

LEGISLATIVE BILL 632

Approved by the Governor August 17, 2020

Introduced by Hughes, 44.

A BILL FOR AN ACT relating to environment and energy; to amend sections 13-2001, 13-2003, 13-2017, 13-2023, 70-1605, and 70-1606, Reissue Revised Statutes of Nebraska, and section 2-1504, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to Nebraska Natural Resources Commission membership and the Integrated Solid Waste Management Act; to define a term; to restate policy; to prohibit regulation of containers as prescribed; to change provisions relating to utility discontinuance and reconnection; to require the Department of Natural Resources to develop a state flood mitigation plan; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 2-1504, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-1504 (1) The Nebraska Natural Resources Commission is established. The commission shall advise the department as requested by the director and shall perform such other functions as are specifically conferred on the commission by law. The commission shall have no jurisdiction over matters pertaining to water rights.

(2) Each member of the commission shall be a resident of the State of Nebraska and shall have attained the age of majority. The voting members of the commission, ~~all of whom shall have attained the age of majority,~~ shall be:

(a) One resident of each of the following river basins, with delineations being those on the Nebraska river basin map officially adopted by the commission and on file with the department: (i) The Niobrara River, White River, and Hat Creek basin, (ii) the North Platte River basin, (iii) the South Platte River basin, (iv) the middle Platte River basin, (v) the lower Platte River basin, (vi) the Loup River basin, (vii) the Elkhorn River basin, (viii) the Missouri tributaries basin, (ix) the Republican River basin, (x) the Little Blue River basin, (xi) the Big Blue River basin, and (xii) the Nemaha River basin;

(b) One additional resident of each river basin which encompasses one or more cities of the metropolitan class; and

(c) Fourteen members appointed by the Governor, subject to confirmation by the Legislature. Of the members appointed by the Governor, one shall represent each of the following categories: Agribusiness interests; agricultural interests; ground water irrigators; irrigation districts; manufacturing interests; metropolitan utilities districts; municipal users of water from a city of the primary class; municipal users of water from a city of the first or second class or a village; outdoor recreation users; public power districts; public power and irrigation districts; range livestock owners; surface water irrigators; and wildlife conservation interests.

(3) Members of the commission described in subdivision (2)(a) of this section shall be selected for four-year terms at individual caucuses of the natural resources district directors residing in the river basin from which the member is selected. Such caucuses shall be held for each basin within ten days following the first Thursday after the first Tuesday of the year the term of office of the member from that basin expires. The dates and locations for such caucuses shall be established by the commission, and the commission shall provide notice to the public by issuing press releases for publication in a newspaper of general circulation in each county that comprises the river basin for which a caucus election will be held. Terms of office of such members shall follow the sequence originally determined by the river basin representatives to the commission at their first meeting on the third Thursday after the first Tuesday in January 1975. All river basin members shall take office on the third Thursday after the first Tuesday in January following their selection and any vacancy shall be filled for the unexpired term by a caucus held within thirty days following the date such vacancy is created. Each member of the commission representing a river basin shall qualify by filing with the other members of the commission an acceptance in writing of his or her selection.

(4) Members of the commission described in subdivision (2)(b) of this section shall be residents of natural resources districts which encompass one or more cities of the metropolitan class and shall be selected in the same manner, at the same time, and for a four-year term having the same term sequence as provided for the other members from such basin under subsection (3) of this section.

(5) For members of the commission described in subdivision (2)(c) of this section:

(a) The Governor shall appoint the eleven additional members added by Laws 2014, LB1098, within thirty days after April 17, 2014. The eleven additional appointments shall be for staggered four-year terms, as determined by the Governor. The Governor shall also set the terms of the current members of the commission appointed under such subdivision and serving on April 17, 2014, to

staggered four-year terms. Future appointments shall be for four-year terms. Members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Members may be removed for cause. Initial appointees shall begin serving immediately following notice of appointment, except that the member appointed representing municipal users of water from the class of city or a village that is being represented by the current member representing municipal users of water and the members representing surface water irrigators and ground water irrigators shall not begin serving until the term of the current member representative of the category expires or such member resigns or is otherwise removed; and

(b) In appointing such members, the Governor shall:

(i) Create a broad-based commission which has knowledge of, has experience with, and is representative of Nebraska's water use and economy;

(ii) Give recognition to the importance of both water quantity and water quality; and

(iii) Appoint members who represent diverse geographic regions of the state, including urban and rural areas, and represent, to the extent possible, the racial and ethnic diversity of the state.

(6) After the members have been appointed as required under this section, the commission shall revise or adopt and promulgate rules and regulations as necessary to administer the Water Sustainability Fund pursuant to sections 2-1506 to 2-1513.

Sec. 2. Section 13-2001, Reissue Revised Statutes of Nebraska, is amended to read:

13-2001 Sections 13-2001 to 13-2043 and section 4 of this act shall be known and may be cited as the Integrated Solid Waste Management Act.

Sec. 3. Section 13-2003, Reissue Revised Statutes of Nebraska, is amended to read:

13-2003 For purposes of the Integrated Solid Waste Management Act, the definitions found in sections 13-2004 to 13-2016.01 and section 4 of this act shall be used.

Sec. 4. Container means a bag, cup, can, pouch, package, container, bottle, or other packaging that is (1) designed to be reusable, recyclable, or single-use, (2) made of cloth, paper, plastic, including foamed or expanded plastic, cardboard, corrugated material, aluminum, glass, or postconsumer recycled or similar material or substrates, including coated, laminated, or multilayer substrates, and (3) designed for consuming, protecting, or transporting merchandise, food, or beverages from or at a food service or retail facility.

Sec. 5. Section 13-2017, Reissue Revised Statutes of Nebraska, is amended to read:

13-2017 It is the policy of this state:

(1) To encourage the development of integrated solid waste management programs, including waste volume reduction and recycling programs and education, at the local governmental level through incentives, technical assistance, grants, and other practical measures;

(2) To support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development in Nebraska of businesses relating to waste reduction and recycling;

(3) To provide education concerning the components of integrated solid waste management, at the elementary level through the high school level and through community organizations, to enhance the success of local programs requiring public involvement; ~~and~~

(4) To support and encourage manufacturing methods which are environmentally sustainable, technologically safe, and ecologically sound and which enhance waste reduction by creating products which have longer usage life and which are adaptable to secondary uses through processes such as pyrolysis or biomass, require less input material, and decrease resource consumption; and -

(5) To encourage uniform regulation of containers in order to avoid the burden on retailers of having to comply with varying regulatory policies in multiple jurisdictions.

Sec. 6. Section 13-2023, Reissue Revised Statutes of Nebraska, is amended to read:

13-2023 (1) A county, municipality, or agency may, by ordinance or resolution, adopt regulations governing collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste within its solid waste jurisdiction area as necessary to protect the public health and welfare and the environment. Regulations authorized by this section shall be equal to or more stringent than the provisions of the Integrated Solid Waste Management Act and rules and regulations adopted and promulgated by the council as authorized by the act. Any person who violates any such regulation shall be subject to a noncompliance fee not to exceed five hundred dollars.

(2) A county, municipality, or agency shall not adopt, enforce, or otherwise administer an ordinance or resolution that prohibits the use of or that sets standards, fees, prohibitions, or requirements regarding the sale, use, or marketing of containers. This subsection shall not apply to county, municipality, or agency recycling or solid waste collection programs, or restrict such programs from the environmental and lawful operation of program facilities and imposition of user fees at such facilities, except that in no event shall such programs prohibit or have the effect of prohibiting the sale, use, or marketing of any containers.

Sec. 7. Section 70-1605, Reissue Revised Statutes of Nebraska, is amended to read:

70-1605 No public or private utility company, other than a municipal utility owned and operated by a village, furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless the utility company first gives notice to any subscriber whose service is proposed to be terminated. Such notice shall be given in person, by first-class mail, or by electronic delivery, except that electronic delivery shall only be used if the subscriber has specifically elected to receive such notices by electronic delivery. If notice is given by first-class mail or electronic delivery, such notice shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven days after notice is sent or given. Holidays and weekends shall be excluded from the seven days. A public or private utility company shall not charge a fee for the discontinuance or reconnection of utility service that exceeds the reasonable costs of providing such service.

Sec. 8. Section 70-1606, Reissue Revised Statutes of Nebraska, is amended to read:

70-1606 (1) The notice required by section 70-1605 shall contain the following information:

- (a) ~~(1)~~ The reason for the proposed disconnection;
- (b) ~~(2)~~ A statement of intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the utility regarding payment of the bill;
- (c) ~~(3)~~ The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;
- (d) ~~(4)~~ The name, address, and telephone number of the utility's employee or department to whom the domestic subscriber may address any inquiry or complaint;
- (e) ~~(5)~~ The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;
- (f) ~~(6)~~ A statement that the utility may not disconnect service pending the conclusion of the conference;
- (g) ~~(7)~~ A statement to the effect that disconnection shall ~~may~~ be postponed or prevented upon presentation of a duly licensed physician's, physician assistant's, or advanced practice registered nurse's certificate, which shall certify that a domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the utility within five days of receiving notice under this section, excluding holidays and weekends, and will prevent the disconnection of the utility's service for a period of at least thirty days from such filing. Only one postponement of disconnection shall be required ~~allowed~~ under this subdivision for each incidence of nonpayment of any past-due account;
- (h) ~~(8)~~ The cost that will be borne by the domestic subscriber for restoration of service;
- (i) ~~(9)~~ A statement that the domestic subscriber may arrange with the utility for an installment payment plan;
- (j) ~~(10)~~ A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and
- (k) ~~(11)~~ Any additional information not inconsistent with this section which has received prior approval from the board of directors or administrative board of any utility.

(2) A public or private utility company, other than a municipal utility owned and operated by a village, shall make the service termination information required under subdivisions (d), (e), (f), (g), (i), (j), and (k) of subsection (1) of this section readily accessible to the public on the web site of the utility company and available by mail upon request.

Sec. 9. The Legislature finds and declares that the State of Nebraska experienced a historic flood event in 2019. This flood event significantly impacted numerous communities and individual Nebraskans. Coordination and communication between state and local entities implementing flood mitigation strategies is essential to maximize federal funds for flood mitigation efforts.

Sec. 10. The Department of Natural Resources shall develop a state flood mitigation plan as a stand-alone document to be annexed into the state hazard mitigation plan maintained by the Nebraska Emergency Management Agency. Such plan shall be structured in accordance with Federal Emergency Management Agency guidelines, and shall be comprehensive, collaborative, and statewide in scope with opportunities for input from diverse stakeholders.

Sec. 11. The Department of Natural Resources shall convene a plan development group which shall be housed and staffed for administrative purposes within such department. The Department of Natural Resources shall engage with federal, state, and local agency and community stakeholders in the development of the state flood mitigation plan, including, but not limited to, the Department of Transportation, the Department of Environment and Energy, the Department of Economic Development, the Department of Agriculture, the Nebraska Emergency Management Agency, natural resources districts, the United States Department of Agriculture, the United States Army Corps of Engineers, the United States Geological Survey, the Federal Emergency Management Agency, the University of Nebraska, representatives of counties, municipalities, and other political subdivisions, and the Natural Resources Committee of the Legislature.

The Department of Natural Resources may engage other sources to provide technical expertise as needed.

Sec. 12. The Department of Natural Resources shall:

(1) Evaluate the flood issues that occurred in 2019, and identify cost-effective flood mitigation strategies that should be adopted to reduce the disruption of lives and livelihoods and prioritize making Nebraska communities more resilient;

(2) Identify opportunities to implement flood hazard mitigation strategies with the intent to reduce the impact of flood events;

(3) Work to improve knowledge and understanding of available recovery resources while identifying potential gaps in current disaster program delivery;

(4) Identify potential available funding sources that can be accessed to improve the resilience of the state through flood mitigation and post-flood disaster recovery. The funding sources shall include, but not be limited to, assistance from (a) the Federal Emergency Management Agency's Flood Mitigation Assistance Grant Program, Building Resilient Infrastructure and Communities Grant Program, Hazard Mitigation Grant Program, Public Assistance Program, and Individual Assistance Program, (b) the United States Department of Housing and Urban Development's Community Development Block Grant Program and Community Development Block Grant Disaster Recovery Program, and (c) programs of the United States Department of Agriculture's Natural Resources Conservation Service. Identification of such funding sources shall be in addition to grants and cost-sharing programs available through other agencies that support flood hazard mitigation planning in communities;

(5) Compile a centralized list of critical infrastructure and state-owned facilities and identify those with the highest risk of flooding. In compiling such list, the Department of Natural Resources shall consult and collaborate with other state and local agencies that have information that identifies vulnerable facilities;

(6) Evaluate state laws, rules, regulations, policies, and programs related to flood hazard mitigation and development in flood hazard-prone areas to support the state's administration of the Federal Emergency Management Agency's National Flood Insurance Program, Community Rating System, and Risk Mapping, Assessment, and Planning Program;

(7) Examine existing law and, if necessary, recommend statutory or administrative changes to help ensure collaboration and coordination between state and local entities in statewide flood mitigation planning; and

(8) Hold two public hearings, one prior to the first state flood mitigation plan development meeting and one prior to the completion of such plan. Notice of each hearing shall be published at least thirty days prior to the hearing date.

Sec. 13. The state flood mitigation plan shall be completed and reported to the Governor and electronically to the Legislature on or before July 1, 2022.

Sec. 14. Original sections 13-2001, 13-2003, 13-2017, 13-2023, 70-1605, and 70-1606, Reissue Revised Statutes of Nebraska, and section 2-1504, Revised Statutes Cumulative Supplement, 2018, are repealed.