

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 545

Final Reading

Introduced by Dubas, 34.

Read first time January 23, 2013

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Public Service Commission; to amend
 2 sections 71-1567, 71-4609, 75-134, 75-136, 75-139,
 3 75-156, 75-722, 86-123, 86-158, 86-209, 86-255, 86-269,
 4 and 86-578, Reissue Revised Statutes of Nebraska, and
 5 section 57-1409, Revised Statutes Cumulative Supplement,
 6 2012; to change appeal procedures as prescribed; to
 7 provide for motions for reconsideration; to harmonize
 8 provisions; to provide a duty for the Revisor of
 9 Statutes; and to repeal the original sections.

10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 57-1409, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 57-1409 Any party aggrieved by a final order of the
4 commission regarding an application or assessment under the Major Oil
5 Pipeline Siting Act, including, but not limited to, a decision
6 relating to the public interest, may appeal. The appeal shall be in
7 accordance with ~~the Administrative Procedure Act.~~ section 75-136.

8 Sec. 2. Section 71-1567, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 71-1567 (1) The commission shall refuse to issue a seal
11 to a manufacturer for any modular housing unit not found to be in
12 compliance with its standards governing the construction of or the
13 structural, plumbing, heating, or electrical systems for modular
14 housing units or for which fees have not been paid. Except in case of
15 failure to pay the required fees, any such manufacturer may request a
16 hearing before the commission on the issue of such refusal.
17 Procedures for notice and opportunity for a hearing before the
18 commission shall be pursuant to the Administrative Procedure Act. The
19 refusal may be appealed, and the appeal shall be in accordance with
20 ~~the Administrative Procedure Act.~~ section 75-136.

21 (2) The issuance of seals may be suspended as to any
22 manufacturer who is convicted of violating section 71-1563 or as to
23 any manufacturer who violates any other provision of the Nebraska
24 Uniform Standards for Modular Housing Units Act or any rule,
25 regulation, commission order, or standard adopted pursuant thereto,

1 and issuance of the seals shall not be resumed until such
2 manufacturer submits sufficient proof that the conditions which
3 caused the violation have been remedied. Any such manufacturer may
4 request a hearing before the commission on the issue of such
5 suspension. Procedures for notice and opportunity for a hearing
6 before the commission shall be pursuant to the Administrative
7 Procedure Act. The suspension may be appealed, and the appeal shall
8 be in accordance with ~~the Administrative Procedure Act.~~ section
9 75-136.

10 Sec. 3. Section 71-4609, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 71-4609 (1) The commission shall administer the Uniform
13 Standard Code for Manufactured Homes and Recreational Vehicles. The
14 commission may adopt and promulgate, amend, alter, or repeal general
15 rules and regulations of procedure for (a) administering the
16 provisions of the code, (b) issuing seals, (c) obtaining statistical
17 data respecting the manufacture and sale of manufactured homes and
18 recreational vehicles, and (d) prescribing means, methods, and
19 practices to make effective such provisions.

20 (2) The commission shall refuse to issue a seal to any
21 manufacturer or other person for any manufactured home or
22 recreational vehicle found to be not in compliance with its standards
23 governing body and frame design and construction or plumbing,
24 heating, or electrical systems for manufactured homes or recreational
25 vehicles or for which fees have not been paid. Except in case of

1 failure to pay the required fees, any such manufacturer or other
2 person may request a hearing before the commission on the issue of
3 such refusal. Procedures for notice and opportunity for a hearing
4 before the commission shall be pursuant to the Administrative
5 Procedure Act. The refusal by the commission may be appealed, and the
6 appeal shall be in accordance with ~~the act.~~ section 75-136.

7 (3) The issuance of seals may be suspended or revoked as
8 to any manufacturer or other person who has not complied with any
9 provision of the code or with any rule, regulation, or standard
10 adopted and promulgated under the code or who is convicted of
11 violating section 71-4608, and issuance of the seals shall not be
12 resumed until such manufacturer or other person submits sufficient
13 proof that the conditions which caused the lack of compliance or the
14 violation have been remedied. Any manufacturer or other person may
15 request a hearing before the commission on the issue of such
16 suspension or revocation. Procedures for notice and opportunity for a
17 hearing before the commission shall be pursuant to the Administrative
18 Procedure Act. The suspension or revocation by the commission may be
19 appealed, and the appeal shall be in accordance with ~~the act.~~ section
20 75-136.

21 (4) The commission may conduct hearings and presentations
22 of views consistent with the regulations adopted by the United States
23 Department of Housing and Urban Development and adopt and promulgate
24 such rules and regulations as are necessary to carry out this
25 function.

1 (5) The commission shall establish a monitoring
2 inspection fee in an amount approved by the United States Secretary
3 of Housing and Urban Development, which fee shall be an amount paid
4 to the commission by the manufacturer for each manufactured-home seal
5 issued in the state. An additional monitoring inspection fee
6 established by the United States Secretary of Housing and Urban
7 Development shall be paid by the manufacturer to the secretary who
8 shall distribute the fees collected from all manufactured-home
9 manufacturers based on provisions developed and approved by the
10 secretary.

11 Sec. 4. Section 75-134, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 75-134 (1) A commission order entered after a hearing
14 shall be written and shall recite (a) a discussion of the facts of a
15 basic or underlying nature, (b) the ultimate facts, and (c) the
16 commission's reasoning or other authority relied upon by the
17 commission.

18 (2) Every order of the commission shall become effective
19 ten days after the date of the mailing of a copy of the order to the
20 parties of record except (a) when the commission prescribes a ~~later~~
21 an alternate effective date, (b) as otherwise provided in section
22 75-121 or 75-139, (c) for cease and desist orders issued pursuant to
23 section 75-133 which shall become effective on the date of entry, or
24 (d) for orders entered pursuant to section 75-319 which shall become
25 effective on the date of entry.

1 (3) Except as otherwise provided in this section or for
2 rate orders provided for in section 75-139, any appeal of a
3 commission order shall not stay enforcement of such order unless
4 otherwise ordered ~~under subsection (3) of section 84-917.~~ by the
5 commission or the Court of Appeals.

6 (4) Notwithstanding subsection (3) of this section, any
7 appeal of a rate order under the State Natural Gas Regulation Act
8 entered pursuant to section 66-1838 shall stay enforcement of such
9 order pending resolution of the appeal.

10 Sec. 5. Section 75-136, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 75-136 (1) Except as otherwise provided by law, if a
13 party to any proceeding is not satisfied with the order entered by
14 the commission, such party may appeal.

15 (2) Any appeal filed on or after ~~August 31, 2003,~~ shall
16 be in accordance with the Administrative Procedure Act. ~~October 1,~~
17 2013, shall be taken in the same manner and time as appeals from the
18 district court, except that the appellate court shall conduct a
19 review of the matter de novo on the record. Appeals shall be heard
20 and disposed of in the appellate court in the manner provided by law.
21 Appeal of a commission order shall be perfected by filing a notice of
22 intention to appeal with the executive director of the commission
23 within thirty days after the effective date of the order as
24 determined under section 75-134.

25 (3) Any appeal filed prior to ~~August 31, 2003,~~ ~~October 1,~~

1 2013, shall be in accordance with sections 75-134, 75-136, ~~to 75-138,~~
2 and 75-156 as such sections existed prior to the changes made by ~~Laws~~
3 ~~2003, LB 187.~~ this legislative bill.

4 (4) Any appeal of a rate order under the State Natural
5 Gas Regulation Act entered pursuant to section 66-1838 shall be
6 advanced by the Court of Appeals as other causes which involve the
7 public welfare and convenience are advanced.

8 Sec. 6. Section 75-139, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 75-139 (1) Except as otherwise provided in this section,
11 the effective date of a rate order that is appealed shall be the
12 first Monday following the date of the appellate court's mandate if
13 the order is affirmed, except that ~~(1)---(a)~~ a shipper may make
14 effective a rate order reducing a fixed rate by filing a supersedeas
15 bond with the commission sufficient in amount to insure refund of the
16 difference between the rate appealed and the original rate to the
17 carrier entitled thereto if the order appealed is reversed and ~~(2)~~
18 (b) a common carrier may make effective a rate order increasing a
19 fixed rate by filing a supersedeas bond with the commission
20 sufficient in amount to insure refund of the difference between the
21 rate finally approved and the rate appealed to shippers or
22 subscribers entitled thereto if the order appealed is reversed.

23 (2) A supersedeas bond may be filed by any affected
24 shipper or common carrier, including shippers or common carriers that
25 were not parties to the rate proceeding, at any time prior to the

1 issuance of the appellate court's mandate. Only the shipper or common
2 carrier filing a supersedeas bond shall benefit from such filing.

3 (3) The commission shall approve a supersedeas bond which
4 meets the requirements of this section within seven days after a
5 written request therefor has been made, and failure to disapprove the
6 bond within the time specified shall be deemed to be an approval.

7 (4) A carrier may put into effect rate increases granted
8 by a commission order while appealing that portion of the
9 commission's order denying a part of an application of the carrier.

10 (5) This section does not apply to rate orders under the
11 State Natural Gas Regulation Act entered pursuant to section 66-1838.

12 Sec. 7. (1) Except with respect to rate orders under the
13 State Natural Gas Regulation Act entered pursuant to section 66-1838,
14 any party may file a motion for reconsideration with the commission
15 within ten days after the effective date of the order as determined
16 under section 75-134. The filing of a motion for reconsideration
17 shall suspend the time for filing a notice of intention to appeal
18 pending resolution of the motion, except that if the commission does
19 not dispose of a motion for reconsideration within sixty days after
20 the filing of the motion, the motion shall be deemed denied and the
21 procedures for appeal in section 75-136 apply.

22 (2) Any party to a general rate proceeding under the
23 State Natural Gas Regulation Act may file a motion for
24 reconsideration within thirty days after the day an order setting
25 natural gas rates is entered by the commission. The filing of a

1 motion for reconsideration shall stay the order until the earlier of
2 the date the commission enters an order resolving the motion or one
3 hundred twenty days from the date of the order setting rates. Either
4 party shall have thirty days after the date the commission enters an
5 order resolving the motion or the expiration of the one-hundred-
6 twenty-day period for considering the motion, whichever is earlier,
7 in which to file an appeal.

8 Sec. 8. Section 75-156, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 75-156 (1) In addition to other penalties and relief
11 provided by law, the Public Service Commission may, upon a finding
12 that the violation is proven by clear and convincing evidence, assess
13 a civil penalty of up to ten thousand dollars per day against any
14 person, motor carrier, regulated motor carrier, common carrier,
15 contract carrier, grain dealer, or grain warehouseman for each
16 violation of (a) any provision of the laws of this state within the
17 jurisdiction of the commission as enumerated in section 75-109.01,
18 (b) any term, condition, or limitation of any certificate, permit, or
19 authority issued by the commission pursuant to the laws of this state
20 within the jurisdiction of the commission as enumerated in section
21 75-109.01, or (c) any rule, regulation, or order of the commission
22 issued under authority delegated to the commission pursuant to the
23 laws of this state within the jurisdiction of the commission as
24 enumerated in section 75-109.01.

25 (2) In addition to other penalties and relief provided by

1 law, the Public Service Commission may, upon a finding that the
2 violation is proven by clear and convincing evidence, assess a civil
3 penalty not less than one hundred dollars and not more than one
4 thousand dollars against any jurisdictional utility for each
5 violation of (a) any provision of the State Natural Gas Regulation
6 Act, (b) any rule, regulation, order, or lawful requirement issued by
7 the commission pursuant to the act, (c) any final judgment or decree
8 made by any court upon appeal from any order of the commission, or
9 (d) any term, condition, or limitation of any certificate issued by
10 the commission issued under authority delegated to the commission
11 pursuant to the act. The amount of the civil penalty assessed in each
12 case shall be based on the severity of the violation charged. The
13 commission may compromise or mitigate any penalty prior to hearing if
14 all parties agree. In determining the amount of the penalty, the
15 commission shall consider the appropriateness of the penalty in light
16 of the gravity of the violation and the good faith of the violator in
17 attempting to achieve compliance after notification of the violation
18 is given.

19 (3) In addition to other penalties and relief provided by
20 law, the Public Service Commission may, upon a finding that the
21 violation is proven by clear and convincing evidence, assess a civil
22 penalty of up to ten thousand dollars per day against any wireless
23 carrier for each violation of the Enhanced Wireless 911 Services Act
24 or any rule, regulation, or order of the commission issued under
25 authority delegated to the commission pursuant to the act.

1 (4) In addition to other penalties and relief provided by
2 law, the Public Service Commission may, upon a finding that the
3 violation is proven by clear and convincing evidence, assess a civil
4 penalty of up to one thousand dollars against any person for each
5 violation of the Nebraska Uniform Standards for Modular Housing Units
6 Act or the Uniform Standard Code for Manufactured Homes and
7 Recreational Vehicles or any rule, regulation, or order of the
8 commission issued under the authority delegated to the commission
9 pursuant to either act. Each such violation shall constitute a
10 separate violation with respect to each modular housing unit,
11 manufactured home, or recreational vehicle, except that the maximum
12 penalty shall not exceed one million dollars for any related series
13 of violations occurring within one year from the date of the first
14 violation.

15 (5) The civil penalty assessed under this section shall
16 not exceed two million dollars per year for each violation except as
17 provided in subsection (4) of this section. The amount of the civil
18 penalty assessed in each case shall be based on the severity of the
19 violation charged. The commission may compromise or mitigate any
20 penalty prior to hearing if all parties agree. In determining the
21 amount of the penalty, the commission shall consider the
22 appropriateness of the penalty in light of the gravity of the
23 violation and the good faith of the violator in attempting to achieve
24 compliance after notification of the violation is given.

25 (6) Upon notice and hearing in accordance with this

1 section and section 75-157, the commission may enter an order
2 assessing a civil penalty of up to one hundred dollars against any
3 person, firm, partnership, limited liability company, corporation,
4 cooperative, or association for failure to file an annual report or,
5 ~~beginning January 1, 2004,~~ pay the fee as required by section 75-116
6 and as prescribed by commission rules and regulations or for failure
7 to register as required by section 86-125 and as prescribed by
8 commission rules and regulations. Each day during which the violation
9 continues after the commission has issued an order finding that a
10 violation has occurred constitutes a separate offense. Any party
11 aggrieved by an order of the commission under this section may
12 appeal. The appeal shall be in accordance with ~~the Administrative~~
13 ~~Procedure Act.~~ section 75-136.

14 (7) When any person or party is accused of any violation
15 listed in this section, the commission shall notify such person or
16 party in writing (a) setting forth the date, facts, and nature of
17 each act or omission upon which each charge of a violation is based,
18 (b) specifically identifying the particular statute, certificate,
19 permit, rule, regulation, or order purportedly violated, (c) that a
20 hearing will be held and the time, date, and place of the hearing,
21 (d) that in addition to the civil penalty, the commission may enforce
22 additional penalties and relief as provided by law, and (e) that upon
23 failure to pay any civil penalty determined by the commission, the
24 penalty may be collected by civil action in the district court of
25 Lancaster County.

1 Sec. 9. Section 75-722, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 75-722 Commission hearings concerning the provisions of
4 sections 75-709 to 75-724 ~~and any appeals therefrom~~ shall be in
5 accordance with the Administrative Procedure Act. Any appeals
6 therefrom shall be in accordance with section 75-136.

7 Sec. 10. Section 86-123, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 86-123 (1) The commission shall regulate the quality of
10 telecommunications service provided by telecommunications companies
11 and shall investigate and resolve subscriber complaints concerning
12 quality of telecommunications service, subscriber deposits, and
13 disconnection of telecommunications service. If such a complaint
14 cannot be resolved informally, then, upon petition by the subscriber,
15 the commission shall set the matter for hearing in accordance with
16 the commission's rules and regulations for notice and hearing. The
17 commission may by order grant or deny, in whole or in part, the
18 subscriber's petition or provide such other relief as is reasonable
19 based on the evidence presented at the hearing. Any such order of the
20 commission may be enforced against any telecommunications company as
21 provided in sections 75-140 to 75-144, and such order may be appealed
22 by an interested party. The appeal shall be in accordance with ~~the~~
23 ~~Administrative Procedure Act.~~ section 75-136.

24 (2) The commission may regulate telecommunications
25 company rates pursuant to sections 86-139 to 86-157.

1 (3) The Nebraska Telecommunications Regulation Act shall
2 preempt and prohibit any regulation of a telecommunications company
3 by counties, cities, villages, townships, or any other local
4 governmental entity.

5 Sec. 11. Section 86-158, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 86-158 (1) Except as otherwise provided in section
8 86-123, any order of the commission entered pursuant to authority
9 granted in the Nebraska Telecommunications Regulation Act may be
10 appealed by any interested party to the proceeding. The appeal shall
11 be in accordance with ~~the Administrative Procedure Act.~~ section
12 75-136.

13 (2) In an original action concerning a violation of the
14 Nebraska Telecommunications Regulation Act by a telecommunications
15 company, the commission shall have jurisdiction as set forth in
16 section 75-132.01. After all administrative remedies before the
17 commission have been exhausted, an appeal may be brought by an
18 interested party to an action. Such appeal shall be in accordance
19 with ~~the Administrative Procedure Act.~~ section 75-136.

20 Sec. 12. Section 86-209, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 86-209 (1) Notwithstanding section 75-156, the commission
23 may, after hearing, impose an administrative penalty for a violation
24 of the Telephone Consumer Slamming Prevention Act. The penalty for a
25 violation shall not exceed two thousand dollars. Every violation

1 associated with a specific access line within the state shall be
2 considered a separate and distinct violation.

3 (2) The amount of an administrative penalty shall be
4 based on:

5 (a) The nature, circumstances, extent, and gravity of a
6 prohibited act;

7 (b) The history of previous violations;

8 (c) The amount necessary to deter future violations; and

9 (d) Any efforts to correct the violation.

10 (3) The commission shall remit any administrative penalty
11 collected under this section to the State Treasurer for distribution
12 in accordance with Article VII, section 5, of the Constitution of
13 Nebraska.

14 (4) Any administrative penalty may be appealed. The
15 appeal shall be in accordance with ~~the Administrative Procedure Act.~~
16 section 75-136.

17 Sec. 13. Section 86-255, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 86-255 Any decision of the commission made pursuant to
20 the Automatic Dialing-Announcing Devices Act or the rules and
21 regulations may be appealed. The appeal shall be in accordance with
22 ~~the Administrative Procedure Act.~~ section 75-136.

23 Sec. 14. Section 86-269, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 86-269 (1) The commission shall adopt and promulgate

1 rules and regulations necessary to carry out the Intrastate Pay-Per-
2 Call Regulation Act.

3 (2) The commission may conduct investigations and shall
4 enforce the act.

5 (3) Upon written complaint and supporting affidavit that
6 an applicable rule or regulation or any provision of the act has been
7 or is being violated, the commission may enter a cease and desist
8 order on an ex parte basis against a party named in a complaint
9 alleging violation of the act. The order shall have duration of no
10 more than twenty days, and a hearing upon the complaint shall be held
11 no later than twenty days after the order is entered by the
12 commission.

13 (4) A decision of the commission made pursuant to the act
14 and rules and regulations of the commission may be appealed. The
15 appeal shall be in accordance with ~~the Administrative Procedure Act.~~
16 section 75-136.

17 Sec. 15. Section 86-578, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 86-578 In an original action concerning a violation of
20 any provision of sections 86-574 to 86-578 by an agency or political
21 subdivision of the state, the Public Service Commission shall have
22 the jurisdiction set forth in section 75-132.01. After all
23 administrative remedies before the Public Service Commission have
24 been exhausted, an appeal may be brought by an interested party. Such
25 appeal shall be in accordance with ~~the Administrative Procedure Act.~~

1 section 75-136.

2 Sec. 16. The Revisor of Statutes shall assign section 7
3 of this act within Chapter 75, article 1, and any reference to such
4 chapter or article shall be deemed to include such section.

5 Sec. 17. Original sections 71-1567, 71-4609, 75-134,
6 75-136, 75-139, 75-156, 75-722, 86-123, 86-158, 86-209, 86-255,
7 86-269, and 86-578, Reissue Revised Statutes of Nebraska, and section
8 57-1409, Revised Statutes Cumulative Supplement, 2012, are repealed.