

## LEGISLATIVE BILL 302

Approved by the Governor March 21, 2019

Introduced by Hughes, 44; at the request of the Governor.

A BILL FOR AN ACT relating to state government; to amend sections 2-15,100, 2-3241, 2-4215, 13-1701, 13-2008, 13-2009, 13-2042.01, 37-806, 46-2,109, 46-602, 46-606, 46-704, 46-705, 46-706, 46-711, 46-721, 46-722, 46-723, 46-724, 46-725, 46-726, 46-728, 46-729, 46-730, 46-731, 46-732, 46-733, 46-743, 46-749, 46-750, 46-1102, 46-1108, 46-1109, 46-1217, 46-1301, 46-1502, 46-1642, 54-744.01, 54-2417, 54-2421, 54-2429, 57-705, 58-221, 60-6,363, 60-6,364, 60-6,367, 60-6,368, 66-203, 66-204, 66-301, 66-302, 66-303, 66-304, 66-489.02, 66-1004, 66-1009, 66-1105, 66-1344, 66-1504, 66-1518, 66-1529.02, 66-2001, 69-2011, 69-2502, 70-1003, 70-1032, 71-2433, 71-3503, 71-5302, 71-5316, 72-804, 72-805, 76-2602, 76-2608, 77-27,150, 77-27,151, 77-27,152, 77-27,153, 77-27,154, 77-27,187.01, 77-27,236, 81-1108.55, 81-1502, 81-1503, 81-1504.01, 81-1505.01, 81-1506, 81-1537, 81-1540, 81-1561, 81-15,118, 81-15,120, 81-15,123, 81-15,124, 81-15,124.01, 81-15,124.02, 81-15,124.04, 81-15,124.05, 81-15,125, 81-15,126, 81-15,127, 81-15,129, 81-15,159, 81-15,159.02, 81-15,166, 81-15,170, 81-15,177, 81-15,178, 81-15,179, 81-15,180, 81-15,183, 81-15,184, 81-15,185, 81-15,185.01, 81-15,185.02, 81-15,185.03, 81-15,186, 81-15,196, 81-15,210, 81-15,213, 81-15,229, 81-15,235, 81-15,242, 81-15,243, 81-15,245, 81-1607, 81-1609, 81-1611, 81-1612, 81-1613, 81-1616, 81-1617, 81-1618, 81-1620, 81-1625, 81-1635, 81-1636, 81-1637, 81-1638, 81-1640, 81-1641, 84-166, 86-570, and 88-550, Reissue Revised Statutes of Nebraska, and sections 2-969, 2-1501, 2-1507, 2-2626, 2-4604, 46-2,139, 46-683.01, 46-707, 46-1224, 46-1304, 49-506, 54-703, 57-1407, 57-1502, 57-1503, 81-2,294, 81-1316, 81-1504, 81-1505, 81-15,149, 81-15,159.01, 81-15,160, 81-1604, 81-1606, 81-1607.01, 81-3449, 81-3453, and 84-602.04, Revised Statutes Cumulative Supplement, 2018; to merge the State Energy Office with the Department of Environmental Quality; to rename the department, the director, and certain funds; to provide, change, transfer, and eliminate powers and duties; to provide for a permit for discharge of certain materials; to harmonize provisions; to provide an operative date; to repeal the original sections; to outright repeal section 69-2505, Reissue Revised Statutes of Nebraska, and sections 81-1601, 81-1602, 81-1603, and 81-1605, Revised Statutes Cumulative Supplement, 2018; and to declare an emergency.

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

Section 1. (1) On and after July 1, 2019, the State Energy Office shall be merged into the Department of Environmental Quality which shall be renamed as the Department of Environment and Energy and the Director of Environmental Quality shall be renamed as the Director of Environment and Energy.

(2) On and after July 1, 2019, positions of employment in the State Energy Office related to the powers, duties, and functions transferred to the Department of Environment and Energy pursuant to this legislative bill are transferred to the Department of Environment and Energy. For purposes of the transition, employees of the State Energy Office shall be considered employees of the Department of Environment and Energy and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the department or the director from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

Sec. 2. Any appropriation and salary limit provided in any legislative bill enacted by the One Hundred Sixth Legislature, First Session, to Agency No. 71, State Energy Office, in the following program classification, shall be null and void, and any such amounts are hereby appropriated to Agency No. 84, Department of Environment and Energy: Program No. 106, Energy Office Administration. Any financial obligations of the State Energy Office that remain unpaid as of June 30, 2019, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the Department of Environment and Energy from the unexpended balance of appropriations existing in such program classifications on June 30, 2019.

Sec. 3. On and after July 1, 2019, whenever the State Energy Office or the Department of Environmental Quality is referred to or designated by any contract or other document in connection with the duties and functions of the Department of Environment and Energy, such reference or designation shall apply to the Department of Environment and Energy. All contracts entered into by the State Energy Office or the Department of Environmental Quality prior to July 1, 2019, in connection with the duties and functions of the Department of Environment and Energy are hereby recognized, with the Department of Environment and Energy succeeding to all rights and obligations under such

Sec. 89. Section 71-3503, Reissue Revised Statutes of Nebraska, is amended to read:

71-3503 For purposes of the Radiation Control Act, unless the context otherwise requires:

(1) Radiation means ionizing radiation and nonionizing radiation as follows:

(a) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation means (i) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (ii) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment;

(2) Radioactive material means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material includes, but is not limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material;

(4) Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material;

(5) Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department;

(6) Person means any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing;

(7) Registration means registration with the department pursuant to the Radiation Control Act;

(8) Department means the Department of Health and Human Services;

(9) Administrator means the administrator of radiation control designated pursuant to section 71-3504;

(10) Electronic product means any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(11) License means:

(a) A general license issued pursuant to rules and regulations adopted and promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials;

(b) A specific license, issued to a named person upon application filed with the department pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials; or

(c) A license issued to a radon measurement specialist, radon mitigation specialist, radon measurement business, or radon mitigation business;

(12) Byproduct material means:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute byproduct material;

(c)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; or

(ii) Any material that (A) has been made radioactive by use of a particle accelerator and (B) is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security;

and

(ii) Is extracted or converted after extraction for use in a commercial, medical, or research activity;

(13) Source material means:

(a) Uranium or thorium or any combination thereof in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material;

(14) Special nuclear material means:

(a) Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235 and any other material that the United States Nuclear Regulatory Commission pursuant to the provisions of section 51 of the federal Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(b) Any material artificially enriched by any material listed in subdivision (14)(a) of this section but does not include source material;

(15) Users of sources of radiation means:

(a) Physicians using radioactive material or radiation-generating equipment for human use;

(b) Natural persons using radioactive material or radiation-generating equipment for education, research, or development purposes;

(c) Natural persons using radioactive material or radiation-generating equipment for manufacture or distribution purposes;

(d) Natural persons using radioactive material or radiation-generating equipment for industrial purposes; and

(e) Natural persons using radioactive material or radiation-generating equipment for any other similar purpose;

(16) Civil penalty means any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates but does not include criminal penalties;

(17) Closure means all activities performed at a waste handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(18) Decommissioning means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(19) Disposal means the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(20) Generate means to produce low-level radioactive waste when used in relation to low-level radioactive waste;

(21) High-level radioactive waste means:

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(22) Low-level radioactive waste means radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (12)(b) of this section;

(23) Management of low-level radioactive waste means the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner;

(24) Source material mill tailings or mill tailings means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;

(25) Source material milling means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;

(26) Spent nuclear fuel means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;

(27) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram;

(28) Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician;

(29) X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device,

and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system;

(30) Licensed facility operator means any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the Department of Environment and Energy Environmental Quality; and

(31) Deliberate misconduct means an intentional act or omission by a person that (a) would intentionally cause a licensee, registrant, or applicant for a license or registration to be in violation of any rule, regulation, or order of or any term, condition, or limitation of any license or registration issued by the department under the Radiation Control Act or (b) constitutes an intentional violation of a requirement, procedure, instruction, contract, purchase order, or policy under the Radiation Control Act by a licensee, a registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee, registrant, or applicant for a license or registration.

Sec. 90. Section 71-5302, Reissue Revised Statutes of Nebraska, is amended to read:

71-5302 (1) The director shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water supplied to consumers through all public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological material determined by the director to be harmful to human health.

(2) The director may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water systems for chemical, radiological, physical, or bacteriological material determined by the director to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health and in setting maximum levels for such harmful materials, the director shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) Subject to section 71-5310, state drinking water standards shall apply to each public water system in the state, except that such standards shall not apply to a public water system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

(5) The director may adopt alternative monitoring requirements for public water systems in accordance with section 1418 of the federal Safe Drinking Water Act, as such section existed on May 22, 2001.

(6) The director may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the director or the Department of Environment and Energy Environmental Quality. In establishing the ranking system the director shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, as the act existed on May 22, 2001, and assistance to systems most in need based upon affordability criteria adopted by the director. This priority system shall be reviewed annually by the director.

Sec. 91. Section 71-5316, Reissue Revised Statutes of Nebraska, is amended to read:

71-5316 For purposes of the Drinking Water State Revolving Fund Act, unless the context otherwise requires:

(1) Safe Drinking Water Act means the federal Safe Drinking Water Act, as the act existed on May 22, 2001;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of a safe drinking water project for a public water system; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of public water systems; or the inspection or supervision of any of such items;

(3) Council means the Environmental Quality Council;

(4) Department means the Department of Environment and Energy Environmental Quality;

(5) Director means the Director of Environment and Energy Environmental Quality;

(6) Operate and maintain means all necessary activities, including the normal replacement of equipment or appurtenances, to assure the dependable and economical function of a public water system in accordance with its intended purpose;

(7) Owner means any person owning or operating a public water system;

(8) Public water system has the definition found in section 71-5301; and