

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 595

Introduced by Wehrbein, 2; Coordsen, 32

Read first time January 19, 1999

Committee: Transportation

A BILL

1 FOR AN ACT relating to railroads; to amend sections 75-156 and
2 75-402, Reissue Revised Statutes of Nebraska; to require
3 notice of abandonment or discontinuation of service; to
4 provide duties for the Public Service Commission; to
5 define a term; to harmonize provisions; and to repeal the
6 original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) Each railroad carrier which furnishes a
2 notice of intent to abandon or discontinue rail service, as
3 referenced by 49 U.S.C. 10903, in the State of Nebraska with a
4 federal regulatory agency shall also file a copy of such notice of
5 intent with the commission at least sixty days prior to the date on
6 which such report is required to be filed with the federal agency.

7 (2) Each railroad carrier which furnishes applications to
8 abandon or discontinue rail service, as referenced by 49 C.F.R.
9 1152.22, in the State of Nebraska with a federal regulatory agency
10 shall also file a copy of such applications with the commission on
11 or before the date on which such report is filed with the federal
12 agency.

13 (3) A violation of subsection (1) or (2) of this section
14 is subject to section 75-156.

15 (4)(a) The commission shall receive, record, and make
16 available all filings made pursuant to subsection (1) or (2) of
17 this section.

18 (b) Within three days after receipt of such filings, the
19 commission shall notify affected communities and parties by public
20 notification in a legal newspaper published in or in general
21 circulation in the affected county or counties. The notice shall
22 be published for three consecutive weeks. Proof of such
23 publication shall be made by an affidavit of the publisher,
24 principal clerk, or other agent of the newspaper and shall be filed
25 in the offices of affected city councils and village boards.

26 (c) The commission shall also notify, in a reasonable and
27 timely manner, communities affected by the abandonment or
28 discontinuance of rail service by registered or certified mail to:

1 (i) City councils and village boards located within the
2 county or counties where such rail lines are located;

3 (ii) The county boards of the county or counties where
4 such rail lines are located;

5 (iii) Rail users who have received or transported
6 agricultural or horticultural products, as defined in section
7 77-1359, on such rail lines within the past two years; and

8 (iv) Any other local public or private entity which the
9 commission deems necessary to notify regarding the abandonment or
10 discontinuance of rail service in the State of Nebraska.

11 Sec. 2. Section 75-156, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 75-156. (1) In addition to other penalties and relief
14 provided by law, the Public Service Commission may assess a civil
15 penalty of up to five thousand dollars against any person, motor
16 carrier, regulated motor carrier, common carrier, or contract
17 carrier for the violation of (a) any provision of Chapter 75,
18 article 3, administered by the commission or section 75-126 as such
19 section applies to any person or carrier specified in Chapter 75,
20 article 3, (b) any term, condition, or limitation of any
21 certificate or permit issued by the commission pursuant to Chapter
22 75, article 3, or (c) any rule, regulation, or order of the
23 commission issued under authority delegated to the commission
24 pursuant to Chapter 75, article 3. The amount of the civil penalty
25 assessed in each case shall be based on the severity of the
26 violation charged. The commission may compromise or mitigate any
27 penalty prior to hearing if all parties agree. In determining the
28 amount of the penalty, the commission shall consider the

1 appropriateness of the penalty in light of the gravity of the
2 violation and the good faith of the violator in attempting to
3 achieve compliance after notification of the violation is given.

4 (2) Upon notice and hearing in accordance with this
5 section and section 75-157, the commission may enter an order
6 assessing a civil penalty of up to five hundred dollars per day
7 against a railroad carrier for the violation of section 1 of this
8 act.

9 (3) Upon notice and hearing in accordance with this
10 section and section 75-157, the commission may enter an order
11 assessing a civil penalty of up to one hundred dollars against any
12 person, firm, partnership, limited liability company, corporation,
13 cooperative, or association for (a) the violation of any provision
14 of sections 75-604 and 86-805 or (b) failure to file an annual
15 report as required by section 75-116 and as prescribed by
16 commission rules and regulations. Each day during which the
17 violation continues after the commission has issued an order
18 finding that a violation has occurred constitutes a separate
19 offense.

20 (4) Any party aggrieved by an order of the commission
21 under this section has the rights of appeal set forth in section
22 75-136.01.

23 ~~(3)~~ (5) When any person, motor carrier, regulated motor
24 carrier, common carrier, or contract carrier is accused of any
25 violation listed in subsection (1) of this section, any railroad
26 carrier is accused of a violation listed in subsection (2) of this
27 section or ~~when~~ any person, firm, partnership, limited liability
28 company, corporation, cooperative, or association is accused of any

1 violation listed in subsection ~~(2)~~ (3) of this section, the
 2 commission shall notify such person or party in writing (a) setting
 3 forth the date, facts, and nature of each act or omission upon
 4 which each charge of a violation is based, (b) specifically
 5 identifying the particular statute, certificate, permit, rule,
 6 regulation, or order purportedly violated, (c) that a hearing will
 7 be held and the time, date, and place of the hearing, (d) that in
 8 addition to the civil penalty, the commission may enforce
 9 additional penalties and relief as provided by law, and (e) that
 10 upon failure to pay any civil penalty determined by the commission,
 11 the penalty may be collected by civil action in the district court
 12 of Lancaster County.

13 Sec. 3. Section 75-402, Reissue Revised Statutes of
 14 Nebraska, is amended to read:

15 75-402. As used in sections 75-401 to 75-430 and section
 16 1 of this act, and in all rules and regulations prescribed by the
 17 commission, unless the context otherwise requires:

18 (1) Commission means the Public Service Commission;

19 (2) Railroad carrier ~~shall mean~~ means any common carrier
 20 engaged in the carrying of freight or passengers over any line of
 21 railroad, or part thereof, within the State of Nebraska; and

22 ~~(2)~~ (3) Railroad ~~shall mean~~ means any line of railroad
 23 track, or part thereof, located within the State of Nebraska.

24 Sec. 4. Original sections 75-156 and 75-402, Reissue
 25 Revised Statutes of Nebraska, are repealed.