

LEGISLATIVE BILL 469

Approved by the Governor May 27, 2015

Introduced by Smith, 14.

A BILL FOR AN ACT relating to law; to amend sections 3-402, 3-408, 81-1601, 81-1602, 81-1603, 81-1605, 81-1606, and 81-1607.01, Reissue Revised Statutes of Nebraska; to define terms; to provide procedures and reporting requirements relating to a state plan regarding carbon dioxide emissions; to provide requirements for meteorological evaluation towers; to provide penalties; to provide and change duties of the State Energy Office; to require a strategic state energy plan as prescribed; to eliminate provisions relating to wind measurement equipment; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; to repeal the original sections; to outright repeal section 66-1901, Revised Statutes Cumulative Supplement, 2014; and to declare an emergency.

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

Section 1. For purposes of sections 1 to 4 of this act:

(1) Covered electric generating unit means a fossil fuel-fired electric generating unit existing within the state prior to the operative date of this section that is subject to regulation under the federal emission guidelines;

(2) Federal emission guidelines means any final rules, regulations, guidelines, or other requirements that the United States Environmental Protection Agency may adopt for regulating carbon dioxide emissions from covered electric generating units under section 111(d) of the federal Clean Air Act, 42 U.S.C. 7411(d);

(3) State means the State of Nebraska; and

(4) State plan means any plan to establish and enforce carbon dioxide emission control measures that the Department of Environmental Quality may adopt to implement the obligations of the state under the federal emission guidelines.

Sec. 2. The Department of Environmental Quality shall not submit a state plan for regulating carbon dioxide emissions from covered electric generating units to the United States Environmental Protection Agency until the department has provided a copy of the state plan to the State Energy Office. The department shall provide such copy to the State Energy Office prior to the submission deadline for the state plan set by the United States Environmental Protection Agency. If the United States Environmental Protection Agency extends the submission deadline, the department shall provide such copy to the State Energy Office at least one hundred twenty days prior to the extended submission deadline. Nothing in this section shall prevent the department from complying with federally prescribed deadlines.

Sec. 3. (1) After receiving the copy of the state plan under section 2 of this act, the State Energy Office shall prepare a report that assesses the effects of the state plan on:

(a) The electric power sector, including:

(i) The type and amount of electric generating capacity within the state that is likely to retire or switch to another fuel;

(ii) The stranded investment in electric generating capacity and other infrastructure;

(iii) The amount of investment necessary to offset retirements of electric generating capacity and maintain generation reserve margins;

(iv) Potential risks to electric reliability, including resource adequacy risks and transmission constraints; and

(v) The amount by which retail electricity prices within the state are forecast to increase or decrease; and

(b) Employment within the state, including direct and indirect employment effects within affected sectors of the state's economy.

(2) The State Energy Office shall complete the report required under this section within thirty days after receiving the copy of the state plan under section 2 of this act and shall electronically submit to the Legislature a copy of such report.

(3) If the Legislature is in session when it receives the report, the Legislature may vote on a nonbinding legislative resolution endorsing or disapproving the state plan based on the findings of the report.

Sec. 4. Upon submitting a state plan to the United States Environmental Protection Agency, the Department of Environmental Quality shall electronically submit to the Legislature a copy of the state plan.

Sec. 5. Section 3-402, Reissue Revised Statutes of Nebraska, is amended to read:

3-402 As used in sections 3-401 to 3-409 and section 6 of this act, unless the context otherwise requires:

(1) Structure ~~means shall mean~~ any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys;

(2) Meteorological evaluation tower means an anchored structure, including all guy wires and accessory facilities, on which one or more meteorological instruments are mounted for the purpose of meteorological data collection;

(3) Obstruction shall mean any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area; and

(4) Person means shall mean any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company.

Sec. 6. (1) A meteorological evaluation tower, the height of which is at least fifty feet above the surface of the ground at point of installation, shall be marked according to subsection (2) of this section. This section applies to a meteorological evaluation tower that is located outside the corporate limits of a city or village.

(2) A meteorological evaluation tower described in subsection (1) of this section shall: (a) Be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base; (b) have two or more spherical marker balls at least twenty-one inches in diameter that are aviation orange in color and attached to each outer guy wire connected to the tower with the top ball no further than twenty feet from the top wire connection and the remaining ball or balls at or below the midpoint of the tower on the outer guy wires; and (c) have yellow safety sleeves installed on each outer guy wire extending at least fourteen feet above the anchor point of the guy wire.

(3) The owner of a meteorological evaluation tower subject to this section shall, not less than ten business days prior to erecting the tower, register with the Department of Aeronautics the name and address of the owner, the height and location of the tower, and any other information that the department deems necessary for aviation safety. The owner of a tower subject to this section shall also report the removal of the tower to the department not more than thirty business days after its removal. The department shall make the information received pursuant to this subsection available to the public within five business days.

(4) The owner of a meteorological evaluation tower described in subsection (1) of this section that was erected prior to the operative date of this section and which is either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet, shall mark the tower as required by subsection (2) of this section within two years after the operative date of this section or at such time the tower is taken down for maintenance or other purposes, whichever comes first, except that the owner of a tower erected prior to the operative date of this section which is not lighted, marked, painted, or modified as described in this subsection shall mark such tower as required by subsection (2) of this section within ninety days after the operative date of this section. The registration requirements of subsection (3) of this section shall be performed by the owner of a tower erected prior to the operative date of this section within fifteen business days after the operative date of this section.

(5) A material failure to comply with the marking and registration requirements of this section shall be admissible as evidence of negligence on the part of an owner of a meteorological evaluation tower in an action in tort for property damage, bodily injury, or death resulting from an aerial collision with such unmarked or unregistered tower.

(6) The department may adopt and promulgate rules and regulations for carrying out the purposes of this section.

Sec. 7. Section 3-408, Reissue Revised Statutes of Nebraska, is amended to read:

3-408 Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409 and section 6 of this act, (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted and promulgated by the Department of Aeronautics pursuant to sections 3-401 to 3-409 and section 6 of this act hereto, as authorized by section 3-407, (4) failing to do and perform any act required by sections 3-401 to 3-409 and section 6 of this act hereby, or (5) violating the terms of any permit issued pursuant to the provisions of sections 3-401 to 3-409 and section 6 of this act, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of the provisions of sections 3-401 to 3-409 and section 6 of this act shall continue in existence, shall constitute a separate offense.

Sec. 8. Section 81-1601, Reissue Revised Statutes of Nebraska, is amended to read:

81-1601 (1) There is hereby created an agency of state government to be known as the State Energy Office. The office may be a separate division within an existing executive department.

(2) The chief executive officer shall be known as the Director of the State Energy Office and shall be appointed by the Governor with the advice and consent of the Legislature. The director shall administer the affairs of the office and shall serve at the pleasure of the Governor. The director may employ such assistants, professional staff, and other employees as may be deemed necessary to effectively carry out the provisions of sections 81-1601 to 81-1605 and section 11 of this act within such appropriations as the Legislature may provide. The salary of the director shall be fixed by the

Governor unless otherwise expressly provided for by law.

Sec. 9. Section 81-1602, Reissue Revised Statutes of Nebraska, is amended to read:

81-1602 The State Energy Office shall have the following duties:

- (1) To serve as or assist in developing and coordinating a central repository within state government for the collection of data on energy;
- (2) To undertake a continuing assessment of the trends in the availability, consumption, and development of all forms of energy;
- (3) To collect and analyze data relating to present and future demands and resources for all sources of energy and to specify energy needs for the state;
- (4) To recommend to the Governor and the Legislature energy policies and conservation measures for the state and to carry out such measures as are adopted;
- (5) To provide for public dissemination of appropriate information on energy, energy sources, and energy conservation;
- (6) To accept, expend, or disburse funds, public or private, made available to it for research studies, demonstration projects, or other activities which are related either to energy conservation and efficiency or development;
- (7) To study the impact and relationship of state energy policies to national and regional energy policies and engage in such activities as will reasonably insure that the State of Nebraska and its citizens receive an equitable share of energy supplies, including the administration of any federally mandated or state-mandated energy allocation programs;
- (8) To actively seek the advice of the citizens of Nebraska regarding energy policies and programs;
- (9) To prepare emergency allocation plans suggesting to the Governor actions to be taken in the event of serious shortages of energy;
- (10) To design a state program for conservation of energy and energy efficiency;
- (11) To provide technical assistance to local subdivisions of government; and
- (12) To provide technical assistance to private persons desiring information on energy conservation and efficiency techniques and the use of renewable energy technologies; -
- (13) To develop a strategic state energy plan pursuant to section 11 of this act;
- (14) To develop and disseminate transparent and objective energy information and analysis while utilizing existing energy planning resources of relevant stakeholder entities;
- (15) To actively seek to maximize federal and other nonstate funding and support to the state for energy planning; and
- (16) To monitor energy transmission capacity planning and policy affecting the state and the regulatory approval process for the development of energy infrastructure and make recommendations to the Governor and electronically to the Legislature as necessary to facilitate energy infrastructure planning and development.

Sec. 10. Section 81-1603, Reissue Revised Statutes of Nebraska, is amended to read:

81-1603 The office shall have the power to do such things as are necessary to carry out sections 81-1601 to 81-1605 and section 11 of this act, including but not limited to the following:

- (1) To adopt rules and regulations, pursuant to the Administrative Procedure Act, to carry out the purposes of sections 81-1601 to 81-1605 and section 11 of this act;
- (2) To make all contracts pursuant to sections 81-1601 to 81-1605 and section 11 of this act and do all things to cooperate with the federal government, and to qualify for, accept, expend, and dispense public or private funds intended for the implementation of sections 81-1601 to 81-1605 and section 11 of this act;
- (3) To contract for services, if such work or services cannot be satisfactorily performed by employees of the agency or by any other part of state government;
- (4) To enter into such agreements as are necessary to carry out energy research and development with other states;
- (5) To carry out the duties and responsibilities relating to energy as may be requested or required of the state by the federal government;
- (6) To cooperate and participate with the approval of the Governor in the activities of organizations of states relating to the availability, conservation, development, and distribution of energy;
- (7) To engage in such activities as will seek to insure that the State of Nebraska and its citizens receive an equitable share of energy supplies at a fair price; and
- (8) To form advisory committees of citizens of Nebraska to advise the director of the energy office on programs and policies relating to energy and to assist in implementing such programs. Such committees shall be of a temporary nature and no member shall receive any compensation for serving on any such committee but, with the approval of the Governor, members shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177 ~~for state employees~~. The minutes of meetings of and actions taken by each committee shall be kept and a record shall be maintained of the name, address, and occupation or vocation of every individual serving on any committee. Such minutes and records shall be maintained in the State Energy

Office and shall be available for public inspection during regular office hours.

Sec. 11. (1) The Legislature finds that:

(a) Comprehensive planning enables the state to address its energy needs, challenges, and opportunities and enhances the state's ability to prioritize energy-related policies, activities, and programs; and

(b) Meeting the state's need for clean, affordable, and reliable energy in the future will require a diverse energy portfolio and a strategic approach, requiring engagement of all energy stakeholders in a comprehensive planning process.

(2) The State Energy Office shall develop an integrated and comprehensive strategic state energy plan and review such plan periodically as the office deems necessary. The office may organize technical committees of individuals with expertise in energy development for purposes of developing the plan. If the office forms an advisory committee pursuant to subdivision (8) of section 81-1603 for purposes of such plan, the chairperson of the Appropriations Committee of the Legislature, the chairperson of the Natural Resources Committee of the Legislature, and three members of the Legislature selected by the Executive Board of the Legislative Council shall be nonvoting, ex officio members of such advisory committee.

(3) The strategic state energy plan shall include short-term and long-term objectives that will ensure a secure, reliable, and resilient energy system for the state's residents and businesses; a cost-competitive energy supply and access to affordable energy; the promotion of sustainable economic growth, job creation, and economic development; and a means for the state's energy policy to adapt to changing circumstances.

(4) The strategic state energy plan shall include, but not be limited to:

(a) A comprehensive analysis of the state's energy profile, including all energy resources, end-use sectors, and supply and demand projections;

(b) An analysis of other state energy plans and regional energy activities which identifies opportunities for streamlining and partnerships; and

(c) An identification of goals and recommendations related to:

(i) The diversification of the state's energy portfolio in a way that balances the lowest practicable environmental cost with maximum economic benefits;

(ii) The encouragement of state and local government coordination and public-private partnerships for future economic and investment decisions;

(iii) The incorporation of new technologies and opportunities for energy diversification that will maximize Nebraska resources and support local economic development;

(iv) The interstate and intrastate promotion and marketing of the state's renewable energy resources;

(v) A consistent method of working with and marketing to energy-related businesses and developers;

(vi) The advancement of transportation technologies, alternative fuels, and infrastructure;

(vii) The development and enhancement of oil, natural gas, and electricity production and distribution;

(viii) The development of a communications process between energy utilities and the State Energy Office for responding to and preparing for regulations having a statewide impact; and

(ix) The development of a mechanism to measure the plan's progress.

Sec. 12. Section 81-1605, Reissue Revised Statutes of Nebraska, is amended to read:

81-1605 Notwithstanding any provisions of sections 81-1601 to 81-1605 and section 11 of this act, the State Energy Office shall not perform any duties or exercise any powers which are delegated to other agencies or subdivisions of state government.

Sec. 13. Section 81-1606, Reissue Revised Statutes of Nebraska, is amended to read:

81-1606 The Director of the State Energy Office shall develop and maintain a program of collection, compilation, and analysis of energy statistics and information. Existing information reporting requests, maintained at the state and federal levels, shall be utilized whenever possible in any data collection required under the provisions of sections 81-1601 to 81-1607 and section 11 of this act. A central state repository of energy data shall be developed and coordinated with other governmental data-collection and record-keeping programs. The director shall, on at least an annual basis, with monthly compilations, submit to the Governor and the Clerk of the Legislature a report identifying state energy consumption by fuel type and by use to the extent that such information is available. The report submitted to the Clerk of the Legislature shall be submitted electronically. Nothing in this section shall be construed as permitting or authorizing the revealing of confidential information. For purposes of this section confidential information shall mean any process, formula, pattern, decision, or compilation of information which is used, directly or indirectly, in the business of the producer, refiner, distributor, transporter, or vendor, and which gives such producer, refiner, distributor, transporter, or vendor an advantage or an opportunity to obtain an advantage over competitors who do not know or use it.

Sec. 14. Section 81-1607.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-1607.01 The State Energy Office Cash Fund is hereby created. The fund shall consist of funds received pursuant to section 57-705. The fund shall be

used for the administration of sections 81-1601 to 81-1607 and section 11 of this act, for energy conservation activities, and for providing technical assistance to communities in the area of natural gas other than assistance regarding ownership of regulated utilities, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the State Energy Office Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 15. The Revisor of Statutes shall assign section 6 of this act within sections 3-401 to 3-409.

Sec. 16. Sections 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, and 18 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 17. Original sections 3-402 and 3-408, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 18. Original sections 81-1601, 81-1602, 81-1603, 81-1605, 81-1606, and 81-1607.01, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 19. The following section is outright repealed: Section 66-1901, Revised Statutes Cumulative Supplement, 2014.

Sec. 20. Since an emergency exists, this act takes effect when passed and approved according to law.