

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 344

Introduced by Brandt, 32.

Read first time January 16, 2025

Committee:

- 1 A BILL FOR AN ACT relating to water allocation; to amend section 46-740,
- 2 Reissue Revised Statutes of Nebraska; to change provisions related
- 3 to ground water allocation and the use of integrated management
- 4 plans, rules, or orders; to harmonize provisions; and to repeal the
- 5 original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 46-740, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 46-740 (1) If allocation is adopted for use of ground water for
4 irrigation purposes in a management area, the permissible withdrawal of
5 ground water shall be allocated equally per irrigated acre except as
6 permitted by subsections (4) through (6) of section 46-739. Such
7 allocation shall specify the total number of acre-inches that are
8 allocated per irrigated acre per year, except that the district may allow
9 a ground water user to average his or her allocation over any reasonable
10 period of time. A ground water user may use his or her allocation on all
11 or any part of the irrigated acres to which the allocation applies or in
12 any other manner approved by the district.

13 (2) Except as permitted pursuant to subsections (4) through (6) of
14 section 46-739, if annual rotation or reduction of irrigated acres is
15 adopted for use of ground water for irrigation purposes in a management
16 area, the nonuse of irrigated acres shall be a uniform percentage
17 reduction of each landowner's irrigated acres within the management area
18 or a subarea of the management area. Such uniform reduction may be
19 adjusted for each landowner based upon crops grown on his or her land to
20 reflect the varying consumptive requirements between crops.

21 (3)(a) If allocations to any municipality have been made prior to
22 November 1, 2005, such allocations shall remain in full force and effect,
23 but may be amended by the appropriate natural resources district. (3)
24 Unless allocations have been made an integrated management plan, a rule,
25 or an order is established, adopted, or issued prior to November 1, 2005,
26 no integrated management plan, rule, or order shall limit the use of
27 ground water by a municipality, within an area determined by the
28 Department of Natural Resources to be fully appropriated pursuant to
29 section 46-714 or designated as overappropriated pursuant to section
30 46-713, until January 1, 2026, except that on and after January 1, 2026,
31 any new or expanded commercial or industrial user served by a municipal

1 water source that commences water use at a rate in excess of twenty-five
2 million gallons annually, expands water use to a rate in excess of
3 twenty-five million gallons annually, or at any time exceeds water use of
4 twenty-five million gallons annually shall be subject to the controls of
5 an integrated management plan, rule, or order and provide a mitigation
6 report to the natural resources district within which such user is
7 located. The mitigation report shall include (i) annual water use, (ii)
8 annual volume of water returned to the municipal system or discharged to
9 another location, (iii) source of water used to mitigate the new or
10 expanded consumptive use, and (iv) any other information deemed necessary
11 by the applicable natural resources district or the Department of Natural
12 Resources. The mitigation report shall be approved by the applicable
13 natural resources district and the Department of Natural Resources prior
14 to January 1, 2026, or prior to commencement of the new or expanded
15 use. ÷

16 (b) Each integrated management plan, rule, or order within an area
17 determined by the Department of Natural Resources to be fully
18 appropriated pursuant to section 46-714 or designated as overappropriated
19 pursuant to section 46-713 may require annual water use and water
20 consumption reporting from municipalities.

21 ~~(a) Any allocations to a municipality that have been made as of~~
22 ~~November 1, 2005, shall remain in full force and effect unless changed by~~
23 ~~the appropriate natural resources district;~~

24 ~~(b)(i) For any municipality that has not received an allocation as~~
25 ~~of November 1, 2005, the minimum annual allocation may be the greater of~~
26 ~~either the amount of ground water authorized by a permit issued pursuant~~
27 ~~to the Municipal and Rural Domestic Ground Water Transfers Permit Act or~~
28 ~~the governmental, commercial, and industrial uses of the municipality~~
29 ~~plus a per capita allowance. Water for commercial and industrial uses may~~
30 ~~be limited as specified in subdivision (b)(iii) of this subsection.~~

31 ~~(ii) The per capita allowance shall be based on the location of the~~

1 ~~municipality, increasing in equal increments from east to west, and shall~~
2 ~~not be less than two hundred gallons per person per day at 95 degrees, 19~~
3 ~~minutes, 00 seconds longitude and not less than two hundred fifty gallons~~
4 ~~per person per day at 104 degrees, 04 minutes, 00 seconds longitude.~~
5 ~~Persons served by a municipality outside of its corporate limits shall be~~
6 ~~considered part of the municipality's population if such service begins~~
7 ~~prior to January 1, 2026.~~

8 ~~(iii) Prior to January 1, 2026, any new or expanded single~~
9 ~~commercial or single industrial development served by any municipality~~
10 ~~within the fully appropriated or overappropriated area which, after July~~
11 ~~14, 2006, commences water use resulting in the consumptive use of water~~
12 ~~in amounts greater than twenty-five million gallons annually may be~~
13 ~~subject to controls adopted pursuant to section 46-715;~~

14 ~~(c) Prior to January 1, 2026, increases in the consumptive use of~~
15 ~~water by a municipality that result in a decrease in streamflow shall be~~
16 ~~addressed by the integrated management plan pursuant to controls or~~
17 ~~incentive programs adopted pursuant to section 46-715 and shall not~~
18 ~~affect the municipal allocations outlined in subdivisions (3)(a) and (b)~~
19 ~~of this section. Any permanent reduction in consumptive use of water~~
20 ~~associated with municipal growth, including governmental, industrial, and~~
21 ~~commercial growth, during the period between July 14, 2006, and January~~
22 ~~1, 2026, shall accrue to the benefit of the natural resources district~~
23 ~~within which such municipality is located; and~~

24 ~~(d) To qualify for the exemption specified in subsection (3) of this~~
25 ~~section, any city of the metropolitan class, city of the primary class,~~
26 ~~city of the first class, or city of the second class shall file a~~
27 ~~conservation plan with the natural resources district, if required by the~~
28 ~~integrated management plan. Villages and other municipalities smaller~~
29 ~~than a city of the second class shall not be required to submit a~~
30 ~~conservation plan to qualify for such exemption.~~

31 ~~(4) On and after January 1, 2026, the base amount for an annual~~

1 allocation to a municipality shall be determined as the greater of either
2 (a) the amount of water authorized by a permit issued pursuant to the
3 Municipal and Rural Domestic Ground Water Transfers Permit Act or (b) the
4 greatest annual use prior to January 1, 2026, for uses specified in
5 subdivision (3)(b) of this section plus the per capita allowance
6 described in subdivision (3)(b)(ii) of this section. On and after January
7 1, 2026, increases in the consumptive use of water by a municipality that
8 result in a decrease in streamflow shall be addressed by the integrated
9 management plan pursuant to controls or incentive programs adopted
10 pursuant to section 46-715. Each municipality may be subject to controls
11 adopted pursuant to such section for amounts in excess of the
12 allocations.

13 (4) (5) Unless an integrated management plan, rule, or order is
14 established, adopted, or issued prior to November 1, 2005, no integrated
15 management plan, rule, or order shall limit the use of ground water by a
16 nonmunicipal commercial or industrial water user within an area
17 determined by the department to be fully appropriated pursuant to section
18 46-714 or designated as overappropriated pursuant to section 46-713,
19 until January 1, 2026, except that:

20 (a) Prior to January 1, 2026, the minimum annual allocation for a
21 nonmunicipal commercial or industrial user shall be the greater of either
22 (i) the amount specified in a permit issued pursuant to the Industrial
23 Ground Water Regulatory Act or (ii) the amount necessary to achieve the
24 commercial or industrial use, including all new or expanded uses that
25 consume less than twenty-five million gallons annually. Any increases in
26 the consumptive use of water by a nonmunicipal commercial or industrial
27 water user that result in a decrease in streamflow shall be addressed by
28 the integrated management plan pursuant to controls or incentive programs
29 adopted pursuant to section 46-715;

30 (b) Prior to January 1, 2026, any new or expanded single commercial
31 or industrial development served by a nonmunicipal well within an area

1 determined by the department to be fully appropriated pursuant to section
2 46-714 or designated as overappropriated pursuant to section 46-713
3 which, after July 14, 2006, commences water use resulting in the
4 consumptive use of water in amounts greater than twenty-five million
5 gallons annually may be subject to controls adopted pursuant to section
6 46-715. This subdivision does not apply to a water user described in this
7 subdivision that is regulated by the Industrial Ground Water Regulatory
8 Act and the United States Nuclear Regulatory Commission;

9 (c) On and after January 1, 2026, the base amount for an annual
10 allocation to a nonmunicipal commercial or industrial user within an area
11 determined by the department to be fully appropriated pursuant to section
12 46-714 or designated as overappropriated pursuant to section 46-713 shall
13 be the amount specified in subdivision (4)(a) ~~(5)(a)~~ or (b) of this
14 section;

15 (d) On and after January 1, 2026, increases in the consumptive use
16 of water by a nonmunicipal commercial or industrial water user that
17 result in a decrease in streamflow shall be subject to the controls of an
18 ~~addressed by the integrated management plan, rule, or order pursuant to~~
19 ~~controls or incentive programs adopted pursuant to section 46-715; and~~

20 (e) Any reduction in consumptive use associated with new
21 nonmunicipal industrial or commercial uses of less than twenty-five
22 million gallons, during the period between July 14, 2006, and January 1,
23 2026, shall accrue to the benefit of the natural resources district
24 within which such nonmunicipal industrial or commercial user is located.

25 **Sec. 2.** Original section 46-740, Reissue Revised Statutes of
26 Nebraska, is repealed.