

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 122

Introduced by Bostelman, 23.

Read first time January 06, 2023

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the One-Call Notification System Act; to
2 amend section 81-502.03, Reissue Revised Statutes of Nebraska, and
3 sections 76-2301, 76-2303, and 76-2325, Revised Statutes Cumulative
4 Supplement, 2022; to define a term; to create the Underground
5 Excavation Safety Committee; to provide powers and duties for the
6 committee and the State Fire Marshal; to change civil penalty
7 procedures; to provide for continuing education as prescribed; to
8 provide an appeal exception; to eliminate an annual report
9 requirement; to harmonize provisions; to provide an operative date;
10 to repeal the original sections; and to outright repeal section
11 76-2325.02, Revised Statutes Cumulative Supplement, 2022.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-2301, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 76-2301 Sections 76-2301 to 76-2332 and sections 3 and 4 of this act
4 shall be known and may be cited as the One-Call Notification System Act.

5 Sec. 2. Section 76-2303, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

7 76-2303 For purposes of the One-Call Notification System Act, the
8 definitions found in sections 76-2303.01 to 76-2317 and section 3 of this
9 act shall be used.

10 Sec. 3. Committee means the Underground Excavation Safety
11 Committee.

12 Sec. 4. (1) The Underground Excavation Safety Committee is created.
13 The committee shall consist of the following members: (a) The State Fire
14 Marshal or the State Fire Marshal's designee, (b) two representatives of
15 operators, and (c) two representatives of excavators.

16 (2) The representative members shall be appointed by the Governor.
17 The Governor shall appoint one of the two initial representatives of
18 operators described in subdivision (1)(b) of this section, and one of the
19 two initial representatives of excavators described in subdivision (1)(c)
20 of this section to a two-year term. The other initial representatives
21 shall be appointed for a four-year term. All succeeding terms shall be
22 for four years. A committee member may be reappointed at the end of such
23 member's term. If there is a vacancy on the committee, the Governor shall
24 appoint a member to serve the remainder of the unexpired term of the
25 vacating member. All appointed committee members shall be subject to
26 approval by the Legislature.

27 (3) The committee shall select from among its members a chairperson.
28 The committee shall govern its procedures pursuant to rules and
29 regulations adopted and promulgated by the State Fire Marshal. No person
30 shall receive any compensation for services rendered as a member of the
31 committee, but may be reimbursed for expenses as provided in sections

1 81-1174 to 81-1177.

2 (4) The committee shall meet not less than quarterly each year, and
3 also at such other times and at such places as may be established by the
4 chairperson. The committee may meet by videoconference with approval of a
5 majority of committee members.

6 (5) It shall be the duty of the committee to: (a) Review complaints
7 filed with the State Fire Marshall and investigations of such complaints
8 completed pursuant to subsection (1) of section 76-2325, (b) determine
9 based on such review whether any person has committed any violation
10 described in subsection (2) of section 76-2325, and (c) determine the
11 appropriate civil penalty, if any, to be assessed for such violation
12 consistent with subdivision (1)(b)(ii) of section 76-2325. No member of
13 the committee shall sit in hearing upon any question in which such member
14 or any business with which such member is associated is a party.

15 Sec. 5. Section 76-2325, Revised Statutes Cumulative Supplement,
16 2022, is amended to read:

17 76-2325 (1)(a)(i) When the State Fire Marshal has reason to believe
18 that any person has committed any violation described in subsection (2)
19 of this section, the State Fire Marshal shall give notice of
20 investigation to such person and perform an investigation to determine
21 the facts and circumstances of such alleged violation.

22 (ii) When any person other than the State Fire Marshal has reason to
23 believe that any violation described in subsection (2) of this section
24 has occurred, such person may submit information to the State Fire
25 Marshal regarding such violation on a form prescribed by the State Fire
26 Marshal. Upon receipt of such information, the State Fire Marshal shall
27 determine whether such information requires investigation, and if the
28 State Fire Marshal has reason to believe an investigation is warranted,
29 the State Fire Marshal shall give notice of investigation to the person
30 being investigated and perform an investigation to determine the facts
31 and circumstances of such alleged violation.

1 (b)(i) The State Fire Marshal shall refer the complaint and
2 investigation findings to the committee for its determination. Except as
3 otherwise provided in subdivision (1)(b)(ii) of this section, the
4 committee shall issue a written determination stating findings of fact,
5 conclusions of law, and the civil penalty, if any, to be assessed for
6 such violation and serve a copy of the written determination by personal
7 service or by certified mail, return receipt requested, upon such person.
8 If the State Fire Marshal's investigation was commenced based on
9 information provided pursuant to subdivision (1)(a)(ii) of this section,
10 a copy of the written determination shall also be delivered by regular
11 mail to the person providing such information.

12 (ii) If the committee determines that the civil penalty to be
13 assessed for any violation exceeds the amount described in subsection (4)
14 of this section, the committee shall refer the complaint, together with
15 the State Fire Marshal's investigation findings and the committee's
16 written determination, to the Attorney General for prosecution pursuant
17 to subsection (5) of this section.

18 (c) Not later than thirty days after the date of the committee's
19 written determination, any party may submit a written request for hearing
20 on the matter. The committee shall then appoint a hearing officer to
21 conduct such hearing and set a hearing date and provide written notice of
22 hearing to the parties at least thirty days prior to the date of the
23 hearing. Such notice shall contain the name, address, and telephone
24 number of the hearing officer, a copy of the written determination upon
25 which the hearing shall be held, and the date, time, and place of
26 hearing. The notice of hearing may be made by personal service or by
27 certified mail. If no hearing is requested in answer to the written
28 determination by the person found to have committed any violation as
29 described in subsection (2) of this section, such person shall pay any
30 civil penalty assessed within thirty days after receipt of the written
31 determination.

1 (d) In the preparation and conduct of the hearing, the hearing
2 officer shall have the power, on the hearing officer's own motion or upon
3 the request of any party, to compel the attendance of any witness and the
4 production of any documents by subpoena to ensure a fair hearing. The
5 hearing officer may administer oaths and examine witnesses and receive
6 any evidence pertinent to the determination of the matter. Any witnesses
7 so subpoenaed shall be entitled to the same fees as prescribed by law in
8 judicial proceedings in the district court of this state in a civil
9 action and mileage at the same rate provided in section 81-1176 for state
10 employees.

11 (e) Any party may appear at the hearing with or without the
12 assistance of counsel to present testimony, examine witnesses, and offer
13 evidence. At the discretion of the hearing officer, other interested
14 parties may be allowed to intervene and present testimony and offer
15 evidence in person or by counsel. A stenographic record of all testimony
16 and other evidence received at the hearing shall be made and preserved
17 pending final disposition of the matter.

18 (f) Unless all requests for hearing are withdrawn, following the
19 hearing the hearing officer shall prepare written findings of fact and
20 conclusions of law, and based on such findings of fact and conclusions of
21 law the committee shall affirm, modify, or reverse the written
22 determination issued under subdivision (1)(b) of this section and issue a
23 final order. The committee's final order may include an assessment of
24 costs incurred in conducting the hearing, including the costs of the
25 hearing officer and compelling the attendance of witnesses and assess
26 such costs against the parties. Any party aggrieved by the final order of
27 the committee may appeal the decision and such appeal shall be in
28 accordance with the Administrative Procedure Act.

29 (2) Except as provided in subsection (3) of this section, any ~~(1)~~
30 Any person who violates section 76-2320, 76-2320.01, 76-2320.02, 76-2321,
31 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 or any rule or regulation

1 adopted and promulgated by the State Fire Marshal pursuant to section
2 76-2319 shall be subject to a civil penalty as follows:

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

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

12 (3) In addition to or in lieu of assessing a civil penalty as
13 provided in subsection (2) of this section, the committee may order that
14 a violator take and complete continuing education regarding compliance
15 with the One-Call Notification System Act. Such continuing education
16 shall be approved by the State Fire Marshal. When imposing a civil
17 penalty, the committee shall consider the nature, circumstances, and
18 gravity of the violation and, with respect to the person found to have
19 committed the violation, the degree of culpability, the absence or
20 existence of prior violations, whether the violation was a willful act,
21 any good faith attempt to achieve compliance, and such other matters as
22 justice may require.

23 (4) The committee shall not assess a civil penalty that is more than
24 ten thousand dollars in the aggregate.

25 (5) ~~(2)~~ An action to recover a civil penalty of more than ten
26 thousand dollars in the aggregate shall be brought by the Attorney
27 General or a prosecuting attorney on behalf of the State of Nebraska in
28 any court of competent jurisdiction of this state. The trial shall be
29 before the court, which shall consider the nature, circumstances, and
30 gravity of the violation and, with respect to the person found to have
31 committed the violation, the degree of culpability, the absence or

1 existence of prior violations, whether the violation was a willful act,
2 any good faith attempt to achieve compliance, and such other matters as
3 justice may require in determining the amount of penalty imposed.

4 (6) All civil penalties collected pursuant to this section shall be
5 remitted to the State Treasurer for distribution in accordance with
6 Article VII, section 5, of the Constitution of Nebraska.

7 (7) The State Fire Marshal shall adopt and promulgate rules and
8 regulations to carry out this section, including general rules of
9 practice and procedure, training requirements for investigators, and
10 rules governing the complaint process.

11 Sec. 6. Section 81-502.03, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 81-502.03 (1) In case of disagreement concerning the propriety of
14 any action taken or proposed to be taken by the State Fire Marshal or the
15 application of any statute, rule, or regulation of his or her office with
16 respect to any establishment or installation, the State Fire Marshal may,
17 and upon application of any party in interest, shall provide for a
18 hearing before the Nebraska Fire Safety Appeals Board in the county of
19 the establishment or installation which is the subject of the
20 disagreement. At least ten days' written notice shall be given to the
21 governing body responsible for the establishment or installation involved
22 and to any public official having jurisdiction. The board shall make a
23 decision based upon the evidence brought forth in the hearing and issue
24 its order accordingly. Prior to ordering any political or governmental
25 subdivision of the State of Nebraska to make any modification in the
26 design or construction of any public building or any modification in the
27 location, installation, or operation of any existing equipment in any
28 public building or to replace such equipment, the State Fire Marshal, his
29 or her first assistant, or one of his or her deputies shall personally
30 appear at a regular meeting of the governing board of such subdivision
31 and present a written report stating the condition of such building or

1 equipment and the reason why such building should be modified or such
2 equipment should be modified or replaced, and a copy of such report shall
3 be attached to the order. Nothing in this section shall prevent the State
4 Fire Marshal from ordering necessary repairs, and nothing in sections
5 81-502.01 to 81-502.03 shall prevent the State Fire Marshal, when actual
6 and immediate danger to life exists, from ordering and requiring the
7 occupants to vacate a building or structure subject to his or her
8 jurisdiction.

9 (2) This section shall not apply to any decision, determination, or
10 other action taken or made by the State Fire Marshal or the committee
11 under the One-Call Notification System Act.

12 Sec. 7. This act becomes operative on July 1, 2024.

13 Sec. 8. Original section 81-502.03, Reissue Revised Statutes of
14 Nebraska, and sections 76-2301, 76-2303, and 76-2325, Revised Statutes
15 Cumulative Supplement, 2022, are repealed.

16 Sec. 9. The following section is outright repealed: Section
17 76-2325.02, Revised Statutes Cumulative Supplement, 2022.