

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 635**

Introduced by Wallman, 30; Davis, 43; Haar, 21; Harms, 48; Kolowski,  
31; Scheer, 19.

Read first time January 23, 2013

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Oil and Gas Conservation  
2 Commission; to amend sections 57-903, 57-905, 57-914,  
3 57-916.01, and 81-1531.01, Reissue Revised Statutes of  
4 Nebraska; to provide powers and duties relating to  
5 hydraulic fracturing; to harmonize provisions; to provide  
6 a duty for the Revisor of Statutes; and to repeal the  
7 original sections.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 57-903, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           57-903 As used in sections 57-901 to 57-921 and section 3  
4 of this act, unless the context otherwise requires:

5           (1)(a) Waste, as applied to oil, shall include  
6 underground waste, inefficient, excessive, or improper use, or  
7 dissipation of reservoir energy, including gas energy and water  
8 drive, surface waste, open pit storage, and waste incident to the  
9 production of oil in excess of the producer's aboveground storage  
10 facilities and lease and contractual requirements, but excluding  
11 storage, other than open pit storage, reasonably necessary for  
12 building up or maintaining crude stocks and products thereof for  
13 consumption, use, and sale; (b) waste, as applied to gas shall  
14 include (i) the escape, blowing, or releasing, directly or  
15 indirectly, into the open air of gas from wells productive of gas  
16 only, or gas from wells producing oil or both oil and gas and (ii)  
17 the production of gas in quantities or in such manner as will  
18 unreasonably reduce reservoir pressure or unreasonably diminish the  
19 quantity of oil or gas that might ultimately be produced, but  
20 excluding gas that is reasonably necessary in the drilling,  
21 completing, testing, and producing of wells and gas unavoidably  
22 produced with oil if it is not economically feasible for the producer  
23 to save or use such gas; and (c) waste shall also mean the abuse of  
24 the correlative rights of any owner in a pool due to nonuniform,  
25 disproportionate, unratable, or excessive withdrawals of oil or gas

1 therefrom causing reasonably avoidable drainage between tracts of  
2 land or resulting in one or more owners in such pool producing more  
3 than his or her just and equitable share of the oil or gas from such  
4 pool;

5 (2) Commission shall mean the Nebraska Oil and Gas  
6 Conservation Commission;

7 (3) Person shall mean any natural person, corporation,  
8 association, partnership, limited liability company, receiver,  
9 trustee, executor, administrator, guardian, fiduciary, or other  
10 representative of any kind and any department, agency, or  
11 instrumentality of the state or of any governmental subdivision  
12 thereof;

13 (4) Oil shall mean crude petroleum oil and other  
14 hydrocarbons regardless of gravity which are produced at the wellhead  
15 in liquid form and the liquid hydrocarbons known as distillate or  
16 condensate recovered or extracted from gas other than gas produced in  
17 association with oil and commonly known as casing-head gas;

18 (5) Gas shall mean all natural gas and all other fluid  
19 hydrocarbons not defined as oil;

20 (6) Pool shall mean an underground reservoir containing a  
21 common accumulation of oil or gas or both, each zone of the structure  
22 which is completely separated from any other zone in the same  
23 structure is a pool as that term is used in sections 57-901 to 57-921  
24 and section 3 of this act;

25 (7) Field shall mean the general area underlaid by one or

1 more pools;

2 (8) Owner shall mean the person who has the right to  
3 drill into and produce from a pool and to appropriate the oil or gas  
4 he or she produces therefrom either for himself or herself or for  
5 himself or herself and others;

6 (9) Producer shall mean the owner of a well or wells  
7 capable of producing oil or gas or both or any person who owns and  
8 operates a lease, or a unit of producing leases in which other  
9 persons own interests, with respect to such well or wells;

10 (10) Correlative rights shall mean the opportunity  
11 afforded to the owner of each property in a pool to produce, so far  
12 as it is reasonably practicable to do so without waste, his or her  
13 just and equitable share of the oil or gas, or both, in the pool; and

14 (11) The word and shall include the word or, and the word  
15 or shall include the word and.

16 Sec. 2. Section 57-905, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 57-905 (1) The commission shall have jurisdiction and  
19 authority over all persons and property, public and private,  
20 necessary to enforce effectively the provisions of sections 57-901 to  
21 ~~57-921.~~ 57-922 and section 3 of this act.

22 (2) The commission shall have authority, and it is its  
23 duty, to make such investigations as it deems proper to determine  
24 whether waste exists or is imminent or whether other facts exist  
25 which justify action by the commission.

1           (3) The commission shall have authority to require: (a)  
2 Identification of ownership of oil or gas wells, producing leases,  
3 tanks, plants, structures, and facilities for the production of oil  
4 and gas; (b) the making and filing of directional surveys, and  
5 reports on well location, drilling, and production within six months  
6 after the completion or abandonment of the well; (c) the drilling,  
7 casing, operating, and plugging of wells in such manner as to prevent  
8 the escape of oil or gas out of one stratum into another, the  
9 intrusion of water into oil or gas strata, the pollution of fresh  
10 water supplies by oil, gas, or salt water, and to prevent blowouts,  
11 cave-ins, seepages, and fires; (d) the furnishing of a reasonable  
12 bond with good and sufficient surety, conditioned for the performance  
13 of the duty to comply with all the provisions of the laws of the  
14 State of Nebraska and the rules, regulations, and orders of the  
15 commission; (e) that the production from wells be separated into  
16 gaseous and liquid hydrocarbons, and that each be accurately  
17 measured; (f) the operation of wells with efficient gas-oil and  
18 water-oil ratios, and to fix these ratios; (g) metering or other  
19 measuring of oil, gas, or product in pipelines or gathering systems;  
20 (h) that every person who produces or purchases oil or gas in this  
21 state shall keep and maintain or cause to be kept and maintained for  
22 a five-year period complete and accurate records of the quantities  
23 thereof, which records shall be available for examination by the  
24 commission or its agents at all reasonable times, and that every such  
25 person file with the commission such reports as it may reasonably

1 prescribe with respect to such oil or gas or the products thereof;  
2 and (i) that upon written request of any person, geologic  
3 information, well logs, drilling samples, and other proprietary  
4 information filed with the commission in compliance with sections  
5 57-901 to ~~57-921~~, 57-922 and section 3 of this act, or any rule,  
6 regulation, or order of the commission, may be held confidential for  
7 a period of not more than twelve months.

8 (4) The commission shall have authority in order to  
9 prevent waste, to regulate: (a) The drilling, producing and plugging  
10 of wells, or test holes, and all other operations for the production  
11 of oil or gas; (b) the shooting and chemical treatment of wells; (c)  
12 the spacing of wells; (d) operations to increase ultimate recovery  
13 such as, but without limitation, the cycling of gas, the maintenance  
14 of pressure, and the introduction of gas, water, or other substances  
15 into producing formations; and (e) disposal of oilfield wastes,  
16 including salt water.

17 (5) The commission shall not have authority to limit the  
18 production of oil or gas, or both, from any pool or field except to  
19 prevent waste therein.

20 (6) The commission shall have authority to classify wells  
21 as oil or gas wells for purposes material to the interpretation or  
22 enforcement of the provisions of sections 57-901 to ~~57-921~~. 57-922  
23 and section 3 of this act.

24 (7) The commission shall have authority to promulgate and  
25 to enforce rules, regulations, and orders to effectuate the purposes

1 and the intent of sections 57-901 to ~~57-921~~. 57-922 and section 3 of  
2 this act.

3 (8) The commission, with the approval of the Governor,  
4 shall have authority to establish and maintain its principal office  
5 and its books, papers, and records at such place in the state as it  
6 shall determine. The commission shall not have authority to purchase  
7 its principal office quarters.

8 (9) The commission shall have authority to require that  
9 all wells drilled for oil and gas shall be adequately logged with  
10 mechanical-electrical logging devices, and to require the filing of  
11 logs.

12 (10) The commission shall have the authority to regulate  
13 the drilling and plugging of seismic and stratigraphic tests in oil  
14 and gas exploration holes.

15 (11) The commission shall have the authority to act as  
16 the state jurisdictional agency pursuant to the federal Natural Gas  
17 Policy Act of 1978, 15 U.S.C. 3301 et seq., ~~Public Law 95-621, 92~~  
18 ~~Stat. 3350.~~

19 (12) The commission shall have the authority to have one  
20 or more examiners, who are employees of the commission, conduct any  
21 of its hearings, investigations, and examinations authorized by  
22 sections 57-901 to ~~57-921~~. 57-922 and section 3 of this act. Such  
23 examiner may exercise the commission's powers, including, but not  
24 limited to, the taking of evidence and testimony under oath,  
25 resolving questions of fact and questions of law, and the entering of

1 an order. Such order shall be entered in the commission's order  
2 journal. Any person having an interest in property affected by an  
3 order issued by an examiner and who is dissatisfied with such order  
4 may appeal to the commission by filing a petition on appeal to the  
5 commission within fifteen days of the entering of the examiner's  
6 order. Such person shall provide notice to all interested persons by  
7 personal service or registered or certified United States mail with  
8 return receipt, requiring such parties to answer within fifteen days  
9 from the date of service. Upon appeal, the commission shall hear the  
10 case de novo on the record and shall not be bound by any conclusions  
11 of the examiner. The commission shall hold a hearing on the appeal  
12 within forty-five days of the filing of an appeal to the commission  
13 and issue its order within fifteen days after the hearing. The  
14 commission shall review all orders issued by an examiner that are not  
15 appealed and issue an order concerning the examiner's order within  
16 sixty days after the examiner's order. The commission shall adopt,  
17 amend, or reject the examiner's order. Any order of an examiner which  
18 is not appealed to the commission and which the commission adopts  
19 shall not be appealable to the district court unless the commission  
20 adopts an order before the end of the time for appeal to the  
21 commission.

22 (13) The commission shall have the authority to require  
23 that every person that transports water produced in association with  
24 the production of oil or gas possess a run ticket or equivalent  
25 documents containing the following: (a) The name and address of the



1 transporter; (b) the name of the operator of the lease of origin; (c)  
2 the location of the lease tank battery by section, township, range,  
3 and county; (d) the location of the destination by section, township,  
4 range, and county; (e) the date and time the fluids were loaded for  
5 transportation and unloaded at the destination; (f) the estimated  
6 volume of fluids or the opening and closing tank gauges or meter  
7 readings; and (g) the signature of the driver. The commission shall  
8 have the authority to require that a copy of any such documentation,  
9 including information describing inventory and details of acceptance  
10 and disposition of the fluids, be provided to the commission, left at  
11 the facility from which the water was loaded for transportation,  
12 carried in the vehicle during transportation, and retained by any  
13 persons that store, possess, or dispose of water produced in  
14 association with the production of oil or gas.

15 (14) The commission shall have the authority to consider  
16 well completions which include hydraulic fracturing, acidizing, or  
17 other chemical stimulations done to complete a well permitted under  
18 the drilling permit for that well if the permit indicates the type of  
19 chemical stimulation to be used.

20 (15) The commission shall have the authority to adopt and  
21 promulgate and enforce rules and regulations relating to hydraulic  
22 fracturing or other chemical stimulations to complete a well to  
23 effectuate the intent of section 3 of this act.

24 Sec. 3. (1) New and existing wells which will be  
25 stimulated by hydraulic fracturing shall demonstrate suitable and

1 safe mechanical configuration for the stimulation treatment proposed.

2 (2) Prior to the initiation of hydraulic fracturing  
3 stimulation, the operator shall evaluate the well. If the operator  
4 proposes stimulation through production casing or through  
5 intermediate casing, the casing shall be tested to the maximum  
6 anticipated treating pressure. If the casing fails the pressure test,  
7 it shall be repaired or the operator shall use a temporary casing or  
8 tubing.

9 (3) Within sixty days after the hydraulic fracturing  
10 stimulation is performed, the operator shall post all the elements  
11 specified in the commission's rules and regulations, including the  
12 amount and source of water used for the stimulation and the amount of  
13 fracturing fluid recovered. The posting shall be on a web site  
14 designated by the commission's rules and regulations.

15 Sec. 4. Section 57-914, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 57-914 (1) No temporary restraining order or injunction  
18 of any kind against the commission or its agents, employees, or  
19 representatives, or the Attorney General, shall become operative  
20 unless and until the plaintiff party shall execute and file with the  
21 clerk of the district court a bond in such amount and upon such  
22 conditions as the court issuing such order or injunction may direct,  
23 with surety approved by the clerk of the district court thereof. The  
24 bond shall be made payable to the State of Nebraska, and shall be for  
25 the use and benefit of all persons who may be and to the extent that

1 they shall suffer injury or damage by any acts done under the  
2 protection of the restraining order or injunction, if the same should  
3 not have issued. No suit on the bond may be brought after six months  
4 from the date of the final determination of the suit in which the  
5 restraining order or injunction was issued.

6 (2) Any suit, action, or other proceedings based upon a  
7 violation of any of the provisions of sections 57-901 to ~~57-921~~  
8 57-922 and section 3 of this act shall be commenced within one year  
9 from the date of the violation complained of.

10 Sec. 5. Section 57-916.01, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 57-916.01 (1) In addition to the penalties prescribed in  
13 section 57-915, any person who violates any provision of sections  
14 57-901 to ~~57-921~~, 57-922 and section 3 of this act, any rule,  
15 regulation, or order of the commission, or any term, condition, or  
16 limitation of any permit issued pursuant to such sections, rule,  
17 regulation, or order may be subject to a civil penalty imposed by the  
18 commission of not to exceed one thousand dollars. No civil penalty  
19 shall be imposed until written notice is sent pursuant to subsection  
20 (2) of this section and a period of ten days has elapsed in which the  
21 person may come into compliance if possible. If any violation is a  
22 continuing one, each day a violation continues after such ten-day  
23 period shall constitute a separate violation for the purpose of  
24 computing the applicable civil penalty. The commission may  
25 compromise, mitigate, or remit such penalties.

1                   (2) Whenever the commission intends to impose a civil  
2 penalty under this section, the commission shall notify the person in  
3 writing (a) setting forth the date, facts, and nature of each  
4 violation with which the person is charged, (b) specifically  
5 identifying the particular provision or provisions of the section,  
6 rule, regulation, order, or permit involved in the violation, and (c)  
7 specifying the amount of each penalty which the commission intends to  
8 impose. Such written notice shall be sent by registered or certified  
9 mail to the last-known address of such person. The notice shall also  
10 advise such person of his or her right to a hearing and that failure  
11 to pay any civil penalty subsequently imposed by the commission will  
12 result in a civil action by the commission to collect such penalty.  
13 The person so notified may, within thirty days of receipt of such  
14 notice, submit a written request for a hearing to review any penalty  
15 to be imposed by the commission. A hearing shall be held in  
16 accordance with the Administrative Procedure Act, and any person upon  
17 whom a civil penalty is subsequently imposed may appeal such penalty  
18 pursuant to such act. On the request of the commission, the Attorney  
19 General or county attorney may institute a civil action to collect a  
20 penalty imposed pursuant to this section.

21                   Sec. 6. Section 81-1531.01, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23                   81-1531.01 Nothing in the Environmental Protection Act  
24 shall be construed to apply to any wells or holes covered by sections  
25 57-901 to 57-922 and section 3 of this act.

1                   Sec. 7. The Revisor of Statutes shall assign section 3 of  
2 this act within sections 57-901 to 57-921.

3                   Sec. 8. Original sections 57-903, 57-905, 57-914,  
4 57-916.01, and 81-1531.01, Reissue Revised Statutes of Nebraska, are  
5 repealed.