

LEGISLATIVE BILL 1002

Approved by the Governor April 4, 1994

Introduced by Pedersen, 39; Avery, 3; Beutler, 28; Bromm, 23; Janssen, 15;
Robinson, 16; Wehrbein, 2; Withem, 14

AN ACT relating to water service; to adopt the Water Service Regulation Act; to provide operative dates; and to declare an emergency.

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

Section 1. This act shall be known and may be cited as the Water Service Regulation Act.

Sec. 2. For purposes of the Water Service Regulation Act:

(1) Commission shall mean the Public Service Commission; and

(2) Private water company shall mean a privately owned entity organized for the purpose of furnishing water for domestic use or sewer services or both to the public, cities, villages, special districts, or other political subdivisions but shall not include (a) any entity that furnishes water for domestic use or sewer services to a mobile home park, (b) bottled water suppliers, or (c) any group of property owners who cooperatively own a water well for the sole purpose of providing water for domestic use to their property if each owner has an equal vote in determining the rates charged for the water.

Sec. 3. The rates and charges of a private water company shall be regulated by the commission as provided in the Water Service Regulation Act. On or before July 1 each year, each private water company shall file a schedule of its rates and charges with the commission and shall also certify to the commission the number of customers it serves.

Sec. 4. The commission and its agents shall be entitled to access to all books, records, and other information of a private water company which may be necessary for the commission to determine whether it may exercise regulatory authority under the Water Service Regulation Act and to carry out its regulatory authority under the act.

Sec. 5. Within ninety days after the operative date of this section, a petition may be filed with the commission requesting a review of the established rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a time, place, and date for a public hearing to consider the established rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission. Notice of a hearing shall be given in the same manner as prescribed in subsection (2) of section 7 of this act.

Sec. 6. A private water company which proposes to change any of its rates or charges shall provide sixty days' notice to its customers and the commission of the proposed rates or charges.

Sec. 7. (1) Prior to the effective date of the proposed rates or charges, a petition may be filed with the commission requesting a review of the proposed rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a time, place, and date for a public hearing to consider the proposed rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission.

(2) Notice of a hearing shall be served on customers by the commission at least fifteen days prior to the day of the hearing. Notice of the hearing shall also be published by the commission at least once a week for two successive weeks in a newspaper of general circulation in each service area affected by or to be affected by the proposed rates or charges with the date of last publication at least ten days prior to the hearing.

(3) At least ten days prior to the hearing, the commission shall make all files and information gathered by it and its employees and agents relating to the matter to be heard available for inspection during regular office hours.

(4) Any person may appear at the hearing and present testimony, evidence, exhibits, or other information and may do so in person or by counsel, or both, pursuant to the rules and regulations of the commission.

Sec. 8. (1) After the conclusion of any hearing held pursuant to section 5 or 7 of this act, the commission shall grant or deny the rates or charges that were considered at the hearing and, if other rates or charges are to be adopted, shall decide on any modifications to the rates or charges that

the commission considers necessary based on the evidence adduced at the hearing.

(2) The commission shall issue a written order setting out its findings and reasoning for its decision. The commission's order may be appealed according to section 75-137.

(3) If the hearing is held pursuant to a petition filed pursuant to section 7 of this act, if the proposed rates or charges become effective before the decision of the commission, and if the decision denies the proposed rates or charges, then the proposed rates or charges shall be denied retroactively and any amounts collected under the proposed rates or charges shall be refunded by the private water company. If the hearing is held pursuant to a petition filed pursuant to section 5 of this act and if the decision of the commission modifies the established rates or charges, then the established rates or charges shall be modified as of the date of the decision and shall not be retroactive.

Sec. 9. (1) No rate or charge determined by the commission pursuant to the Water Service Regulation Act may yield more than a fair return on the fair value of property used and useful in rendering service to the public.

(2) The commission shall not include in the basis for establishment of the rate or charge any amounts spent by the private water company for advertising or other public relations expenses.

Sec. 10. The commission may adopt and promulgate rules and regulations necessary to carry out the Water Service Regulation Act.

Sec. 11. Any private water company that violates any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission shall be subject to a civil penalty of not less than fifty dollars nor more than one thousand dollars for each act of violation and for each day of violation to be recovered as provided in section 12 of this act.

Sec. 12. (1) Whenever it appears that a private water company has violated, is violating, or is threatening to violate any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission, the commission may institute a civil suit in the district court of Lancaster County for (a) injunctive relief to restrain the private water company from continuing the violation or threat of violation, (b) the assessment and recovery of a civil penalty as provided in section 11 of this act, or (c) both injunctive relief and civil penalty.

(2) On application for injunctive relief and a finding that a private water company is violating or threatening to violate any provisions of the act or any rule, regulation, or order of the commission, the district court shall grant the injunctive relief as the facts may warrant.

(3) At the request of the commission, the county attorney shall institute and pursue a suit in the name of the state for injunctive relief or to recover the civil penalty, or both, as authorized in subsection (1) of this section.

Sec. 13. Sections 10, 13, and 14 of this act shall become operative on their effective date. The other sections of this act shall become operative on July 1, 1994.

Sec. 14. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.