

AMENDMENTS TO LB344

(Amendments to Standing Committee amendments, AM83)

Introduced by Friesen, 34.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and all amendments thereto and
3 insert the following new sections:

4 Section 1. Section 76-2325, Revised Statutes Cumulative Supplement,
5 2020, is amended to read:

6 76-2325 (1)(a)(i) When the State Fire Marshal has reason to believe
7 that any person has committed any violation described in subsection (2)
8 of this section, the State Fire Marshal shall give notice of
9 investigation to such person and perform an investigation to determine
10 the nature and extent, if any, of such alleged violation.

11 (ii) When any person other than the State Fire Marshal has reason to
12 believe that any violation described in subsection (2) of this section
13 has occurred, such person may submit information to the State Fire
14 Marshal regarding such violation on a form prescribed by the State Fire
15 Marshal. Upon receipt of such information, the State Fire Marshal shall
16 determine whether such information requires investigation, and if the
17 State Fire Marshal has reason to believe an investigation is warranted,
18 the State Fire Marshal shall give notice of investigation to the person
19 being investigated and perform an investigation to determine the nature
20 and extent, if any, of such alleged violation.

21 (b) If after investigation the State Fire Marshal finds that such
22 person has committed any violation as described in subsection (2) of this
23 section, the State Fire Marshal shall issue a written determination
24 stating findings of fact, conclusions of law, and the civil penalty, if
25 any, to be assessed for such violation and serve a copy of the written
26 determination by personal service or by certified mail, return receipt

1 requested, upon such person. If the State Fire Marshal's investigation
2 was commenced based on information provided pursuant to subdivision (1)
3 (a)(ii) of this section, a copy of the written determination shall also
4 be delivered by regular mail to the person providing such information.

5 (c) Not later than thirty days after the date of the written
6 determination, any party may submit a written request for hearing on the
7 matter. The State Fire Marshal shall then appoint a hearing officer to
8 conduct such hearing and set a hearing date and provide written notice of
9 hearing to the parties at least thirty days prior to the date of the
10 hearing. Such notice shall contain the name, address, and telephone
11 number of the hearing officer, a copy of the written determination upon
12 which the hearing shall be held, and the date, time, and place of
13 hearing. The notice of hearing may be made by personal service or by
14 certified mail. If no hearing is requested in answer to the written
15 determination by the person found to have committed any violation as
16 described in subsection (2) of this section, such person shall pay any
17 civil penalty assessed within thirty days after receipt of the written
18 determination.

19 (d) In the preparation and conduct of the hearing, the hearing
20 officer shall have the power, on the hearing officer's own motion or upon
21 the request of any party, to compel the attendance of any witness and the
22 production of any documents by subpoena to ensure a fair hearing. The
23 hearing officer may administer oaths and examine witnesses and receive
24 any evidence pertinent to the determination of the matter. Any witnesses
25 so subpoenaed shall be entitled to the same fees as prescribed by law in
26 judicial proceedings in the district court of this state in a civil
27 action and mileage at the same rate provided in section 81-1176 for state
28 employees.

29 (e) Any party may appear at the hearing with or without the
30 assistance of counsel to present testimony, examine witnesses, and offer
31 evidence. At the discretion of the hearing officer, other interested

1 parties may be allowed to intervene and present testimony and offer
2 evidence in person or by counsel. A stenographic record of all testimony
3 and other evidence received at the hearing shall be made and preserved
4 pending final disposition of the matter.

5 (f) Unless all requests for hearing are withdrawn, following the
6 hearing the hearing officer shall prepare written findings of fact and
7 conclusions of law, and based on such findings of fact and conclusions of
8 law the State Fire Marshal shall affirm, modify, or reverse the written
9 determination issued under subdivision (1)(b) of this section and issue a
10 final order. The State Fire Marshal's final order may include an
11 assessment of costs incurred in conducting the hearing, including the
12 costs of the hearing officer and compelling the attendance of witnesses
13 and assess such costs against the parties. Any party aggrieved by the
14 final order of the State Fire Marshal may appeal the decision and such
15 appeal shall be in accordance with the Administrative Procedure Act.

16 (2) Except as provided in subsection (3) of this section, any ~~(1)~~
17 Any person who violates section 76-2320, 76-2320.01, 76-2320.02, 76-2321,
18 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 or any rule or regulation
19 adopted and promulgated by the State Fire Marshal pursuant to section
20 76-2319 shall be subject to a civil penalty assessed by the State Fire
21 Marshal as follows:

22 (a) For a violation by an excavator or an operator related to a gas
23 or hazardous liquid underground pipeline facility or a fiber optic
24 telecommunications facility, an amount not to exceed ten thousand dollars
25 for each violation for each day the violation persists, up to a maximum
26 of five hundred thousand dollars; and

27 (b) For a violation by an excavator or an operator related to any
28 other underground facility, an amount not to exceed five thousand dollars
29 for each day the violation persists, up to a maximum of fifty thousand
30 dollars.

31 (3) In addition to or in lieu of assessing a civil penalty as

1 provided in subsection (2) of this section, the State Fire Marshal may
2 order that a violator take and complete continuing education regarding
3 compliance with the One-Call Notification System Act. Such continuing
4 education shall be approved by the State Fire Marshal. When imposing a
5 civil penalty, the State Fire Marshal shall consider the appropriateness
6 of such penalty in relation to the size of the excavator's or operator's
7 business operation, the gravity of the violation, and any good faith
8 attempt by the excavator or operator to achieve compliance.

9 ~~(4) (2) An action to recover a civil penalty shall be brought by the~~
10 ~~Attorney General or a prosecuting attorney on behalf of the State of~~
11 ~~Nebraska in any court of competent jurisdiction of this state. The trial~~
12 ~~shall be before the court, which shall consider the nature,~~
13 ~~circumstances, and gravity of the violation and, with respect to the~~
14 ~~person found to have committed the violation, the degree of culpability,~~
15 ~~the absence or existence of prior violations, whether the violation was a~~
16 ~~willful act, any good faith attempt to achieve compliance, and such other~~
17 ~~matters as justice may require in determining the amount of penalty~~
18 ~~imposed. All penalties shall be remitted to the State Treasurer for~~
19 ~~distribution in accordance with Article VII, section 5, of the~~
20 ~~Constitution of Nebraska.~~

21 (5) The State Fire Marshal shall adopt and promulgate rules and
22 regulations to establish rules of procedure to carry out this section.

23 Sec. 2. Section 81-502.03, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 81-502.03 In case of disagreement concerning the propriety of any
26 action taken or proposed to be taken by the State Fire Marshal or the
27 application of any statute, rule, or regulation of his or her office with
28 respect to any establishment or installation, the State Fire Marshal may,
29 and upon application of any party in interest, shall provide for a
30 hearing before the Nebraska Fire Safety Appeals Board in the county of
31 the establishment or installation which is the subject of the

1 disagreement. At least ten days' written notice shall be given to the
2 governing body responsible for the establishment or installation involved
3 and to any public official having jurisdiction. The board shall make a
4 decision based upon the evidence brought forth in the hearing and issue
5 its order accordingly. Prior to ordering any political or governmental
6 subdivision of the State of Nebraska to make any modification in the
7 design or construction of any public building or any modification in the
8 location, installation, or operation of any existing equipment in any
9 public building or to replace such equipment, the State Fire Marshal, his
10 or her first assistant, or one of his or her deputies shall personally
11 appear at a regular meeting of the governing board of such subdivision
12 and present a written report stating the condition of such building or
13 equipment and the reason why such building should be modified or such
14 equipment should be modified or replaced, and a copy of such report shall
15 be attached to the order. Nothing in this section shall prevent the State
16 Fire Marshal from ordering necessary repairs, and nothing in sections
17 81-502.01 to 81-502.03 shall prevent the State Fire Marshal, when actual
18 and immediate danger to life exists, from ordering and requiring the
19 occupants to vacate a building or structure subject to his or her
20 jurisdiction. This section shall not apply to any decision,
21 determination, or other action taken or made by the State Fire Marshal
22 under the One-Call Notification System Act.

23 Sec. 3. Original section 81-502.03, Reissue Revised Statutes of
24 Nebraska, and section 76-2325, Revised Statutes Cumulative Supplement,
25 2020, are repealed.

26 Sec. 4. The following section is outright repealed: Section
27 76-2325.02, Revised Statutes Cumulative Supplement, 2020.