overappropriated in  
22 accordance with section 46-713.

23           Whenever any change in type of appropriation is approved  
24 pursuant to this subsection and as long as that change remains in  
25 effect, the appropriation shall be subject to the statutes, rules,

1 and regulations that apply to the type of appropriation to which the  
2 change has been made.

3 (4) The Legislature finds that induced ground water  
4 recharge appropriations issued pursuant to sections 46-233 and 46-235  
5 and instream appropriations issued pursuant to section 46-2,115 are  
6 specific to the location identified in the appropriation. Neither  
7 type of appropriation shall be transferred to a different location,  
8 changed to a different type of appropriation, or changed to permit a  
9 different purpose of use.

10 (5) In addition to any other purposes for which transfers  
11 and changes may be approved, such transfers and changes may be  
12 approved if the purpose is (a) to augment the flow in a specific  
13 stream reach for any instream use that the department has determined,  
14 through rules and regulations, to be a beneficial use or (b) to  
15 increase the frequency that a diversion rate or rate of flow  
16 specified in another valid appropriation is achieved.

17 For any transfer or change approved pursuant to  
18 subdivision (a) of this subsection, the department shall be provided  
19 with a report at least every five years while such transfer or change  
20 is in effect. The purpose of such report shall be to indicate whether  
21 the beneficial instream use for which the flow is augmented continues  
22 to exist. If the report indicates that it does not or if no report is  
23 filed within sixty days after the department's notice to the  
24 appropriator that the deadline for filing the report has passed, the  
25 department may cancel its approval of the transfer or change and such

1 appropriation shall revert to the same location of use, type of  
2 appropriation, and purpose of use as prior to such approval.

3 (6) A quantified or unquantified appropriation for  
4 incidental underground water storage may be transferred to a new  
5 location along with the direct-use appropriation with which it is  
6 recognized if the director finds such transfer to be consistent with  
7 section 46-294 and determines that the geologic and other relevant  
8 conditions at the new location are such that incidental underground  
9 water storage will occur at the new location. The director may  
10 request such information from the applicant as is needed to make such  
11 determination and may modify any such quantified appropriation for  
12 incidental underground water storage, if necessary, to reflect the  
13 geologic and other conditions at the new location.

14 (7) Unless an incidental underground water storage  
15 appropriation is changed as authorized by subdivision (3)(e) of this  
16 section or is transferred as authorized by subsection (6) of this  
17 section or subsection (1) of section 46-291, such appropriation shall  
18 be canceled or modified, as appropriate, by the director to reflect  
19 any reduction in water that will be stored underground as the result  
20 of a transfer or change of the direct-use appropriation with which  
21 the incidental underground water storage was recognized prior to the  
22 transfer or change.

23 Sec. 3. Original sections 46-240.01 and 46-290, Reissue  
24 Revised Statutes of Nebraska, are repealed.