

LEGISLATIVE BILL 165

Approved by the Governor April 16, 2003

Introduced by Natural Resources Committee: Schrock, 38, Chairperson;
Friend, 10; Hudkins, 21; Jones, 43; Kremer, 34; Louden, 49;
Stuhr, 24; and Stuthman, 22; Vrtiska, 1; Wehrbein, 2

AN ACT relating to government; to amend sections 18-2410, 18-2427, 18-2430, 18-2433, 18-2446, and 70-627.02, Reissue Revised Statutes of Nebraska; to state intent and provide for shipping fees for radioactive and transuranic waste as prescribed; to create a fund; to provide powers and duties; to change and eliminate provisions relating to power projects under the Municipal Cooperative Financing Act; to provide for indemnification by power districts for certain acts of negligence as prescribed; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal section 18-2429, Reissue Revised Statutes of Nebraska.

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

Section 1. It is the intent of the Legislature that costs incurred by the State of Nebraska attributable to the shipment of high-level radioactive waste and transuranic waste in or through the state shall be borne by the shipper.

Sec. 2. For purposes of sections 1 to 6 of this act:

(1) Department means the Department of Health and Human Services Regulation and Licensure;

(2) High-level radioactive waste has the definition found in section 81-1589; and

(3) Transuranic waste means waste material containing alpha-emitting radioactive elements having an atomic number greater than 92 in concentrations greater than ten nanocuries per gram.

Sec. 3. Until January 1, 2005, a fee of two thousand dollars shall be assessed on each cask of high-level radioactive waste or transuranic waste shipped in or through the state, whether shipped by motor carrier or rail. On and after January 1, 2005, the department shall establish and assess fees on all high-level radioactive waste and transuranic waste shipped by any means in or through the state. Such fees shall be equitable and shall be used for purposes related to (1) shipping of high-level radioactive waste and transuranic waste, including, but not limited to, inspections, escorts, and security for waste shipment, planning, and maintenance, (2) coordination of emergency response capability, (3) education and training, (4) purchase of necessary equipment, and (5) administrative costs attributable to the state agencies which are incurred as related to the shipping of high-level radioactive waste and transuranic waste. Fees assessed pursuant to this section shall be paid in advance of shipment by the shipper. Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Radiation Transportation Emergency Response Cash Fund.

Sec. 4. The Radiation Transportation Emergency Response Cash Fund is created. The fund shall consist of fees credited pursuant to section 3 of this act. The fund shall be used for the purposes stated in such section. The Director-State Engineer, the Superintendent of Law Enforcement and Public Safety, the Director of Regulation and Licensure, the Adjutant General as director of the Nebraska Emergency Management Agency, and the executive director of the Public Service Commission, or their designees, shall meet at least annually to recommend changes in the fees charged and allocation of the fees collected among participating agencies based upon their respective costs in carrying out such section. Any money in the 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. 5. The department may adopt and promulgate rules and regulations to carry out sections 1 to 4 of this act.

Sec. 6. Sections 1 to 5 of this act do not apply to high-level radioactive waste or transuranic waste shipped by or for the United States Government for military, national security, or national defense purposes. Sections 1 to 5 of this act do not require disclosure of defense information or restricted data as defined in the federal Atomic Energy Act of 1954.

Sec. 7. Section 18-2410, Reissue Revised Statutes of Nebraska, is amended to read:

18-2410. Municipality shall mean (1) any city or village

incorporated under the laws of this state or any equivalent entity incorporated under the laws of another state or (2) any public entity organized under Chapter 70, article 6, and incorporated under the laws of this state for the sole purpose of providing wholesale electric energy to a single municipality which is incorporated under the laws of this state.

Sec. 8. Section 18-2427, Reissue Revised Statutes of Nebraska, is amended to read:

18-2427. Upon adoption of ordinances in accordance with section 18-2420, a petition shall be addressed to the Nebraska Power Review Board stating that it is the intent and purpose to create an agency pursuant to sections 18-2426 to 18-2434, subject to approval by the Nebraska Power Review Board. The petition shall state the name of the proposed agency, the names of the proposed participating municipalities, the percentage of each participating municipality's total annual firm power requirements provided from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, during each of the five calendar years preceding May 1, 1981, the name and residence of each of the directors so far as known, a certified copy of each of the ordinances of the participating municipalities determining the need for such an agency, a certified copy of the proceedings of each municipality evidencing the director's right to office, a general description of the operation in which the agency intends to engage, and the location and method of operation of the proposed plants and systems of the agency.

Sec. 9. Section 18-2430, Reissue Revised Statutes of Nebraska, is amended to read:

18-2430. If any of the participating municipalities in the agency has not received at least fifty percent of its total annual firm power requirements for any one of the five years preceding May 1, 1981, from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, the Nebraska Power Review Board, upon receipt of such petition, shall make an investigation of the proposed agency and its proposed plants and systems. If the Nebraska Power Review Board determines that the statements in the petition filed pursuant to section 18-2427 are true and conform to public convenience and welfare and, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of a district or corporation organized under the provisions of Chapter 70, article 6, 7, or 8 or the Electric Cooperative Corporation Act, the Nebraska Power Review Board or its successor shall, within thirty days after the receipt of such petition, execute a certificate in duplicate setting forth a true copy of the petition and declaring that the petition has been approved.

Sec. 10. Section 18-2433, Reissue Revised Statutes of Nebraska, is amended to read:

18-2433. (1) A petition for the creation of an agency which intends to engage in the operation of power projects or the generation or supply of electrical energy may be amended as provided in this section. Upon a majority vote of the directors, an agency may amend its petition for creation or may amend its charter to provide for a change in the general description of the nature of the business in which the agency is engaged, upon petition to the Nebraska Power Review Board and approval by the Nebraska Power Review Board in accordance with the procedure established in sections 18-2426 to 18-2434.

(2) With respect to the formation, organization, or operation of power projects or the generation or supply of electric energy, the amendments shall be approved if each new proposed participating municipality has for any one year during the five calendar years preceding May 1, 1981, received at least fifty percent of its total annual firm power requirements from a source other than a district or a corporation organized pursuant to Chapter 70, article 6, 7, or 8, and the statements in the petition are deemed by the Nebraska Power Review Board to be true.

(3) If any new proposed municipality has not received at least fifty percent of its total annual firm power requirements for any one of the five calendar years preceding May 1, 1981, from a source other than a district or corporation organized pursuant to Chapter 70, article 6, 7, or 8, after notice to interested parties and a public hearing which may be held at the option of the Nebraska Power Review Board, such amendments shall be approved if the Nebraska Power Review Board, after notice to interested parties and a public hearing, determines that the statements in the petition are true and conform to public convenience and welfare, and so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumptions of duties and responsibilities of, or on the part of, such agency, do not nullify, conflict with, or materially affect those of any other district or a

corporation organized under the provisions of Chapter 70, article 6~~7~~ or 8 or the Electric Cooperative Corporation Act, or those of any part of such district or corporation.

Sec. 11. Section 18-2446, Reissue Revised Statutes of Nebraska, is amended to read:

18-2446. (1) Money of the agency shall be paid out or expended only upon the authorization or approval of the board of directors by specific agreement, by a written contract, or by a resolution. All money of the agency shall be paid out or expended only by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee, or agent of the agency as shall be authorized by the treasurer to sign in his or her behalf. Such authorization shall be in writing and filed with the secretary of the agency.

(2) Money of the agency paid out or expended shall be examined by the board of directors at a the next regular meeting ~~within two months~~ following such expenditure.

(3) In the event that there is no treasurer's bond that expressly insures the agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any and every person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the agency, together with the written authorization filed with the secretary of the board, a surety bond, effective for protection against such loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the agency other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Sec. 12. Section 70-627.02, Reissue Revised Statutes of Nebraska, is amended to read:

70-627.02. In addition to all other rights and powers which may be possessed by a public power district or public power and irrigation district under the petition for its creation and all amendments thereto and other statutes, any such district which has radioactive material available to it in association with facilities constructed in connection with the production of electrical energy shall have the power to: (1) Use, ~~use,~~ sell, lease, transport, dispose of, furnish, or make available, under contract or otherwise, to any person, firm, corporation, state, county, city, village, governmental subdivision or agency, the government of the United States or any officer, department, bureau or agency thereof, ~~or~~ any corporation organized by federal law, or any body politic or corporate, any such radioactive material or the energy therefrom; (2) ~~to~~ own, operate, construct, reconstruct, purchase, remove, lease, or otherwise acquire, improve, extend, manage, use, or operate any facilities or any such facilities or property, real or personal; or (3) ~~to~~ engage in or transact business, or enter into any kind of contract or arrangement with anyone, ~~for any of the purposes above mentioned, or for or incident to the exercise of any one or more of the powers of the district foregoing powers, and~~ for any and every service involving, employing, or in any manner pertaining to the use of radioactive material or the energy therefrom, or for the financing or payment of the cost and expense incident to the acquisition, construction, reconstruction, improvement, or operation of any such facilities or property, real or personal, or incident to any obligation or indebtedness entered or incurred by any such district. ~~or for any of the purposes above mentioned~~

A public power district or public power and irrigation district may indemnify a public or private entity for such entity's own negligence, notwithstanding section 25-21,187, if the district enters into a contract with the public or private entity for the management or operation of a nuclear power plant that provides for compensation on an at-cost basis. This section does not authorize indemnification for any direct damages from the misconduct of such public or private entity engaged in management or operation of a nuclear power plant. The same limitations of liability and other protections available to a public power district or a public power and irrigation district under the Political Subdivisions Tort Claims Act shall apply to any public or private entity acting as an agent for a public power district or a public power and irrigation district pursuant to a contract for the management or operation of a nuclear power plant.

Sec. 13. Sections 7 to 12, 14, and 15 of this act become operative three calendar months after adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 14. Original sections 18-2410, 18-2427, 18-2430, 18-2433, 18-2446, and 70-627.02, Reissue Revised Statutes of Nebraska, are repealed.

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Sec. 15. The following section is outright repealed: Section
18-2429, Reissue Revised Statutes of Nebraska.