

LEGISLATIVE BILL 187

Approved by the Governor May 29, 2003

Introduced by Baker, 44

AN ACT relating to transportation and telecommunications; to amend sections 14-115, 14-116, 15-901, 18-2432, 39-1311, 39-1311.01 to 39-1311.04, 70-604.06, 70-1016, 75-116, 75-121, 75-305, 75-1008, and 88-529, Reissue Revised Statutes of Nebraska, and sections 16-902, 17-1002, 75-117, 75-122.01, 75-128, 75-132.01, 75-134, 75-136, 75-156, 75-903, 86-123, 86-158, 86-313, 86-442, 86-457, and 86-578, Revised Statutes Supplement, 2002; to require subdivision plat reviews within highway corridors as prescribed; to change and eliminate appeal provisions for the Nebraska Power Review Board and the Public Service Commission to conform to the Administrative Procedure Act; to provide and change fees and the disposition of fees; to authorize civil penalties for violations of the Enhanced Wireless 911 Services Act; to change provisions relating to surcharge hearings under the Telecommunications Relay System Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal section 75-138, Reissue Revised Statutes of Nebraska, and sections 75-136.01 and 75-137, Revised Statutes Supplement, 2002.

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

Section 1. Section 14-115, Reissue Revised Statutes of Nebraska, is amended to read:

14-115. No owner of real estate within the corporate limits of such city shall be permitted to subdivide ~~said~~ the real estate into blocks and lots, or parcels, without ~~having~~ first having obtained from the city engineer a plat or plan for the avenues, streets, and alleys to be laid out within or across the same and, when applicable, having complied with sections 39-1311 to 39-1311.05. A copy of such plat must be filed in the office of the city clerk for at least two weeks before such plat can be approved. Public notice must be given for two weeks of the filing of ~~said~~ the plat, and such plat, if ordered by the council, shall be made so that such avenues, streets, and alleys so far as practicable, shall correspond in width, name, and direction and be continuous of the avenues, streets, and alleys in the city contiguous to or near the real estate to be subdivided. ~~as aforesaid.~~ The council shall have power to compel the owner of such real estate, in subdividing the same, to lay out and dedicate to the public the avenues, streets, and alleys, to be within or across such real estate in accordance with ~~said~~ the plat. It shall further have the power to prohibit the selling or offering for sale, of any lots or parts of such real estate not subdivided and platted as herein required. It shall also have power to establish the grade of all such streets and alleys and to require the same to be graded to such established grade before selling or offering for sale any of ~~said~~ the lots or parts of ~~said~~ the real estate. Any and all additions to be made to the city shall be made so far as the same relates to the avenues, streets, and alleys therein, under and in accordance with the foregoing provisions. Whenever the owners of all the lots and lands, except streets and alleys, embraced and included in any existing plat or subdivision shall desire to vacate ~~said~~ the plat or subdivision for the purpose of replatting the land embraced in ~~said~~ the plat or subdivision, and shall present a petition praying for such vacation to the city council, and submit therewith for the approval of the city council a proposed replat of the same, which shall in all things be in conformity with the requirements of this section, the city council may, by concurrent resolution, declare the existing plat and the streets and alleys therein vacated and approve ~~said~~ the proposed replat. Thereupon the existing plat or subdivision shall be vacated and the land comprised within the streets and alleys so vacated shall revert to and the title thereto vest in the owners of the abutting property and become a part of such property, each owner taking title to the centerline of the vacated street or alley adjacent to his or her property. When + PROVIDED, ~~that when~~ a portion of a street or alley is vacated only on one side of the center thereof, the title to such land shall vest in the owner of the abutting property and become a part of such property. It + AND PROVIDED FURTHER, ~~it~~ shall require a two-thirds vote of all the members of the city council to adopt such resolution. Upon the vacation of any plat as aforesaid, it shall be the duty of the owners petitioning for same to cause to be recorded in the office of the register of deeds and county

assessor of the county a duly certified copy of the petition, the action of the council therein, and the resolution vacating ~~said~~ the plat.

Sec. 2. Section 14-116, Reissue Revised Statutes of Nebraska, is amended to read:

14-116. No owner of any real estate located in an area which is within three miles of the corporate limits of any city of the metropolitan class, when such real estate is located in any county in which a city of the metropolitan class is located, and is outside of any organized city or village, shall be permitted to subdivide, plat, or lay out ~~said the~~ real estate in building lots and streets or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval thereof by the city council of such city and, when applicable, having complied with sections 39-1311 to 39-1311.05. No ~~and no~~ plat of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same shall have been first approved by the city council of such city. Such city shall have authority within ~~the~~ such area above described to regulate the subdivision of land for the purpose, whether immediate or future, of transfer of ownership or building development; to prescribe standards for laying out subdivisions in harmony with a comprehensive plan; to require the installation of improvements by the owner or by the creation of public improvement districts; by requiring a good and sufficient bond guaranteeing installation of such improvement, or by requiring the execution of a contract with the city insuring the installation of such improvements; and to require the dedication of land for adequate streets, drainage ways, and easements for sewers and utilities. All such requirements for improvements shall operate uniformly throughout the area of jurisdiction of ~~said~~ such city. Subdivision For purposes of this section, subdivision shall mean the division of a lot, tract, or parcel of land into two or more lots, blocks, or other divisions of lands for the purpose, whether immediate or future, of ownership or building developments except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in size. The city council of any such city may withhold approval of a plat until the appropriate department of the city has certified that the improvements required by ordinance have been satisfactorily installed or until a sufficient bond guaranteeing installation of the improvements has been posted with the city or until public improvement districts have been created or until a contract has been executed insuring the installation of such improvements.

Sec. 3. Section 15-901, Reissue Revised Statutes of Nebraska, is amended to read:

15-901. No owner of real estate located in any city of the primary class or within three miles of the corporate limits of any city of the primary class, when such real estate is located in the same county as the city and outside of any organized city or village, shall be permitted to subdivide, plat, or lay out the real estate in building lots and streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto, without first having obtained approval by the city planning commission and, when applicable, having complied with sections 39-1311 to 39-1311.05. No plat or subdivision of such real estate shall be recorded in the office of the register of deeds or have any force or effect unless the same is approved by the city planning commission. A city of the primary class shall have authority within the area to regulate the subdivision of land for the purpose, whether immediate or future, of transferring ownership or building development, except that the city shall have no power to regulate subdivision in those instances where the smallest parcel created is more than ten acres in area. A city of the primary class shall have authority within the area to prescribe standards for laying out subdivisions in harmony with the comprehensive plan; to require the installation of improvements by the owner, by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements; and to require the dedication of land for public purposes.

For purposes of this section, subdivision shall mean the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area.

Subdivision plats shall be approved by the city planning commission on recommendation by the city planning director and public works and utilities department. The city planning commission may withhold approval of a plat

until the public works and utilities department has certified that the improvements required by the regulations have been satisfactorily installed, until a sufficient bond guaranteeing installation of the improvements has been posted, or until public improvement districts are created. The city council may provide procedures in land subdivision regulations for appeal by any person aggrieved by any action of the city planning commission or city planning director on any plat.

Sec. 4. Section 16-902, Revised Statutes Supplement, 2002, is amended to read:

16-902. (1) Except as provided in section 13-327, a city of the first class may designate by ordinance the portion of the territory located within two miles of the corporate limits of the city and outside of any other organized city or village within which the designating city will exercise the powers and duties granted by sections 16-902 to 16-904.

(2) No owner of any real property located within the area designated by a city pursuant to subsection (1) of this section or section 13-327 may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council of such city or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the city shall not be construed as affecting the necessity of obtaining the approval of the city council of such city or its designated agent.

(3) In counties that (a) have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and (b) are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all available material for a proposed subdivision plat.

Sec. 5. Section 17-1002, Revised Statutes Supplement, 2002, is amended to read:

17-1002. (1) Except as provided in section 13-327, any city of the second class or village may designate by ordinance the portion of the territory located within one mile of the corporate limits of such city or village and outside of any other organized city or village within which the designating city or village will exercise the powers and duties granted by this section and section 17-1003 or section 19-2402.

(2) No owner of any real property located within the area designated by a city or village pursuant to subsection (1) of this section may subdivide, plat, or lay out such real property in building lots, streets, or other portions of the same intended to be dedicated for public use or for the use of the purchasers or owners of lots fronting thereon or adjacent thereto without first having obtained the approval of the city council or board of trustees of such municipality or its agent designated pursuant to section 19-916 and, when applicable, having complied with sections 39-1311 to 39-1311.05. The fact that such real property is located in a different county or counties than some or all portions of the municipality shall not be construed as affecting the necessity of obtaining the approval of the city council or board of trustees of such municipality or its designated agent.

(3) No plat of such real property shall be recorded or have any force or effect unless approved by the city council or board of trustees of such municipality or its designated agent.

(4) In counties that have adopted a comprehensive development plan which meets the requirements of section 23-114.02 and are enforcing subdivision regulations, the county planning commission shall be provided with all available materials on any proposed subdivision plat, contemplating public streets or improvements, which is filed with a municipality in that county, when such proposed plat lies partially or totally within the extraterritorial subdivision jurisdiction being exercised by that municipality in such county. The commission shall be given four weeks to officially comment on the appropriateness of the design and improvements proposed in the plat. The review period for the commission shall run concurrently with subdivision review activities of the municipality after the commission receives all

available material for a proposed subdivision plat.

Sec. 6. Section 18-2432, Reissue Revised Statutes of Nebraska, is amended to read:

18-2432. An appeal of any final action ~~taken by~~ of the Nebraska Power Review Board pursuant to the Municipal Cooperative Financing Act may be taken to the Court of Appeals. Such in the same manner as appeals are taken from decisions of the Public Service Commission appeal shall be in accordance with rules provided by law for appeals in civil cases.

Sec. 7. Section 39-1311, Reissue Revised Statutes of Nebraska, is amended to read:

39-1311. (1) The Department of Roads at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

Sec. 8. Section 39-1311.01, Reissue Revised Statutes of Nebraska, is amended to read:

39-1311.01. The department shall transmit a copy of the map required by subsection (2) of section 39-1311 to the officer responsible for review of preliminary subdivision plats and to the officer responsible for issuance of building permits or, if subdivision plats or building permits are not required in the county or municipality, to the county clerk of the county in which the corridor is located.

Sec. 9. Section 39-1311.02, Reissue Revised Statutes of Nebraska, is amended to read:

39-1311.02. (1) A review of a preliminary subdivision plat shall be required for all proposals to subdivide land or to make public or private improvements on all land within an approved corridor.

(2) A building permit shall be required for all structures within an approved corridor if the actual cost of the structure exceeds one thousand dollars. Structures include, but are not limited to, any construction or improvement to land such as public or private streets, sidewalks, and utilities; golf course tee boxes, fairways, or greens; drainage facilities; storm water detention areas; mitigation sites; green space; landscaped areas; or other similar uses. Any application for a building permit shall include a plat drawn by a person licensed as a professional engineer or architect under the Engineers and Architects Regulation Act or registered as a land surveyor as provided in sections 81-8,108 to 81-8,127 showing the location of all existing and proposed structures in the area subject to corridor protection.

Sec. 10. Section 39-1311.03, Reissue Revised Statutes of Nebraska, is amended to read:

39-1311.03. (1) Upon the filing of a request for a review of a proposed subdivision plat on a parcel located within a corridor, the officer responsible for reviewing subdivision plats or, if the review of a subdivision plat is required only by virtue of sections 39-1311 to 39-1311.05, the county clerk shall give the department notice of the filing of a request for a review of a preliminary subdivision plat. The officer responsible for review of subdivision plats shall not approve or forward for approval a subdivision plat

for a period of sixty days from the date of mailing notice of the filing of the request with the department unless the department waives in writing the time period. Within the sixty-day period, the department may if it wishes file with such officer a statement of intent to negotiate with the owner of the land involved. Upon the filing of such statement of intent, the department shall be allowed six months for negotiations with the landowner. At the end of such six-month period, if the landowner has not withdrawn his or her request for review of a subdivision plat, the officer responsible for review of subdivision plats shall proceed with consideration of such preliminary plat if it meets all other applicable codes, ordinances, and laws.

(2) Upon the filing of a request for a building permit on a parcel located within a corridor, the officer responsible for issuance of building permits or, if a building permit is required only by virtue of sections 39-1311 to 39-1311.05, the county clerk shall give the department notice of the filing of the request for a building permit. The officer responsible for issuance of building permits shall not issue a permit for a period of sixty days from the date of mailing notice of the filing of the request with the department unless the department waives in writing the time period. Within the sixty-day period, the department may if it wishes file with such officer a statement of intent to negotiate with the owner of the land involved. Upon the filing of such statement of intent, the department shall be allowed six months for negotiations with the landowner. At the end of such six-month period, if the landowner has not withdrawn his or her application for a permit, it shall be issued if it meets all other applicable codes, ordinances, and laws.

Sec. 11. Section 39-1311.04, Reissue Revised Statutes of Nebraska, is amended to read:

39-1311.04. When an officer is not now authorized to issue building permits, the county clerk shall be authorized to review and approve subdivision plats or issue building permits required by the provisions of sections 39-1311 to 39-1311.05.

Sec. 12. Section 70-604.06, Reissue Revised Statutes of Nebraska, is amended to read:

70-604.06. An appeal may be taken to the Court of Appeals from of any final action of the Nebraska Power Review Board in the same manner as appeals are taken from decisions of the Public Service Commission may be taken to the Court of Appeals. Such appeal shall be in accordance with the rules provided by law for appeals in civil cases.

Sec. 13. Section 70-1016, Reissue Revised Statutes of Nebraska, is amended to read:

70-1016. An appeal may be taken to the Court of Appeals from of any final action of the board in the same manner as appeals are taken from decisions of the Public Service Commission may be taken to the Court of Appeals. Such appeal shall be in accordance with rules provided by law for appeals in civil cases.

Sec. 14. Section 75-116, Reissue Revised Statutes of Nebraska, is amended to read:

75-116. Each regulated motor carrier as defined in section 75-302 or common carrier required to furnish an annual report with a federal regulatory agency shall file a copy of the report with the commission on or before the date on which such report is filed with such agency. Each such carrier not required to file an annual report with a federal regulatory agency may be required to file an annual report with the commission in the form prescribed by the commission on or before April 30 of each year. Each carrier which files an annual report or a copy of an annual report under this section shall submit a fee of twenty-five dollars with the filing. The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

Sec. 15. Section 75-117, Revised Statutes Supplement, 2002, is amended to read:

75-117. Any motor carrier or regulated motor carrier as defined in section 75-302 or common carrier which fails, neglects, or refuses to comply with any order of the commission shall be guilty of a Class IV misdemeanor. Each day during which such failure, neglect, or refusal continues shall constitute a separate offense. If a motion is filed for reconsideration or to set aside the order, ~~or if the order is appealed,~~ the carrier shall not be subject to such penalty during the pendency of such motion. ~~or such appeal.~~

Sec. 16. Section 75-121, Reissue Revised Statutes of Nebraska, is amended to read:

75-121. To prevent interstate rate wars and injury to any common carrier or other person or in case of any other emergency to be judged by the commission, the commission shall temporarily alter, amend, or suspend any

existing rates in force in respect to any common carrier or fix any such rates if none exist. The order prescribing an emergency rate shall describe the emergency and may be entered and made effective immediately. Within five days after the effective date of such order, notice of the rate shall be given to the common carriers affected in accordance with the commission's rules for notice. If an affected common carrier or other interested person files a protest to the granting of such rate within fifteen days after notice has been given, the commission shall notify the rate applicant and the protestant, hold a hearing, and issue an order within thirty days after the expiration of the time to file a protest. Emergency rate orders shall be subject to the provisions of section 75-139 and subject to review as provided in ~~sections section 75-136. and 75-137.~~

Sec. 17. Section 75-128, Revised Statutes Supplement, 2002, is amended to read:

75-128. (1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in section 75-121 and except for good cause shown, a decision of the commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings.

(2) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to a commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

(3) For each application, complaint, or petition filed with the commission, except those filed under sections ~~75-301 to 75-322, there shall be charged~~ 75-303.01 and 75-303.02, the commission shall charge a filing fee to be determined by the commission, but in an amount not to exceed the sum of fifty five hundred dollars, payable at the time of such filing. There shall also be charged The commission shall also charge to persons regulated by the commission a hearing fee of fifty dollars to be determined by the commission, but in an amount not to exceed the sum of two hundred fifty dollars, for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

(4) For each new tariff filed with the commission, except those filed under sections 75-301 to 75-322, the commission shall charge a fee not to exceed fifty dollars. This subsection does not apply to amendments to existing tariffs.

(5) The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

Sec. 18. Section 75-132.01, Revised Statutes Supplement, 2002, is amended to read:

75-132.01. (1) Notwithstanding the provisions of section 75-131, the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, or the Telephone Consumer Slamming Prevention Act by any person providing telecommunications service for a fee in Nebraska intrastate commerce pursuant to such acts or (b) sections 86-574 to 86-578 by an agency or political subdivision of the state.

(2) ~~After all administrative remedies before the commission have been exhausted, any interested party to an action may appeal in accordance with the Administrative Procedure Act.~~

(3) If the commission enters an order declining jurisdiction under subsection (1) of this section, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of such acts or sections has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors,

officers, employees, or agents or the agency or political subdivision of the state from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals in civil cases.

Sec. 19. Section 75-134, Revised Statutes Supplement, 2002, is amended to read:

75-134. (1) A commission order entered after a hearing shall be written and shall recite (a) a discussion of the facts of a basic or underlying nature, (b) the ultimate facts, and (c) the commission's reasoning or other authority relied upon by the commission.

(2) Every order of the commission shall become effective ten days after the date of the mailing of a copy of the order to the parties of record except (a) when the commission prescribes a later effective date, (b) as otherwise provided in section 75-121 or 75-139, (c) as otherwise provided for cease and desist orders issued pursuant to section 75-133, or (d) for orders entered pursuant to section 75-319 which shall be effective on the date of entry.

(3) Except as otherwise provided in this section or for rate orders provided for in section 75-139, any appeal of a commission order shall not stay enforcement of such order unless otherwise ordered under subsection (3) of section 84-917. ~~if one of the parties of record commences an appeal pursuant to section 75-137, the order appealed shall be in abeyance until the Court of Appeals or Supreme Court issues its mandate. Nothing in this section shall hold in abeyance an order authorizing the issuance of a certificate or permit, an order denying relief or authority, or an order entered pursuant to section 75-319.~~

(4) ~~If a party of record to a telecommunications order commences an appeal in accordance with the Administrative Procedure Act, the order appealed shall become effective on the date prescribed in subsection (2) of this section and remain in effect unless upon application (a) the commission or district court issues an order staying the underlying commission order or (b) the commission, district court, Court of Appeals, or Supreme Court issues an order reversing or modifying the underlying commission order. For purposes of this subsection, telecommunications order means an order entered by the commission pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, or section 86-125.~~

(5) ~~The commission or district court may only issue a stay pursuant to subsection (4) of this section if it finds that (a) the applicant for the stay is likely to prevail when the matter is finally decided, (b) without relief, the applicant will suffer irreparable injury, and (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings. The commission or district court may require the party requesting such stay to give bond in such amount and conditioned as the commission or court may direct. The grant or denial of a stay shall not be considered to be a final order.~~

Sec. 20. Section 75-122.01, Revised Statutes Supplement, 2002, is amended to read:

~~75-122.01.~~ Except as otherwise provided in ~~section 75-134~~ sections 75-132.01, 75-134, 75-144, and 75-1012, the district courts shall have jurisdiction to enjoin a commission order only when the order was not entered in accordance with Chapter 75 or 86 and the commission's rules and regulations adopted and promulgated pursuant to such chapters.

Sec. 21. Section 75-136, Revised Statutes Supplement, 2002, is amended to read:

75-136. ~~(1)~~ Except as otherwise provided by law, if a party to any proceeding is not satisfied with the order entered by the commission, such party may appeal. Any appeal filed on or after the operative date of this section shall be in accordance with the Administrative Procedure Act. Any appeal filed prior to the operative date of this section shall be in accordance with sections 75-134, 75-136 to 75-138, and 75-156 as such sections existed prior to the changes made by this legislative bill. ~~to the Court of Appeals as provided in section 75-137 to reverse, vacate, or modify the order.~~

~~(2) In the case of an order assessing a civil penalty entered under subdivision (1)(b) of section 75-156, the party may seek judicial review in accordance with the Administrative Procedure Act. In the case of any other order entered under sections 75-156 to 75-158, the party may (a) seek the review of the Court of Appeals as provided in section 75-137 or (b) seek judicial review of the order under section 75-136.01. Subdivisions (a) and~~

~~(b) of this subsection are mutually exclusive and the choice of either section 75-136.01 or 75-137 shall govern the appeal process.~~

Sec. 22. Section 75-156, Revised Statutes Supplement, 2002, is amended to read:

75-156. (1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, or contract carrier for each violation of (a) any provision of sections 75-301 to 75-390 administered by the commission or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390, (b) a commission order entered pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, or the Telecommunications Relay System Act, (c) any term, condition, or limitation of any certificate or permit issued by the commission pursuant to sections 75-301 to 75-390, or (d) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to sections 75-301 to 75-390.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless 911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

(3) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

~~(2)~~ (4) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or, beginning January 1, 2004, pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section, ~~except an order assessing a civil penalty issued under subdivision (1)(b) of this section,~~ has the rights of appeal set forth in section 75-136.01. For an order assessing a civil penalty issued under subdivision (1)(b) of this section, any party aggrieved may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

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

Sec. 23. Section 75-305, Reissue Revised Statutes of Nebraska, is amended to read:

75-305. ~~For purposes of sustaining the administration and enforcement of sections 75-301 to 75-322 as such sections pertain to regulated motor carriers, there is hereby fixed an application fee of seventy-five dollars payable by the applicant at the time of filing the application, except that such fee shall not apply to applications under sections 75-303.01 and 75-303.02. In addition thereto, every~~ Every regulated motor carrier subject to sections 75-301 to 75-322 shall pay an annual fee not exceeding the sum of ~~twenty-five~~ eighty dollars for each motor vehicle operated, which fee shall be

fixed by the commission and shall not exceed the amount actually necessary to sustain the administration and enforcement of such sections. When the applicant has registered his or her motor vehicles under section 60-305.09, such fee of ~~twenty-five dollars~~ shall be payable on whichever shall be the lesser of (1) the proportion of his or her fleet so registered or (2) the number of motor vehicles owned by him or her and actually used in intrastate business within this state, except that such annual fee for any truck-trailer or tractor-trailer combination shall be ~~forty~~ one hundred twenty dollars. In the case of a truck-trailer or tractor-trailer combination, only one license plate shall be required for such combination. Such annual fees shall be due and payable on or before January 1 and shall be delinquent on March 1 of each year after such permit or certificate has been issued. If the initial certificate or permit is issued to a motor carrier on or after July 1, the fee shall be fifty percent of the annual fee. Such fees shall be paid to and collected by the commission and remitted to the State Treasurer within thirty days of receipt for credit to the General Fund.

Sec. 24. Section 75-903, Revised Statutes Supplement, 2002, is amended to read:

75-903. All grain dealers doing business in this state shall be licensed by the commission. If the applicant is an individual, the application shall include the applicant's social security number. To procure and maintain a license, each grain dealer shall:

(1) Pay an annual fee of ~~thirty~~ sixty dollars which shall be due on or before the date established by the commission for each license and a registration fee not to exceed ~~twenty~~ forty dollars per year for each vehicle used by such licensee to transport grain. Such fees shall be paid to the State Treasurer and credited to the ~~state~~ General Fund;

(2) Equip each vehicle used by the licensee for grain transportation with a commercial license plate registered with the Department of Motor Vehicles, except that a licensee who resides in another state shall license such vehicles according to the laws of his or her state of residence;

(3) Affix a grain dealer plate issued by the commission to each vehicle used by the licensee;

(4) File security which may be a bond issued by a corporate surety company and payable to the commission, an irrevocable letter of credit, or a certificate of deposit, subject to the approval of the commission, for the benefit of any producer or owner within this state who files a valid claim arising from a sale to or purchase from a grain dealer. The security shall be in the amount of thirty-five thousand dollars or seven percent of grain purchases by the grain dealer in the preceding license year as reported on a form prescribed by the commission, whichever is greater, not to exceed one hundred fifty thousand dollars. Such security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than thirty days after taking possession of the grain purchased. The liability of the surety shall cover purchases and sales made or arranged by the grain dealer during the time the bond is in force. A grain dealer's bond filed with the commission shall be in continuous force and effect until canceled by the surety. The liability of the surety on any bond required by this section shall not accumulate for each successive license period during which the bond is in force; and

(5) File, as the commission may by rule or regulation require, a financial statement of the licensee's operations as a grain dealer.

Sec. 25. Section 75-1008, Reissue Revised Statutes of Nebraska, is amended to read:

75-1008. (1) After the conclusion of any hearing held pursuant to section 75-1005 or 75-1007, 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~~ by a party to the proceeding. Such appeal shall be in accordance with section 75-136.

(3) If the hearing is held pursuant to a petition filed pursuant to section 75-1007, 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 75-1005 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. 26. Section 86-123, Revised Statutes Supplement, 2002, is amended to read:

86-123. (1) The commission shall regulate the quality of telecommunications service provided by telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of telecommunications service. If such a complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing. The commission may by order grant or deny, in whole or in part, the subscriber's petition or provide such other relief as is reasonable based on the evidence presented at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-144, and such order may be appealed by an interested party. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The commission may regulate telecommunications company rates pursuant to sections 86-139 to 86-157.

(3) The Nebraska Telecommunications Regulation Act shall preempt and prohibit any regulation of a telecommunications company by counties, cities, villages, townships, or any other local governmental entity.

Sec. 27. Section 86-158, Revised Statutes Supplement, 2002, is amended to read:

86-158. (1) Except as otherwise provided in section 86-123, any order of the commission entered pursuant to authority granted in the Nebraska Telecommunications Regulation Act may be appealed by any interested party to the proceeding. The appeal shall be in accordance with the Administrative Procedure Act.

(2) An In an original action or appeal concerning a violation of the Nebraska Telecommunications Regulation Act by a telecommunications company, the commission shall have jurisdiction as shall follow the procedures set forth in section 75-132.01. After all administrative remedies before the commission have been exhausted, an appeal may be brought by an interested party to an action. Such appeal shall be in accordance with the Administrative Procedure Act.

Sec. 28. Section 86-313, Revised Statutes Supplement, 2002, is amended to read:

86-313. (1)(a) Each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed twenty cents per month on each telephone access line in Nebraska, including cellular telephone service. The surcharge shall only be collected on the first one hundred telephone access lines per subscriber. The companies shall add the surcharge to each subscriber's local telephone bill.

(b) The telephone companies are not liable for any surcharge not paid by a subscriber and are not obligated to take legal action to collect the surcharge.

(2) ~~Before October~~ April 1 of each year, the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide telecommunications relay system and the specialized telecommunications equipment program for the following year plus a reasonable reserve. The surcharge shall become effective on ~~January~~ July 1 following the change. The amount appropriated for the specialized telecommunications equipment program from the fund shall not exceed the revenue generated by one cent of the surcharge per month.

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing for such purpose.

(4) The proceeds from the surcharge shall be remitted to the commission monthly no later than thirty days after the end of the month in which they were collected together with forms provided by the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any telephone company collecting the surcharge pursuant to the act.

Sec. 29. Section 86-442, Revised Statutes Supplement, 2002, is amended to read:

86-442. Sections 86-442 to 86-469 and section 30 of this act shall be known and may be cited as the Enhanced Wireless 911 Services Act.

Sec. 30. The commission may assess a civil penalty pursuant to section 75-156 for each violation of any provision of the Enhanced Wireless 911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

Sec. 31. Section 86-457, Revised Statutes Supplement, 2002, is amended to read:

86-457. Each wireless carrier who has a subscriber with a billing address in Nebraska shall collect a surcharge of not more than fifty cents per month per access line. The wireless carrier shall add the surcharge to each subscriber's billing statement. The wireless carrier is not liable for any surcharge not paid by a subscriber and is not obligated to take legal action to collect the surcharge. The surcharge shall appear as a separate line-item charge on the subscriber's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge" or a reasonable abbreviation of such phrase. The commission may take any legal action as it deems necessary to collect unpaid surcharges in its own name, as a real party in interest, or by assigning such debt for collection to a third party.

Sec. 32. Section 86-578, Revised Statutes Supplement, 2002, is amended to read:

86-578. An In an original action ~~or appeal~~ concerning a violation of any provision of sections 86-574 to 86-578 by an agency or political subdivision of the state, the Public Service Commission shall have the jurisdiction ~~shall follow the procedures~~ set forth in section 75-132.01. After all administrative remedies before the Public Service Commission have been exhausted, an appeal may be brought by an interested party. Such appeal shall be in accordance with the Administrative Procedure Act.

Sec. 33. Section 88-529, Reissue Revised Statutes of Nebraska, is amended to read:

88-529. The commission shall charge an annual license fee for each warehouse to be operated, except as provided in section 88-531. The fee for any license issued for less than twelve months shall be prorated based on its duration. The annual license fee shall be as provided in this section.

| Capacity in Bushels | Fee |
|--------------------------|-------|
| 0 -- 10,000 | \$ 30 |
| 10,001 -- 25,000 | 38 |
| 25,001 -- 50,000 | 45 |
| 50,001 -- 75,000 | 53 |
| 75,001 -- 100,000 | 60 |
| 100,001 -- 150,000 | 68 |
| 150,001 -- 200,000 | 75 |
| 200,001 -- 250,000 | 83 |
| 250,001 -- 300,000 | 90 |
| 300,001 -- 350,000 | 98 |
| 350,001 -- 400,000 | 105 |
| 400,001 -- 450,000 | 113 |
| 450,001 -- 500,000 | 120 |
| 500,001 -- 600,000 | 128 |
| 600,001 -- 700,000 | 135 |
| 700,001 -- 800,000 | 143 |
| 800,001 -- 900,000 | 150 |
| 900,001 -- 1,000,000 | 158 |
| 1,000,001 -- 2,000,000 | 225 |
| 2,000,001 -- 3,000,000 | 263 |
| 3,000,001 -- 4,000,000 | 300 |
| 4,000,001 -- 5,000,000 | 338 |
| 5,000,001 -- 6,000,000 | 375 |
| 6,000,001 -- 7,000,000 | 413 |
| 7,000,001 -- 8,000,000 | 450 |
| 8,000,001 -- 9,000,000 | 488 |
| 9,000,001 -- 10,000,000 | 525 |
| 10,000,001 -- 11,000,000 | 563 |
| 11,000,001 -- 15,000,000 | 713 |
| 15,000,001 -- 20,000,000 | 900 |
| 20,000,001 -- 25,000,000 | 1,088 |
| 25,000,001 -- 30,000,000 | 1,275 |
| 30,000,001 -- 40,000,000 | 1,650 |
| 40,000,001 or more | 2,250 |
| Capacity in Bushels | Fee |
| 0 -- 10,000 | \$ 45 |
| 10,001 -- 25,000 | 57 |
| 25,001 -- 50,000 | 68 |
| 50,001 -- 75,000 | 78 |

| | | | | |
|------------|---------|------------|-------|-------|
| 75,001 | -- | 100,000 | ..... | 90 |
| 100,001 | -- | 150,000 | ..... | 102 |
| 150,001 | -- | 200,000 | ..... | 113 |
| 200,001 | -- | 250,000 | ..... | 125 |
| 250,001 | -- | 300,000 | ..... | 135 |
| 300,001 | -- | 350,000 | ..... | 147 |
| 350,001 | -- | 400,000 | ..... | 156 |
| 400,001 | -- | 450,000 | ..... | 170 |
| 450,001 | -- | 500,000 | ..... | 180 |
| 500,001 | -- | 600,000 | ..... | 192 |
| 600,001 | -- | 700,000 | ..... | 203 |
| 700,001 | -- | 800,000 | ..... | 215 |
| 800,001 | -- | 900,000 | ..... | 225 |
| 900,001 | -- | 1,000,000 | ..... | 237 |
| 1,000,001 | -- | 2,000,000 | ..... | 338 |
| 2,000,001 | -- | 3,000,000 | ..... | 395 |
| 3,000,001 | -- | 4,000,000 | ..... | 450 |
| 4,000,001 | -- | 5,000,000 | ..... | 507 |
| 5,000,001 | -- | 6,000,000 | ..... | 563 |
| 6,000,001 | -- | 7,000,000 | ..... | 620 |
| 7,000,001 | -- | 8,000,000 | ..... | 675 |
| 8,000,001 | -- | 9,000,000 | ..... | 732 |
| 9,000,001 | -- | 10,000,000 | ..... | 788 |
| 10,000,001 | -- | 11,000,000 | ..... | 845 |
| 11,000,001 | -- | 15,000,000 | ..... | 1,070 |
| 15,000,001 | -- | 20,000,000 | ..... | 1,350 |
| 20,000,001 | -- | 25,000,000 | ..... | 1,632 |
| 25,000,001 | -- | 30,000,000 | ..... | 1,913 |
| 30,000,001 | -- | 40,000,000 | ..... | 2,475 |
| 40,000,001 | or more | ..... | ..... | 3,375 |

Sec. 34. Sections 14, 17, 23, 24, 33, and 35 of this act become operative on January 1, 2004. The other sections of this act become operative on their effective date.

Sec. 35. Original sections 75-116, 75-305, and 88-529, Reissue Revised Statutes of Nebraska, and sections 75-128 and 75-903, Revised Statutes Supplement, 2002, are repealed.

Sec. 36. Original sections 14-115, 14-116, 15-901, 18-2432, 39-1311, 39-1311.01 to 39-1311.04, 70-604.06, 70-1016, 75-121, and 75-1008, Reissue Revised Statutes of Nebraska, and sections 16-902, 17-1002, 75-117, 75-122.01, 75-132.01, 75-134, 75-136, 75-156, 86-123, 86-158, 86-313, 86-442, 86-457, and 86-578, Revised Statutes Supplement, 2002, are repealed.

Sec. 37. The following sections are outright repealed: Section 75-138, Reissue Revised Statutes of Nebraska, and sections 75-136.01 and 75-137, Revised Statutes Supplement, 2002.