

AMENDMENTS TO LB1038

Introduced by Natural Resources.

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

3           Section 1. Section 2-945.01, Reissue Revised Statutes of Nebraska,  
4 is amended to read:

5           2-945.01 Sections 2-945.01 to 2-966 and sections 3 and 4 of this act  
6 ~~2-968~~ shall be known and may be cited as the Noxious Weed Control Act.

7           Sec. 2. Section 2-958.02, Reissue Revised Statutes of Nebraska, is  
8 amended to read:

9           2-958.02 (1) From funds available in the Noxious Weed and Invasive  
10 Plant Species Assistance Fund, the director may administer a grant  
11 program to assist local control authorities and other weed management  
12 entities in the cost of implementing and maintaining noxious weed control  
13 programs and in addressing special weed control problems as provided in  
14 this section.

15           (2) The director shall receive applications by local control  
16 authorities and weed management entities for assistance under this  
17 subsection and, in consultation with the advisory committee created under  
18 section 2-965.01, award grants for any of the following eligible  
19 purposes:

20           (a) To conduct applied research to solve locally significant weed  
21 management problems;

22           (b) To demonstrate innovative control methods or land management  
23 practices which have the potential to reduce landowner costs to control  
24 noxious weeds or improve the effectiveness of noxious weed control;

25           (c) To encourage the formation of weed management entities;

26           (d) To respond to introductions or infestations of invasive plants  
27 that threaten or potentially threaten the productivity of cropland and

1 rangeland over a wide area;

2 (e) To respond to introductions and infestations of invasive plant  
3 species that threaten or potentially threaten the productivity and  
4 biodiversity of wildlife and fishery habitats on public and private  
5 lands;

6 (f) To respond to special weed control problems involving weeds not  
7 included in the list of noxious weeds promulgated by rule and regulation  
8 of the director if the director has approved a petition to bring such  
9 weeds under the county control program;

10 (g) To conduct monitoring or surveillance activities to detect, map,  
11 or determine the distribution of invasive plant species and to determine  
12 susceptible locations for the introduction or spread of invasive plant  
13 species; and

14 (h) To conduct educational activities.

15 (3) The director shall select and prioritize applications for  
16 assistance under subsection (2) of this section based on the following  
17 considerations:

18 (a) The seriousness of the noxious weed or invasive plant problem or  
19 potential problem addressed by the project;

20 (b) The ability of the project to provide timely intervention to  
21 save current and future costs of control and eradication;

22 (c) The likelihood that the project will prevent or resolve the  
23 problem or increase knowledge about resolving similar problems in the  
24 future;

25 (d) The extent to which the project will leverage federal funds and  
26 other nonstate funds;

27 (e) The extent to which the applicant has made progress in  
28 addressing noxious weed or invasive plant problems;

29 (f) The extent to which the project will provide a comprehensive  
30 approach to the control or eradication of noxious weeds or invasive plant  
31 species as identified and listed by the Nebraska Invasive Species

1 Council;

2 (g) The extent to which the project will reduce the total population  
3 or area of infestation of a noxious weed or invasive plant species as  
4 identified and listed by the Nebraska Invasive Species Council;

5 (h) The extent to which the project uses the principles of  
6 integrated vegetation management and sound science; and

7 (i) Such other factors that the director determines to be relevant.

8 (4) The director shall receive applications for grants under this  
9 subsection and shall award grants to recipients and programs eligible  
10 under this subsection. Priority shall be given to grant applicants whose  
11 proposed programs are consistent with vegetation management goals and  
12 priorities and plans and policies of the Riparian Vegetation Management  
13 Task Force established under ~~created pursuant to~~ section 4 of this act  
14 ~~2-968~~. Beginning in fiscal year 2016-17 ~~2009-10~~, it is the intent of the  
15 Legislature to appropriate one ~~two~~ million dollars annually for the  
16 management of vegetation within the banks of a natural stream or within  
17 one hundred feet of the banks of a channel of any natural stream. Such  
18 funds shall only be used to pay for activities and equipment as part of  
19 vegetation management programs that have as their primary objective  
20 improving conveyance of streamflow in natural streams. Grants from funds  
21 appropriated as provided in this subsection shall be disbursed only to  
22 weed management entities, local weed control authorities, and natural  
23 resources districts, ~~whose territory includes one or more fully~~  
24 ~~appropriated or overappropriated river basins,~~ as designated by the  
25 ~~Department of Natural Resources~~ with priority given to ~~fully appropriated~~  
26 river basins that are the subject of an interstate compact or decree. The  
27 Game and Parks Commission shall assist grant recipients in implementing  
28 grant projects under this subsection, and interlocal agreements under the  
29 Interlocal Cooperation Act or the Joint Public Agency Act shall be  
30 utilized whenever possible in carrying out the grant projects.—~~This~~  
31 ~~subsection terminates on June 30, 2013.~~

1 (5) Nothing in this section shall be construed to relieve control  
2 authorities of their duties and responsibilities under the Noxious Weed  
3 Control Act or the duty of a person to control the spread of noxious  
4 weeds on lands owned and controlled by him or her.

5 (6) The Department of Agriculture may adopt and promulgate necessary  
6 rules and regulations to carry out this section.

7 ~~(7)(a) The director shall apply for a grant from the Nebraska~~  
8 ~~Environmental Trust Fund prior to the application deadline in September~~  
9 ~~of 2009 for grants to be awarded and funded in April of 2010.~~

10 ~~(7 b) The director may annually shall apply for conservation funding~~  
11 ~~a grant from the Natural Resources Conservation Service of the United~~  
12 ~~States Department of Agriculture prior to July 31, 2009.~~

13 Sec. 3. The Riparian Vegetation Management Task Force is created.  
14 The Governor shall appoint the members of the task force. The members  
15 shall include one surface water project representative from each river  
16 basin that has ever been determined to be fully appropriated pursuant to  
17 section 46-714 or 46-720 or is designated as overappropriated pursuant to  
18 section 46-713 by the Department of Natural Resources; one surface water  
19 project representative from a river basin that has not been determined to  
20 be fully appropriated pursuant to section 46-714 or 46-720 or is not  
21 designated as overappropriated pursuant to section 46-713 by the  
22 Department of Natural Resources; one representative from the Department  
23 of Agriculture, the Department of Environmental Quality, the Department  
24 of Natural Resources, the office of the Governor, the office of the State  
25 Forester, the Game and Parks Commission, and the University of Nebraska;  
26 three representatives nominated by the Nebraska Association of Resources  
27 Districts; two representatives nominated by the Nebraska Weed Control  
28 Association; one riparian landowner from each of the state's  
29 congressional districts; and one representative from the Nebraska  
30 Environmental Trust. In addition to such members, any member of the  
31 Legislature may serve as a nonvoting, ex officio member of the task force

1 at his or her option. For administrative and budgetary purposes only, the  
2 task force shall be housed within the Department of Agriculture.

3       Sec. 4. The Riparian Vegetation Management Task Force, in  
4 consultation with appropriate federal agencies, shall develop and  
5 prioritize vegetation management goals and objectives, analyze the cost-  
6 effectiveness of available vegetation treatment, and develop plans and  
7 policies to achieve such goals and objectives. Any plan shall utilize the  
8 principles of integrated vegetation management and sound science. The  
9 task force shall convene within thirty days after the appointment of the  
10 members is complete to elect a chairperson and conduct such other  
11 business as deemed necessary. An annual report shall be submitted to the  
12 Governor and the Legislature by June 30 each year with the first report  
13 due on June 30, 2017. The report submitted to the Legislature shall be  
14 submitted electronically. It is the intent of the Legislature that  
15 expenses of the task force not exceed twenty-five thousand dollars of the  
16 total appropriation to the program per fiscal year.

17       Sec. 5. Section 46-290, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19       46-290 (1)(a) Except as provided in this section and sections  
20 46-2,120 to 46-2,130, any person having a permit to appropriate water for  
21 beneficial purposes issued pursuant to sections 46-233 to 46-235,  
22 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the  
23 use of such appropriation to a location other than the location specified  
24 in the permit, (ii) to change that appropriation to a different type of  
25 appropriation as provided in subsection (3) of this section, or (iii) to  
26 change the purpose for which the water is to be used under a natural-  
27 flow, storage, or storage-use appropriation to a purpose not at that time  
28 permitted under the appropriation shall apply for approval of such  
29 transfer or change to the Department of Natural Resources.

30       (b) The application for such approval shall contain (i) the number  
31 assigned to such appropriation by the department, (ii) the name and

1 address of the present holder of the appropriation, (iii) if applicable,  
2 the name and address of the person or entity to whom the appropriation  
3 would be transferred or who will be the user of record after a change in  
4 the location of use, type of appropriation, or purpose of use under the  
5 appropriation, (iv) the legal description of the land to which the  
6 appropriation is now appurtenant, (v) the name and address of each holder  
7 of a mortgage, trust deed, or other equivalent consensual security  
8 interest against the tract or tracts of land to which the appropriation  
9 is now appurtenant, (vi) if applicable, the legal description of the land  
10 to which the appropriation is proposed to be transferred, (vii) if a  
11 transfer is proposed, whether other sources of water are available at the  
12 original location of use and whether any provisions have been made to  
13 prevent either use of a new source of water at the original location or  
14 increased use of water from any existing source at that location, (viii)  
15 if applicable, the legal descriptions of the beginning and end of the  
16 stream reach to which the appropriation is proposed to be transferred for  
17 the purpose of augmenting the flows in that stream reach, (ix) if a  
18 proposed transfer is for the purpose of increasing the quantity of water  
19 available for use pursuant to another appropriation, the number assigned  
20 to such other appropriation by the department, (x) the purpose of the  
21 current use, (xi) if a change in purpose of use is proposed, the proposed  
22 purpose of use, (xii) if a change in the type of appropriation is  
23 proposed, the type of appropriation to which a change is desired, (xiii)  
24 if a proposed transfer or change is to be temporary in nature, the  
25 duration of the proposed transfer or change, and (xiv) such other  
26 information as the department by rule and regulation requires.

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

1 (3) Regardless of whether a transfer or a change in the purpose of  
2 use is involved, the following changes in type of appropriation, if found  
3 by the Director of Natural Resources to be consistent with section  
4 46-294, may be approved subject to the following:

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

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

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

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

23 (e) An appropriation for the manufacturing of hydropower at a  
24 facility located on a natural stream channel may be permanently changed  
25 in full to an instream basin-management appropriation to be held jointly  
26 by the Game and Parks Commission and any natural resources district or  
27 combination of natural resources districts. The beneficial use of such  
28 change is to maintain the streamflow for fish, wildlife, and recreation  
29 that was available from the manufacturing of hydropower prior to the  
30 change. Such changed appropriation may also be utilized by the owners of  
31 the appropriation to assist in the implementation of an approved

1 integrated management plan or plans developed pursuant to sections 46-714  
2 to 46-718 for each natural resources district within the river basin. Any  
3 such change under this section shall be subject to review under the  
4 provisions of sections 46-229 to 46-229.06 to ensure that the beneficial  
5 uses of the change of use are still being achieved; and

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

31 Whenever any change in type of appropriation is approved pursuant to

1 this subsection and as long as that change remains in effect, the  
2 appropriation shall be subject to the statutes, rules, and regulations  
3 that apply to the type of appropriation to which the change has been  
4 made.

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

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

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

29 (6) A quantified or unquantified appropriation for incidental  
30 underground water storage may be transferred to a new location along with  
31 the direct-use appropriation with which it is recognized if the director

1 finds such transfer to be consistent with section 46-294 and determines  
2 that the geologic and other relevant conditions at the new location are  
3 such that incidental underground water storage will occur at the new  
4 location. The director may request such information from the applicant as  
5 is needed to make such determination and may modify any such quantified  
6 appropriation for incidental underground water storage, if necessary, to  
7 reflect the geologic and other conditions at the new location.

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

16 (8) Any appropriation for manufacturing of hydropower changed under  
17 subdivision (3)(e) of this section shall maintain the priority date and  
18 preference category of the original manufacturing appropriation and shall  
19 be subject to condemnation and subordination pursuant to sections 70-668  
20 and 70-669. Any person holding a subordination agreement that was  
21 established prior to such change of appropriation shall be entitled to  
22 enter into a new subordination agreement for terms consistent with the  
23 original subordination agreement at no additional cost. Any person having  
24 obtained a condemnation award that was established prior to such change  
25 of appropriation shall be entitled to the same benefits created by such  
26 award, and any obligations created by such award shall become the  
27 obligations of the new owner of the appropriation changed under this  
28 section.

29 Sec. 6. Section 70-668, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 70-668 In applying the provisions of law relating to the

1 appropriation of water, priority of appropriation shall give the better  
2 right as between those using the water for the same purpose, but when the  
3 waters of any natural stream are not sufficient for the use of all those  
4 desiring to use the same, those using the water for domestic purposes  
5 shall have preference over those claiming it for any other purpose. Those  
6 using the water for agricultural purposes shall have the preference over  
7 those using the same for manufacturing purposes, and those using the  
8 water for agricultural purposes shall have the preference over those  
9 using the same for power purposes, where turbine or impulse water wheels  
10 are installed, or for instream basin-management purposes.

11 Sec. 7. Section 70-669, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 70-669 No inferior right to the use of the waters of this state  
14 shall be acquired by a superior right without just compensation therefor  
15 to the inferior user. The just compensation paid to those using water for  
16 power purposes shall not be greater than the cost of replacing the power  
17 which would be generated in the plant or plants of the power user by the  
18 water so acquired. The just compensation to be paid to a holder of an  
19 instream basin-management appropriation that has been changed from a  
20 manufacturing of hydropower appropriation pursuant to section 46-290  
21 shall be the cost per acre-foot of water subordinated for the hydropower  
22 appropriation at the time of approval of the change. The amount of  
23 compensation may be adjusted annually, except that any increase shall not  
24 exceed the annual change in the Consumer Price Index from the time of  
25 approval of the change. If publication of such index is discontinued, a  
26 comparable index selected by the Director of Natural Resources shall be  
27 used.

28 Sec. 8. Original sections 2-945.01, 2-958.02, 46-290, 70-668, and  
29 70-669, Reissue Revised Statutes of Nebraska, are repealed.

30 Sec. 9. The following sections are outright repealed: Sections  
31 2-967 and 2-968, Revised Statutes Cumulative Supplement, 2014.