

LEGISLATIVE BILL 321

Approved by the Governor May 22, 1979

Introduced by Agriculture and Environment Committee,
Schmit, 23, Chmn.; Lamb, 43; Kahle, 37;
Haberman, 44; Burrows, 30; DeCamp, 40

AN ACT to amend sections 19-2107, 31-1503, 81-1509, and 81-1518, Reissue Revised Statutes of Nebraska, 1943, and section 81-1533, Reissue Revised Statutes of Nebraska, 1943, as amended by section 58, Legislative Bill 322, Eighty-sixth Legislature, First Session, 1979, relating to disposal of waste; to change notice, hearing, and licensing requirements pertaining to solid waste disposal systems; to delete a requirement for reconfirmation; to change appeal procedures as prescribed; to provide for state allocations concurrent with federal grants as prescribed; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 19-2107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-2107. (1) Notwithstanding any provision of any other statute, whenever any municipality or any person, corporation, or other entity under contract to it selects a site for its garbage disposal facilities or solid waste disposal area without its corporate limits, as authorized in section 19-2101, or outside of its zoning jurisdiction, it shall first file with the Department of Environmental Control a written request for approval of such proposed site and an application for a license to operate such site pursuant to the provisions of Chapter 81, article 15, and the Department of Environmental Control shall furnish a copy of such request and application to the county board of the county in which such proposed site is located. ~~Within fifteen days after receipt of such copy, the county board shall submit to the Department of Environmental Control its written recommendation for approval or disapproval of such proposed site, which recommendation shall be advisory only. Within thirty days after receipt of such request, the Department of Environmental Control shall either approve or disapprove the same and either grant or refuse to grant a license to operate a solid waste disposal area pursuant to Chapter 81, article 15, and give written notice to the municipality of the action taken and furnish a copy of such notice to the county~~

board involved. The only consideration by the Department of Environmental Control in granting such approval, or refusing the same, shall be whether or not the location and operation of such proposed garbage disposal facility or solid waste disposal area will be deleterious to the public health of the community surrounding such facility or area, or that the operation of such facility or area at that particular location would constitute a public nuisance, or be inimical to public safety. The department shall grant a license to operate a solid waste disposal area only if the provisions of Chapter 81, article 15, and all rules and regulations, including minimum standards governing solid waste disposal areas, adopted thereunder are complied with.

(2) A hearing shall be held by the county board within forty-five days from receipt of the copy of the request and application filed under subsection (1) of this section. Notice of the hearing and the resulting recommendation of the county board shall conform in all respects to the provisions of Chapter 81, article 15.

(3) The Department of Environmental Control shall process the request and grant or deny the license pursuant to the procedures and conditions set out in Chapter 81, article 15, and rules and regulations promulgated pursuant to such article.

Sec. 2. That section 81-1503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1503. (1) The Environmental Control Council is hereby created. The council shall consist of sixteen members to be appointed by the Governor with the advice and consent of the Legislature as follows: One representative of the food products manufacturing industry, one representative of conservation, one representative of the agricultural processing industry, one representative of the automotive or petroleum industry, one representative of the chemical industry, one representative of heavy industry, one representative of the power generating industry, one representative of agriculture actively engaged in crop production, one representative of labor, one professional engineer experienced in control of air and water pollution and solid wastes, one physician knowledgeable in the health aspects of air, water and land pollution, one representative from county government, two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class, one representative of the livestock industry, and one representative of the public at large.

(2) Within thirty days after May 26, 1971, the Governor shall appoint the initial sixteen members to be appointed by him. Members shall serve for terms of four years, except that of the members first appointed, eight shall be appointed for terms of two years and eight shall be appointed for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made, ~~and shall be subject to reconfirmation by the legislature after the appointee has served for two years. If the legislature fails to reconfirm a member, the Governor shall appoint a successor for the balance of the term.~~ As the terms of the initial appointees to the council expire, succeeding appointees shall be representatives of the same segment of the public as the previous appointee, and such successors shall be appointed to four-year terms, except appointees to vacancies occurring from unexpired terms, in which case the successor shall serve out the term of his predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed. All members shall be citizens and residents of the State of Nebraska.

(3) Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording him an opportunity to be publicly heard in person, or by counsel, in his own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. When a member is removed, the Governor shall file, in the office of the Secretary of State, a complete statement of all charges made against such member and the findings thereon, together with a complete record of the proceedings.

(4) The council shall elect from its members a chairman and a vice-chairman, who shall hold office at the pleasure of the council. The vice-chairman shall serve as chairman in case of the absence or disability of the chairman. The director shall serve as secretary of the council and shall keep all records of meetings of and actions taken by the council. He shall be promptly advised as to such actions by the chairman.

(5) The members of the council, while engaged in the performance of their official duties, shall receive compensation at the rate of forty dollars per day while so serving, including travel time. In addition, members of the council shall receive reimbursement for actual and necessary expenses on the same basis and subject to the same conditions as full-time state employees.

(6) The council shall hold at least four meetings, once each calendar quarter at a time and place fixed by the council and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairman. Such special meetings must be called by him upon receipt of a written request signed by two or more members of the council. Written notice of the time and place of all meetings shall be mailed in advance to the office of each member of the council by the secretary. The majority of the members of the council shall constitute a quorum.

(7) The council shall submit to the Governor a list of names from which he shall appoint the Director of Environmental Control, who shall be experienced in air, water and land pollution control, and who may be otherwise an employee of the state government. The director shall be responsible for administration of the department and all standards, rules and regulations adopted pursuant to Chapter 81, article 15. All such standards, rules and regulations shall be adopted by the council, after consideration of the recommendations of the director. All grants to political subdivisions under the control of the department shall be made by the director in accordance with priorities established by the council. A majority of the members of the council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the council shall be necessary for the adoption of standards, rules and regulations.

(8) Before the director shall enter upon the duties of his office, he shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear and affirm that he holds no other public office nor any position under any political committee or party and that he has not during the two years immediately prior to his appointment received a significant portion of his income directly or indirectly from permit holders or applicants for a permit under the provisions of sections 81-1501 to 81-1532 and that he will not receive such income during his term as director. Such oath and affirmation shall be filed with the Secretary of State.

Sec. 3. That section 81-1509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1509. (1) An appeal may be taken from any final order or other final determination of the director, by any person who is or may be adversely affected by such

~~order or determination, thereby, or by the attorney General on behalf of the State of Nebraska,~~ to the district court of Lancaster County. Within thirty days after receipt of a copy of the order, or other final determination, or after service of notice thereof by certified or registered mail, the appellant or his attorney shall serve a notice of appeal on the agency through its director. During such thirty-day period the court may for good cause shown extend such time for not exceeding an additional sixty days. The notice of appeal shall refer to the action of the director appealed from and shall specify the grounds of appeal, including both points of law and fact which are asserted or questioned by the appellant. A copy of the original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within ten days of the service of the notice and thereupon the court shall have jurisdiction of the appeal. The service of such notice of appeal shall not act as a stay of enforcement of the director's final order or other final determination unless so ordered and directed by the court.

(2) The appellant and the director state shall in all cases be deemed the original parties to an appeal. ~~The state, through the attorney General or any other person affected, may become a party by intervention as in a civil action upon showing cause therefor in cases where the original action involved parties other than the director.~~ No bond or deposit for costs shall be required of the state or department upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

(3) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and the answer thereto according to the rules related to a trial in the nature of an appeal in equity of an administrative determination. All findings of fact by the director are to be deemed final, unless it is shown that such findings were not supported by substantial evidence produced before the director at the hearing. In any appeal or other proceeding involving any order, or other determination of the director, the action of the director shall be prima facie reasonable and valid and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with. A certified copy of the proceedings, together with all documents and papers on file and all testimony taken therein shall be certified to the district court in connection with each appeal. The certified copies of the director's findings and decisions shall be deemed its answer to the notice of appeal.

(4) The trial of the appeal before the district court shall be without a jury and shall be de novo. The court shall receive in evidence in any such case a certified transcript of the proceedings had before the director, together with a certified copy of the director's findings and decision, which findings and decision shall be evidence of the facts found therein and may receive such further evidence as the court in its discretion deems proper and necessary and shall have jurisdiction to enter such judgment and orders enforcing such judgment as may be proper and necessary. The record of the director filed in court shall be returned to the director after the final disposition of the case by the district court or the Supreme Court.

(5) The director or any party who may consider himself aggrieved by the decision of the district court on appeal, may appeal such decision to the Supreme Court in the same manner as is provided in civil cases.

Sec. 4. That section 81-1518, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1518. (1) Before the director shall approve a solid waste disposal area, it shall be approved by the county board of the county, if the area is outside the zoning jurisdiction of a city or village, or by the city council or board of trustees if within the zoning jurisdiction of a city or village. The director shall send a copy of the application to the county board, city council or board of trustees, advising them of the application filed with the director. A hearing shall be had by the county board, city council or board of trustees within thirty forty-five days from receipt of the copy of the application.

(2) Before the county board, city council or board of trustees shall approve such area, notice shall be given at least ten days before the hearing. Such notice shall be given by publication of the notice one time in a newspaper either published in or having general circulation in the county, city or village where the proposed area is to be located. A copy of the printed notice shall be mailed to the director at least five days before the hearing. The notice shall state the time and place of hearing, the name of the applicant for a license for such area and the exact location of the area. If the county board, city council, or board of trustees deems such an area suitable for a solid waste disposal area, such fact shall be certified to the director.

(3) Upon receipt of the application, the director or his designated representative shall inspect the proposed site and determine if the proposed operation complies with the provisions of sections 81-1501 to 81-1532 and the rules and regulations adopted under sections 81-1501 to 81-1532 and the ordinances of a city or village regulating the disposal of solid wastes, has been approved by the governmental subdivision where the area is to be located, and the director finds that the applicant is a responsible and suitable person to conduct the business, the director shall issue a license to the applicant upon filing by the applicant with the director of a performance bond in an amount equal to five hundred dollars per acre of disposal area, but not less than twenty-five hundred dollars; provided, when the applicant is a county, city or village, no bond shall be required.

Sec. 5. That section 81-1533, Reissue Revised Statutes of Nebraska, 1943, as amended by section 58, Legislative Bill 322, Eighty-sixth Legislature, First Session, 1979, be amended to read as follows:

81-1533. All funds appropriated to aid in defraying the state's share of participation in Public Law 92-500, as amended by Public Law 95-217, the Federal Clean Water Act, 33 U.S.C. 466 et seq., Water--Pollution Control Act Amendments of 1972, shall be administered on a cash-flow basis utilizing General Funds appropriated to Agency No. 84 -- Department of Environmental Control, Program No. 518 -- Wastewater Treatment Facilities, to meet payout requirements as they occur. The director is hereby authorized to make state allocations concurrent with any federal grant to political subdivisions for the construction of wastewater treatment facilities at the rate of twelve-and-one-half-per-cent--of--the--total one half of the nonfederal eligible cost of the projects. Such state allocations shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds. The director shall submit to the Governor and the Clerk of the Legislature a semiannual report on January 1 and July 1 of each fiscal year containing information which shows the financial status of the program including a statement of the fund balance, an itemized list of all conditional grants made to political subdivisions including actual and estimated amounts and time of payouts, the necessary appropriations required to meet those grants, and any other information which will reflect the progress and financial status of the program. Each member of the Legislature shall receive a copy of the report required by this section by making a request for it to the director. Such funds shall be annually apportioned among Nebraska communities based principally on need and in accordance with the

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procedures established through the state's continuing planning process pursuant to section 303 (e) of the federal act under which federal participation is contingent.

Sec. 6. That original sections 19-2107, 81-1503, 81-1509, and 81-1518, Reissue Revised Statutes of Nebraska, 1943, and section 81-1533, Reissue Revised Statutes of Nebraska, 1943, as amended by section 58, Legislative Bill 322, Eighty-sixth Legislature, First Session, 1979, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.