LEGISLATIVE BILL 1161
Passed over the Governor's veto
April 14, 1998.

Introduced by Bromm, 23; Beutler, 28; Bohlke, 33; Bruning, 3; Elmer, 44; Preister, 5; Schrock, 38; Stuhr, 24

AN ACT relating to the environment; to amend sections 66-482, 66-486, 66-4,141, 66-4,143, 66-678, 66-680, 66-681, 66-6,113, 66-713, 66-1501, 66-1519, 66-1519.01, 66-1520, 66-1523, 66-1525, 66-1529.01, 66-1529.02, 81-8,297, 81-8,299, 81-8,301, 81-15,121, 81-15,124, and 87-112, Reissue Revised Statutes of Nebraska, sections 46-656.29, 81-15,117, 81-15,119, 81-15,120, 81-15,124.01, 81-15,189, and 81-15,190, Revised Statutes Supplement, 1996, and sections 32-608, 66-4,144, 66-718, 66-1518, 66-1521, 81-15,162.02, and 87-209, Revised Statutes Supplement, 1997; to create a well measuring device cost-sharing program; to adopt the Wellhead Protection Area Act and the Geologists Regulation Act; to change provisions relating to water well permits; to provide for weather modification programs; to change motor fuel tax provisions; to change provisions relating to the Petroleum Release Remedial Action Act, the Petroleum Products and Hazardous Substances Storage and Handling Act, and the Scrap Tire Reduction and Recycling Incentive Fund; to provide powers and duties; to eliminate provisions relating to weather control and a fee; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; to outright repeal sections 2-2428 to 2-2449 and 66-1522, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. (1) For purposes of this section:

(a) Measuring device means any accurate method used to measure total volume of water pumped annually; and

(b) Well means a water well to be used for other than domestic purposes which is capable of pumping more than fifty gallons per minute and which is located in the alluvial aquifer of the Republican River Basin as determined and delineated on a map provided by the Department of Water Resources.

(2) It is the intent of the Legislature to appropriate five hundred thousand dollars each year for FY1998-99, FY1999-00, and FY2000-01 for a cost-share program to install measuring devices on wells in the alluvial aquifer of the Republican River Basin. The money shall be appropriated to a separate account within the Nebraska Soil and Water Conservation Fund for cost sharing on the purchase and installation of measuring devices on eligible wells if every natural resources district covering any portion of the alluvial aquifer of the Republican River Basin has established by October 1, 1998, a program requiring the installation of measuring devices on a minimum of ninety percent of active eligible wells by April 1, 2001, and adopts and promulgates rules and regulations within a reasonable time governing the program.

(3) To be eligible for cost-share assistance under this section a well must meet the definition of a well in subsection (1) of this section and the measuring device shall be purchased, installed, and operational by April 1, 2001. If eligible for cost sharing under this section, fifty percent of the cost of purchase and installation of the measuring device, up to a maximum state share of six hundred dollars per well, may be provided through the cost-share program.

(4) Any owner or operator of a well upon which cost-share funds are expended under this section shall be responsible for reporting water use to the natural resources district in which the well is located in a manner prescribed by the natural resources district.

(5) If the requirements of subsections (2) and (3) of this section have not been met by April 1, 2001, the natural resources district shall remit to the state an amount equal to the cost-share assistance provided to the natural resources district under such subsections. Any owner or operator of a well upon which cost-share funds are expended shall not be responsible for any repayment requirements under this section.

Sec. 2. Sections 2 to 10 of this act shall be known and may be cited as the Wellhead Protection Area Act.

Sec. 3. For purposes of the Wellhead Protection Area Act:

(1) Controlling entity means a city, a village, a natural resources district, a rural water district, any other entity, including, but not limited

to, a privately owned public water supply system, or any combination thereof operating under an interlocal agreement pursuant to the Interlocal Cooperation Act that operates a public water supply system;

(2) Department means the Department of Environmental Quality;

(3) Director means the Director of Environmental Quality; and

(4) Wellhead protection area means the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

Sec. 4. Any controlling entity may designate a wellhead protection area and adopt controls pursuant to the Wellhead Protection Area Act for the purpose of protecting the public water supply system. The department shall provide technical assistance to any controlling entity designating a wellhead protection area and adopting controls pursuant to the act.

Sec. 5. Any controlling entity proposing to designate a wellhead protection area and adopt controls shall:

(1) Designate the boundaries of the wellhead protection area following the procedure in section 6 of this act. The wellhead protection area shall be based on all reasonably available hydrogeologic information on ground water flow, recharge, and discharge and other related information necessary to adequately determine the wellhead protection area for the purposes stated in this section;

(2) Identify within each proposed wellhead protection area all potential sources of contaminants which may have any adverse effect on the health of persons;

(3) Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of controls, education, training, and demonstration projects to protect the water supply within the wellhead protection area from such contaminants;

(4) Include contingency plans for the location and provision of alternate drinking water supplies for each affected public water supply system in the event of water well or well field contamination by such contaminants; and

(5) Propose the controls necessary to provide protection from contaminants which may have any adverse effect on the health of persons served by the public water supply system of each participating controlling entity.

Sec. 6. The controlling entity shall publicize proposed boundaries for the wellhead protection area and the proposed controls and shall provide time for public comment at one or more regularly scheduled public meetings of the governing board of the controlling entity. Notice of the time for public comment shall be published in conjunction with notice of such regularly scheduled meeting. A description of the proposed boundaries and the text of the proposed controls shall be available at the office of the controlling entity for thirty days before such meeting. Persons shall be given the opportunity to speak on the proposed designation and the proposed controls or to submit written testimony for consideration by the controlling entity.

Sec. 7. Within sixty days after the last time for public comment under section 6 of this act, the controlling entity shall make a final designation of the boundaries of the wellhead protection area and the controls necessary to protect the water in the wellhead protection area and shall submit them to the director for approval or disapproval. Such approval shall be based on whether the boundaries of the wellhead protection area are reasonably defined, the controls are reasonably related to the purpose of ground water protection in the area, and such approval is in the public interest. The director shall act on the proposed designation of boundaries and proposed controls within ninety days after the date the proposals are received by him or her.

If the director approves the proposed boundaries and controls, he or she shall so notify the controlling entity, but the boundaries and controls shall not be deemed effective until the controlling entity has adopted such boundaries and controls by ordinance or resolution. If the director disapproves either or both of the proposals, he or she shall return the proposals to the controlling entity with an explanation of the reasons for such disapproval. The controlling entity may revise such proposed designation of boundaries and proposed controls and, after notice and hearing as provided for in the original proposed designation of boundaries and proposed controls, submit the revised proposed designation of boundaries and proposed controls to the director for approval or disapproval.

If the director does not act on either the original or revised proposed designation of boundaries and proposed controls within ninety days after submission by the controlling entity, the proposed designation of boundaries and proposed controls shall be deemed approved by the director.

Sec. 8. Any wellhead protection area established before the operative date of this section by resolution or ordinance of the controlling entity need not be reestablished under the Wellhead Protection Area Act unless controls are proposed. If such controls are proposed, the controls and the boundaries of the wellhead protection area are subject to the requirements of sections 5 to 7 of this act. Any wellhead protection area purported to have been established before the operative date of this section other than by official action of a controlling entity shall be null and void beginning nine calendar months after the operative date of this section unless reestablished by resolution or ordinance of the controlling entity.

Sec. 9. A designated wellhead protection area may be amended as to boundaries and controls as provided for in the initial designation of a wellhead protection area in the Wellhead Protection Area Act.

Sec. 10. The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Wellhead Protection Area Act.

Sec. 11. A natural resources district may establish weather modification programs. A district may enter into agreements with companies, service organizations, municipalities, political subdivisions, public or private postsecondary educational institutions, or state or federal agencies to establish or participate in such programs.

Sec. 12. Section 32-608, Revised Statutes Supplement, 1997, is amended to read:

32-608. (1) Except as provided in subsection (4) or (5) of this section, a filing fee shall be paid by or on behalf of each candidate prior to filing for office. The filing fee shall be paid to the county treasurer or, in the case of a city or village office, the city or village treasurer of the county, city, or village in which the candidate resides or, if the candidate does not reside at the time of filing in the county in which such candidate is seeking office, in the county where the office is sought. The fee shall be placed in the general fund of the county, city, or village. No candidate filing forms shall be filed until the proper treasurer's receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the county, city, or village treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(2) Notwithstanding the provisions of subsection (4) of this section, the filing fees shall be as follows:

(a) For the office of United States Senator, state officers, including members of the Legislature, Representatives in Congress, county officers including county superintendents of schools, and city or village officers, except the mayor or council members of cities having a home rule charter, a sum equal to one percent of the annual salary such candidate will receive if he or she is elected and qualifies for the office for which he or she files as a candidate;

(b) For directors of public power and irrigation districts in districts receiving annual gross revenue of forty million dollars or more, twenty-five dollars, and in districts receiving annual gross revenue of less than forty million dollars, ten dollars;

(c) For directors of reclamation districts, ten dollars; and

(d) For Regents of the University of Nebraska, members of the State Board of Education, and directors of metropolitan utilities districts, twenty-five dollars.

(3) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer. Any undeclared write-in candidate who is nominated or elected by write-in votes shall pay the filing fee required for the office within ten days after the canvass of votes by the county canvassing board and shall file the receipt with the person issuing the certificate of nomination or the certificate of election prior to the certificate being issued.

(4) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars per year. No filing fee shall be required for any candidate for membership on a school board, on the board of an educational service unit, on the board of governors of a community college area, on the board of directors of ~~a weather control district,~~ a natural resources district~~,~~ or a ground water conservation district, or on the board of trustees of a sanitary and improvement district.

(5) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis. A pauper shall mean a person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or

her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own. Available resources shall include every type of property or interest in property that an individual owns and may convert into cash except:

(a) Real property used as a home;

(b) Household goods of a moderate value used in the home; and

(c) Assets to a maximum value of three thousand dollars used by a recipient in a planned effort directed towards self-support.

(6) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the proper governing body prior to the date of the election. Upon approval of the claim by the proper governing body, the filing fee shall be refunded.

Sec. 13. Section 46-656.29, Revised Statutes Supplement, 1996, is amended to read:

46-656.29. (1) Any person who intends to construct a water well in a management area in this state on land which he or she owns or controls shall, before commencing construction, apply with the district in which the water well will be located for a permit on forms provided by the district, except that (a) no permit shall be required for test holes or dewatering wells with an intended use of ninety days or less, (b) no permit shall be required for ~~water wells~~ a single water well designed and constructed to pump fifty gallons per minute or less, and (c) a district may provide by rule and regulation that a permit need not be obtained for water wells defined by the district to be replacement water wells. A district may require a permit for a water well designed and constructed to pump fifty gallons per minute or less if such water well is commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock. Such wells shall be considered one water well and the combined capacity shall be used as the rated capacity. Forms shall be made available at each district in which a management area is located, in whole or in part, and at such other places as may be deemed appropriate. The district shall review such application and issue or deny the permit within thirty days after the application is filed.

(2) A person shall apply for a permit under this section before he or she modifies a water well for which a permit was not required under subsection (1) of this section into one for which a permit would otherwise be required under such subsection.

(3) The application shall be accompanied by a seventeen-dollar-and-fifty-cent filing fee payable to the district and shall contain (a) the name and post office address of the applicant or applicants, (b) the nature of the proposed use, (c) the intended location of the proposed water well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed water well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if the water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, (h) the registration number of the water well being replaced if applicable, and (i) such other information as the district requires.

(4) Any person who has failed or in the future fails to obtain a permit required by subsection (1) or (2) of this section shall make application for a late permit on forms provided by the district.

(5) The application for a late permit shall be accompanied by a two-hundred-fifty-dollar fee payable to the district and shall contain the same information required in subsection (3) of this section.

Sec. 14. Section 66-482, Reissue Revised Statutes of Nebraska, is amended to read:

66-482. For purposes of sections 66-482 to 66-4,149:

(1) Motor vehicle shall have the same definition as in section 60-301;

(2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum

product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

(3) Agricultural ethyl alcohol shall mean ethyl alcohol produced from cereal grains or agricultural commodities grown within the continental United States, and for the purpose of sections 66-482 to 66-4,149, the purity of the ethyl alcohol shall be determined excluding denaturant and the volume of alcohol blended with gasoline for motor vehicle fuel shall include the volume of any denaturant required pursuant to law;

(4) Alcohol blend shall mean a blend of agricultural ethyl alcohol in gasoline or other motor vehicle fuel, such blend to contain not less than five percent by volume of alcohol;

(5) Supplier shall mean any person who owns motor vehicle fuel imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state and any person who refines and stores motor vehicle fuel at a refinery in this state;

(6) Distributor shall mean any person who acquires ownership of motor vehicle fuel directly from a supplier at or from a barge, barge line, or pipeline terminal in this state;

(7) Wholesaler shall mean any person, other than a supplier, distributor, or importer, who acquires motor vehicle fuel for resale;

(8) Retailer shall mean any person who acquires motor vehicle fuel from a supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;

(9) Importer shall mean any person who owns motor vehicle fuel at the time such fuel enters the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor vehicle fuel in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected;

(10) Exporter shall mean any person who acquires ownership of motor vehicle fuel from any licensed supplier, distributor, wholesaler, or importer exclusively for use or resale in another state;

(11) Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(12) Diesel fuel shall mean any fuel defined as diesel fuel in section 66-654;

(13) Compressed fuel shall mean any fuel defined as compressed fuel in section 66-6,100;

(14) Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision; ~~and~~

(15) Department shall mean the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; and

(16) Semiannual period shall mean either the period which begins on January 1 and ends on June 30 of each year or the period which begins on July 1 and ends on December 31 of each year.

Sec. 15. Section 66-486, Reissue Revised Statutes of Nebraska, is amended to read:

66-486. (1) In lieu of the expense of collecting and remitting the gasoline tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two and one-half percent upon all amounts above five thousand dollars remitted each month.

(2) Except as otherwise provided in Chapter 66, article 4, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the supplier, distributor, wholesaler, or importer as specified in Chapter 66, article 4, shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in Chapter 66, article 4. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in Chapter 66, article 4.

(3) In consideration of receiving the commission, the supplier, distributor, wholesaler, or importer ~~shall be deemed to be ultimately~~

~~responsible for payment of the taxes imposed under Chapter 66, article 4, and such supplier, distributor, wholesaler, or importer~~ shall not be entitled to any deductions, credits, or refunds arising out of such supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of motor vehicle fuel.

Sec. 16. Section 66-4,141, Reissue Revised Statutes of Nebraska, is amended to read:

66-4,141. (1) Upon receipt of the cost figures required by section 66-4,143, the department shall determine the statewide average cost by dividing the total amount paid for motor vehicle fuel, diesel fuel, and compressed fuel by the State of Nebraska, excluding any state and federal taxes, by the total number of gallons of motor vehicle fuel, diesel fuel, and compressed fuel purchased during the reporting period.

(2) After computing the statewide average cost as required in subsection (1) of this section, the department shall multiply such statewide average cost by the tax rate established pursuant to section 66-4,144.

(3) In making the computations required by subsections (1) and (2) of this section, gallonage reported shall be rounded to the nearest gallon and total costs shall be rounded to the nearest dollar. All other computations shall be made with three decimal places, except that after all computations have been made the tax per gallon shall be rounded to the nearest one-tenth of one cent.

(4) The tax rate per gallon computed pursuant to this section shall be distributed to all licensed motor vehicle fuel suppliers, distributors, wholesalers, and importers, diesel fuel suppliers, distributors, wholesalers, and importers, compressed fuel retailers, and interstate motor vehicle operators who choose to be subject to sections 66-490 to 66-494 at least five days prior to the first day of any ~~calendar quarter~~ semiannual period during which the tax is to be adjusted. Such tax rate shall be utilized in computing the tax due for the period specified by the department.

Sec. 17. Section 66-4,143, Reissue Revised Statutes of Nebraska, is amended to read:

66-4,143. (1) The materiel administrator of the Department of Administrative Services shall on or before the tenth day of the ~~second~~ fifth calendar month following the end of a ~~calendar quarter~~ semiannual period submit to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue a report providing the total cost and number of gallons of motor vehicle fuel, diesel fuel, and compressed fuel purchased by the State of Nebraska during the preceding month. In providing such information, the materiel administrator shall total only those purchases which were fifty or more gallons and shall separately identify the amount of any state or federal tax which was included in the price paid.

(2) The department shall provide any assistance the materiel administrator may need in performing his or her duties under this section.

Sec. 18. Section 66-4,144, Revised Statutes Supplement, 1997, is amended to read:

66-4,144. (1) In order to insure that an adequate balance in the Highway Restoration and Improvement Bond Fund is maintained to meet the debt service requirements of bonds to be issued by the commission under subsection (2) of section 39-2223, the Governor may call a meeting of the State Tax Board at any time in advance of the issuance of such bonds. At such meeting, the board shall set the rate of the excise tax imposed by sections 66-4,140, 66-669, and 66-6,108 for each year during which such bonds are outstanding to provide in each such year money equal in amount to not less than one hundred twenty-five percent of such year's bond principal and interest payment requirements. Such rate shall be in addition to the rate of excise tax set pursuant to subsection (2) of this section. Each such rate shall be effective from July 1 of a stated year through June 30 of the succeeding year or during such other period not longer than one year as the board determines to be consistent with the principal and interest requirements of such bonds. Such excise tax rates set pursuant to this subsection may be increased, but such excise tax rates shall not be subject to reduction or elimination unless the board has received from the Nebraska Highway Bond Commission notice of reduced principal and interest requirements for such bonds, in which event the Governor may call a meeting of the board to determine whether the rate or rates shall be changed. The new rate or rates, if any, set by the board shall become effective on the first day of the following ~~calendar quarter~~ semiannual period.

(2) In order to insure that there is maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, within fifteen days after the adjournment of each regular session of the Legislature, the board shall set the rate of the excise tax imposed by

sections 66-4,140, 66-669, and 66-6,108 which will be effective from July 1 through June 30 of the succeeding year. The rate of excise tax for a given July 1 through June 30 period set pursuant to this subsection shall be in addition to and independent of the rate or rates of excise tax set pursuant to subsection (1) of this section for such period.

(3) The Department of Roads, with assistance from the Department of Revenue, shall prepare and provide the necessary information to each member of the board at least five days before each meeting. Such information shall include, but not be limited to, the unobligated balance in the Highway Cash Fund anticipated on the subsequent June 30, monthly estimates of anticipated receipts to the Highway Cash Fund for the subsequent fiscal year, and the appropriations made from the Highway Cash Fund for the subsequent fiscal year.

(4) The board shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. The board shall then fix the rate of excise tax in an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one percent.

(5) On or before the fifteenth day of each month, the Department of Roads shall provide to each member of the board and the Clerk of the Legislature a report reflecting a comparison of the Highway Cash Fund deposits for the preceding calendar month and fiscal year to date against the projections for the same periods and the limitations of information contained in such report. The projections in the report shall be those last used by the board in setting the excise tax rate for the periods being reviewed. The report shall contain a comparison of actual receipts received to date added to any modified projections of deposits to the Highway Cash Fund for the remainder of the current fiscal year, as supplied by the Department of Roads to the board, against the appropriation for the current fiscal year. If the accumulative total deposits to the Highway Cash Fund under Chapter 66, articles 4 and 6, for the fiscal year are at any time less than ninety-eight percent or greater than one hundred four percent of the projected deposits for such period or if the actual receipts received to date added to any modified projections of deposits to the Highway Cash Fund for the current fiscal year, as supplied by the Department of Roads to the board, are less than ninety-eight percent or greater than one hundred four percent of the appropriation for the current fiscal year, the Governor may call a meeting of the board to determine whether the rate shall be changed. If such a change is required, the board shall set the new rate which shall become effective on the first day of the following ~~calendar quarter~~ semiannual period.

(6) Nothing in this section shall be construed to abrogate the duties of the Department of Roads or attempt to change any highway improvement program schedule.

Sec. 19. Section 66-678, Reissue Revised Statutes of Nebraska, is amended to read:

66-678. (1) In lieu of the expense of remitting the diesel fuel tax pursuant to the Diesel Fuel Tax Act and complying with the statutes and rules and regulations related thereto, every supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each month.

(2) Except as otherwise provided in the Diesel Fuel Tax Act, the per-gallon amount of the tax shall be added to the selling price of every gallon of such diesel fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the supplier, distributor, wholesaler, or importer as specified in the act shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in the act. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in the act.

(3) In consideration of receiving the commission provided under subsection (1) of this section, the supplier, distributor, wholesaler, or importer ~~shall be deemed to be ultimately responsible for payment of the taxes imposed under the Diesel Fuel Tax Act except as provided in section 66-674, and such supplier, distributor, wholesaler, or importer~~ shall not be entitled to any deductions, credits, or refunds arising out of such supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of diesel fuel.

Sec. 20. Section 66-680, Reissue Revised Statutes of Nebraska, is amended to read:

66-680. Every supplier, distributor, wholesaler, importer, exporter, and retailer shall prepare and maintain such records as the department reasonably requires with respect to inventories, receipts, purchases, and sales or other dispositions of diesel fuel. Except for retailers, the ~~The~~ records required by this section shall be retained for a minimum period of three years or for five years if the required returns or reports are not filed. The records required by this section for retailers shall be retained for three years. The records ~~and~~ shall be available at all reasonable times for audit and examination by the department to determine liability for the payment of the taxes and penalties under the Diesel Fuel Tax Act.

Sec. 21. Section 66-681, Reissue Revised Statutes of Nebraska, is amended to read:

66-681. (1) Except as provided in subsection (5) of this section, no motor vehicle registered for operation on the highway shall be fueled with undyed diesel fuel that has not been taxed or diesel fuel which contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low or high sulphur diesel fuel.

(2) No retailer of diesel fuel shall sell or offer to sell diesel fuel that contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low or high sulphur diesel fuel unless the fuel dispensing device is clearly marked with a notice that the fuel is dyed or chemically marked. ~~All sales of dyed diesel fuel shall be accompanied by a sales invoice or similar receipt containing a statement that the fuel contains evidence of dye or chemical marker.~~

(3) Any law enforcement officer, any carrier enforcement officer, or any agent of the department who has reasonable grounds to suspect a violation of the Diesel Fuel Tax Act may inspect the fuel in the fuel supply tank of any motor vehicle or the fuel storage facilities and dispensing devices of any diesel fuel retailer to determine compliance with this section. Fuel inspections may also be conducted in the course of safety or other inspections authorized by law.

(4) Any person who violates any provision of this section or who refuses to permit an inspection authorized by this section shall be guilty of a Class IV misdemeanor and shall be subject to an administrative penalty of two hundred fifty dollars for the first such violation. If the person had another violation under this section within the last five years, the person shall be subject to an administrative penalty of five hundred dollars for the current violation. If the person had two or more violations under this section within the last five years, the person shall be subject to an administrative penalty of one thousand dollars for ~~each~~ the current violation. All such penalties shall be assessed against the registered owner of the vehicle as of the date of the violation. The penalty shall ~~to~~ be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(5) Any motor vehicle owned or leased by any state, county, municipality, or other political subdivision may be operated on the highways of this state with dyed diesel fuel, except high sulphur diesel fuel dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545, if the taxes imposed by the act are paid to the department by the state, county, municipality, or other political subdivision. The state, county, municipality, or other political subdivision shall pay the tax and file a return concerning the tax to the department in like manner and form as is required under section 66-674.

Sec. 22. Section 66-6,113, Reissue Revised Statutes of Nebraska, is amended to read:

66-6,113. (1) In lieu of the expense of remitting the compressed fuel tax and complying with the statutes and rules and regulations related thereto, every retailer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each tax period.

(2) Except as otherwise provided in the Compressed Fuel Tax Act, the per-gallon amount of the tax shall be added to the selling price of every gallon of such compressed fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for

the purpose of convenience and facility to the consumer. The levy and assessment on the retailer as specified in the act shall be as an agent of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in the act. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in the act.

(3) In consideration of receiving the commission provided under subsection (1) of this section, the retailer shall not be entitled to any deductions, credits, or refunds arising out of such retailer's failure or inability to collect any such taxes from any subsequent purchaser of compressed fuel.

Sec. 23. Section 66-713, Reissue Revised Statutes of Nebraska, is amended to read:

66-713. (1) Any person operating as a retailer of motor vehicle fuel or diesel fuel in this state shall obtain a license from the department. A separate license shall be issued for each retail location operated by such person.

(2)(a) Every retailer shall keep a complete and accurate record of all motor vehicle fuel, to be based on gross gallons, received, purchased, or obtained, which record shows the name and address of the person from whom each transfer or purchase of motor vehicle fuel was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and the total amount of motor vehicle fuel sold at retail during the month.

(b) The retailer shall also record all sales of nonhighway use motor vehicle fuel to include the date of sale, the quantity sold, the identity of the purchaser, and the license number of the purchaser.

(3) The retailer shall maintain separate records containing the information required in subdivision (2)(a) of this section for diesel fuel. The records shall also include all exempt sales of diesel fuel, the date of sale, the quantity sold, and the identity of the purchaser.

~~(4) The retailer shall file a monthly report containing all or a portion of the information in this section as required by the department. The report shall be due on the twentieth day of the following month.~~

Sec. 24. Section 66-718, Revised Statutes Supplement, 1997, is amended to read:

66-718. (1) The department may require such other information as it deems necessary on any report, return, or other statement under the motor fuel laws. Licensees under the International Fuel Tax Agreement Act shall file reports as required by the agreement under section 66-1406.

(2) Beginning January 1, 1999, the ~~The~~ department ~~may~~ shall require any of the reports, returns, or other filings due from suppliers and terminal operators under the motor fuel laws to be made electronically, except that such requirement shall not apply to any person normally reporting less than one hundred thousand gallons of motor fuel a month.

(3) The department shall prescribe the formats or procedures for electronic filing. To the extent not inconsistent with requirements of the motor fuel laws, the department shall adopt formats and procedures that are consistent with other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

Sec. 25. A person, other than a responsible person, may file a claim with the State Claims Board under the State Miscellaneous Claims Act for (1) property damage caused by a release and (2) reasonable costs directly incurred due to uninhabitability of a dwelling or unfitness of a water supply caused by a release. For purposes of claims made under this section, property damage means damage to real estate or water well contaminated as a result of a release. Claims approved under this section shall be approved on the basis of merit and eligibility as set forth in section 66-1525. Claims approved under this section shall be reduced by any third-party claim, as defined in section 66-1515.01, for the same damage. A claim approved under this section shall not be considered to be from a collateral source in a judicial proceeding for the same damage. Any claim under this section shall be paid from the Petroleum Release Remedial Action Cash Fund within sixty days after the claim is approved pursuant to section 81-8,300, subject to section 66-1523. A claim approved under this section shall not exceed two hundred thousand dollars and the total claims paid for property damage shall not exceed eight hundred thousand dollars per occurrence.

Sec. 26. Section 66-1501, Reissue Revised Statutes of Nebraska, is amended to read:

66-1501. Sections 66-1501 to 66-1530 and section 25 of this act shall be known and may be cited as the Petroleum Release Remedial Action Act.

Sec. 27. Section 66-1518, Revised Statutes Supplement, 1997, is amended to read:

66-1518. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of fixtures and tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Other procedures necessary to carry out the act.

(2) Such rules and regulations shall take into account the recommendations for rules and regulations developed by the technical advisory committee established pursuant to section 81-15,189.

(3) The ~~director~~ Director of Environmental Quality shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred in completing all remedial actions ordered; (b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(4) The ~~department~~ Department of Environmental Quality shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

(5) The ~~department~~ Department of Environmental Quality and the Department of Insurance, in consultation with interested parties, shall report to the Legislature ~~at the beginning of every third year during which the fund is in existence~~ on or before October 1, 1998, on the availability and cost of private insurance to insure the damages for which payment may be made from the fund.

Sec. 28. Section 66-1519, Reissue Revised Statutes of Nebraska, is amended to read:

66-1519. There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(1) The fees imposed by sections 66-1520 and 66-1521;

(2) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(3) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

Money in the fund may only be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated

representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before ~~December 31, 1990~~ June 30, 1999, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; ~~and~~ (g) expenses incurred by the technical advisory committee created in section 81-15,189 in carrying out its duties pursuant to section 81-15.190; and (h) claims approved by the State Claims Board authorized under section 25 of this act.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 29. Section 66-1519.01, Reissue Revised Statutes of Nebraska, is amended to read:

66-1519.01. (1) Prior to December 31, 1996, the department may authorize the State Treasurer to transfer funds from the Petroleum Release Remedial Action Cash Fund to the Wastewater Treatment Facilities Construction Loan Fund in such amount as determined by the department to be necessary to satisfy the state match requirement necessary to obtain federal capitalization grants under the federal Clean Water Act, as defined in section 81-15,149. The department may enter into contracts for repayment of such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such transfers. Such contracts may allow repayments to be completed on or after December 31, 1996.

(2) Prior to December 31, 1996, the department may authorize the State Treasurer to deposit amounts received from the Wastewater Treatment Facilities Construction Loan Fund, including amounts due from federal capitalization grants for the benefit of the Wastewater Treatment Facilities Construction Loan Fund, in the Petroleum Release Remedial Action Cash Fund. The department may authorize the State Treasurer to repay such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such deposits, and the department may enter into contracts with respect thereto for the benefit of the Wastewater Treatment Facilities Construction Loan Fund. The terms of any such contracts or authorizations may end on or after December 31, 1996.

(3) The department may agree, in the contracts authorized under subsection (2) of this section, that specific amounts or sources of money in the Petroleum Release Remedial Action Cash Fund shall be obligated or pledged to the repayment of deposits from the Wastewater Treatment Facilities Construction Loan Fund, ~~and not treated as part of the unobligated balance for the purposes of section 66-1522,~~ and that some or all of such specified amounts shall not be available to provide reimbursement pursuant to section 66-1523 or payments pursuant to section 66-1529.01 or 66-1529.02. Such specified amounts shall not exceed the amounts the department deems reasonably necessary to provide adequate security for the repayment of deposits. Any such pledge shall be valid and binding from the time the pledge is made, the amounts or sources of money so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, regardless of whether the parties have notice thereof, and no such pledge agreement need be recorded.

Sec. 30. Section 66-1520, Reissue Revised Statutes of Nebraska, is amended to read:

66-1520. (1) ~~On or before August 1, 1989, all owners of operating tanks registered in accordance with section 81-15,121 shall pay a petroleum release remedial action fee to the State Fire Marshal for each registered tank. The fee shall be based on the size of the tank as follows:~~

~~(a) Up to two thousand five hundred gallons, fifty dollars per tank;~~

~~(b) Two thousand five hundred one to five thousand gallons, seventy-five dollars per tank;~~

~~(c) Five thousand one to seven thousand five hundred gallons, one hundred dollars per tank; and~~

~~(d) Over seven thousand five hundred gallons, one hundred fifty dollars per tank.~~

~~(2)~~ On ~~January 1, 1992, and~~ each January 1, ~~thereafter,~~ all owners of operating tanks registered in accordance with section 81-15,121 shall pay a

petroleum release remedial action fee of ~~seventy-five~~ ninety dollars to the State Fire Marshal for each registered tank.

(2) ~~(3)~~ The State Fire Marshal shall remit the fees received pursuant to this section to the State Treasurer for credit to the fund.

Sec. 31. Section 66-1521, Revised Statutes Supplement, 1997, is amended to read:

66-1521. (1) A petroleum release remedial action fee is hereby imposed upon the refiner, importer, or supplier who first sells, offers for sale, or uses petroleum within this state, except that the fee shall not be imposed on petroleum that is exported or packaged in individual containers of one hundred ten gallons or less and intended for sale or use in this state. The amount of the fee shall be ~~three-tenths~~ nine-tenths of one cent per gallon on motor vehicle fuels as defined in section 66-482 and ~~one-tenth~~ three-tenths of one cent per gallon on petroleum other than such motor vehicle fuels. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 25 of this act; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. ~~plus any additional amount authorized by section 66-1522.~~ The fee shall be paid by all refiners, importers, and suppliers subject to the fee by filing a monthly return on or before the twentieth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported. The fee paid under this subsection shall not be eligible for the credit under section 66-4,124.

(2) No refiner, importer, or supplier shall sell, offer for sale, or use petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to such sale, offer for sale, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any refiner, importer, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The division shall adopt and promulgate rules and regulations necessary to carry out this section.

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed twenty-eight thousand dollars for each fiscal year. The twenty-eight thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The division shall collect the fee imposed by subsection (1) of this section.

Sec. 32. Section 66-1523, Reissue Revised Statutes of Nebraska, is amended to read:

66-1523. (1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons ~~in an amount not to exceed nine hundred seventy-five thousand dollars per occurrence~~ for the cost of remedial action for releases reported after July 17, 1983, and on or before ~~December 31, 1998~~ June 30, 1999, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 25 of this act and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars,

and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person ~~in an amount not to exceed nine hundred eighty-five thousand dollars per occurrence~~ for the cost of remedial action for releases reported after July 17, 1983, and on or before ~~December 31, 1998~~ June 30, 1999, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 25 of this act and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, 1999.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Sec. 33. Section 66-1525, Reissue Revised Statutes of Nebraska, is amended to read:

66-1525. (1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before ~~December 31, 1998~~ June 30, 1999, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Sec. 34. Section 66-1529.01, Reissue Revised Statutes of Nebraska, is amended to read:

66-1529.01. ~~Any tangible personal property shall be owned proportionately by the responsible person and the department based upon the amount of fund revenue used in the remedial action.~~

~~If the department and the responsible person agree on the value of tangible personal property which is no longer needed for remedial action, the department shall pay to the responsible person his or her share of the value based upon the percentage paid by that person of the cost of the remedial action. Payment may be made either from the proceeds of the sale of the property or directly from the fund. Upon payment to the responsible person, title to the property shall vest in the state, and the property may be used in other remedial actions, stored until needed, maintained, or sold. The department may require responsible persons to use previously used equipment or property in remedial actions pursuant to procedures adopted under section 66-1518. If the responsible person and the department cannot agree upon the fair market value or salvage value of the property, the property shall be sold or otherwise liquidated and the responsible person shall receive his or her share of the proceeds. The department's portion of proceeds of the sale of the property shall be deposited in the fund.~~ (1) The department shall reimburse the responsible person from the fund for damages to fixtures and costs of tangible personal property related to the remedial action as set forth in subsections (2) and (3) of this section.

(2) The responsible person shall be reimbursed from the fund for reasonable repair or replacement costs approved in a remedial action plan for fixtures which are damaged by the remedial action, except in the case of intentional acts or gross negligence by the responsible person or his or her agents. Costs for removal of fixtures are eligible for reimbursement at the time of site closure if such fixtures were a part of the approved remedial action. All fixtures reimbursed by the fund which are attached to real property are owned by the responsible person or the property owner, if different from the responsible person.

(3) The responsible person shall be reimbursed from the fund for the value of tangible personal property purchased by the responsible person and used in the remedial action. Reimbursement shall be according to the current schedule of reasonable rates made available by the department pursuant to section 66-1518. All tangible personal property reimbursed by the fund is owned by the state. The department may use tangible personal property reimbursed by the fund in other remedial actions, store such property until needed, maintain the property, or sell or dispose of such property in a manner beneficial to the fund. Any proceeds from the sale or disposal of such property shall be remitted to the State Treasurer for credit to the fund.

Sec. 35. Section 66-1529.02, Reissue Revised Statutes of Nebraska, is amended to read:

66-1529.02. (1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before ~~December 31, 1998~~ June 30, 1999, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If

such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Sec. 36. Section 81-8,297, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,297. The State Claims Board shall have the power and authority to receive, investigate, and otherwise carry out its duties with regard to (1) all claims under the State Miscellaneous Claims Act, (2) all claims under sections 25-1802 to 25-1807, (3) all claims under the State Contract Claims Act, ~~and~~ (4) all requests on behalf of any department, board, or commission of the state for waiver or cancellation of money or charges when necessary for fiscal or accounting procedures, and (5) all claims filed under section 25 of this act. All such claims or requests and supporting documents shall be filed with the Risk Manager and shall be designated by number, name of claimant as requester, and short title. Nothing in this section shall be construed to be a waiver of the sovereign immunity of the state beyond what is otherwise provided by law.

The board shall adopt and promulgate such rules and regulations as are necessary to carry out the powers granted in this section. The Attorney General shall be the legal advisor to the board for purposes of this section and may authorize the assistant attorney general in charge of the Claims Division to perform any of his or her duties under this section.

Sec. 37. Section 81-8,299, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,299. The State Claims Board shall, for the purposes contemplated by the State Contract Claims Act, the State Miscellaneous Claims Act, and sections 25-1802 to 25-1807 and section 25 of this act, have the right, power, and duty to (1) administer oaths, (2) compel the attendance of witnesses and the production of books, papers, and documents and issue subpoenas for such purposes, and (3) punish the disobedience of such a subpoena or subpoenas, the refusal of a witness to be sworn or testify, or the failure to produce books, papers, and documents, as required by such subpoena or subpoenas so issued, as contempt, in the same manner as are officers who are authorized to take depositions.

Sec. 38. Section 81-8,301, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,301. Any award made under the State Contract Claims Act, the State Miscellaneous Claims Act, or section 25-1806 or section 25 of this act and accepted by the claimant shall be final and conclusive on all officers of the State of Nebraska except when procured by means of fraud. The acceptance by the claimant of such award shall be final and conclusive on the claimant and shall constitute a complete release by the claimant of any claim against the state and against the employee of the state whose act or omission gave rise to the claim by reason of the same subject matter.

Sec. 39. Section 81-15,117, Revised Statutes Supplement, 1996, is amended to read:

81-15,117. Sections 81-15,117 to 81-15,127 and section 45 of this act shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

Sec. 40. Section 81-15,119, Revised Statutes Supplement, 1996, is amended to read:

81-15,119. For purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, unless the context otherwise requires:

(1) Operator shall mean any person in control of, or having responsibility for, the daily operation of a tank but shall not include a person described in subdivision (2)(b) of this section;

(2)(a) Owner shall mean:

(i) In the case of a tank in use on July 17, 1986, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances; and

(ii) In the case of any tank in use before July 17, 1986, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(b) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:

(i) Holds indicia of ownership primarily to protect his or her

security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(ii) Acquires ownership of a tank or the property on or within which a tank is or was located:

(A) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(B) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(c) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act;

(3) Permanent abandonment shall mean that a tank has been taken permanently out of service as a storage vessel for any reason or has not been used for active storage for more than one year;

(4) Person shall mean any individual, firm, joint venture, partnership, limited liability company, corporation, association, political subdivision, cooperative association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof owning or operating a tank;

(5) Regulated substance shall mean:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under subtitle C of such act; and

(b) Any petroleum product, including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquefied natural gas;

(6) Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank or any overfilling of a tank into ground water, surface water, or subsurface soils;

(7) Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action which is reasonable and necessary;

(8) Risk-based corrective action shall mean an approach to petroleum release corrective actions in which exposure and risk assessment practices, including appropriate consideration of natural attenuation, are integrated with traditional corrective actions to ensure that appropriate and cost-effective remedies are selected that are protective of human health and the environment;

~~(8)~~ (9) Tank shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. Tank shall not include any:

(a) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for consumptive use on the premises where stored, subject to a one-time fee;

(b) Tank with a storage capacity of one thousand one hundred gallons or less used for storing heating oil for consumptive use on the premises where stored, subject to a one-time fee;

(c) Septic tank;

(d) Tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the tank is situated on or above the surface of the floor;

(e) Pipeline facility, including gathering lines:

(i) Regulated under the Natural Gas Pipeline Safety Act of 1979, 49 U.S.C. app. 1671;

(ii) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. app. 2001; or

(iii) Which is an intrastate pipeline regulated under state law comparable to the laws prescribed in subdivisions (e)(i) and (e)(ii) of this subdivision;

(f) Surface impoundment, pit, pond, or lagoon;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storm water or wastewater collection system; and

~~(9)~~ (10) Temporary abandonment shall mean that a tank will be or has been out of service for at least one hundred eighty days but not more than one year.

Sec. 41. Section 81-15,120, Revised Statutes Supplement, 1996, is amended to read:

81-15,120. Any farm or residential tank or tank used for storing heating oil as defined in subdivisions ~~(8)(a)~~ (9)(a) and (b) of section 81-15,119 shall be registered with the State Fire Marshal. The registration shall be accompanied by a one-time fee of five dollars and shall be valid until the State Fire Marshal is notified that a tank so registered has been permanently closed. Such registration shall specify the ownership of, location of, and substance stored in the tank to be registered. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Petroleum Products and Hazardous Substances Storage and Handling Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the Department of Environmental Quality to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, including the provision of matching funds required by Public Law 99-499 for actions otherwise authorized by the act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 42. Section 81-15,121, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,121. (1) A person shall not (a) maintain or use any tank for the storage of regulated substances, (b) install any new tank, or (c) permanently close a tank without first securing a permit from the State Fire Marshal.

(2) A fee shall not be charged for a permit under subdivision (1)(a) or (c) of this section. The fee for a permit for installation shall be fifty dollars. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund.

(3) All owners of operating tanks, except those provided for in subsection (4) of this section, shall annually register each tank. All registration permits shall expire on December 31 of the year for which the permit was issued. The registration fee shall be ~~twenty-five~~ thirty dollars per tank. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund. Such permits shall contain the information specified in subsection (5) of this section.

(4) In the case of tanks permanently abandoned on or after January 1, 1974, an annual permit shall not be required and an initial registration permit shall be sufficient.

(5) The application for a registration permit shall be provided by and filed with the State Fire Marshal's office and shall require, but not be limited to, the following information:

(a) The date the tank was placed in or taken out of operation;

(b) The age of the tank;

(c) The size, type, and location of the tank; and

(d) The type of substances stored in the tank and the quantity of such substances remaining in the tank if the tank has been permanently closed.

(6) The registration permit fee collected pursuant to this section shall be deposited in the Underground Storage Tank Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the State Fire Marshal to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 43. Section 81-15,124, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,124. Any reported or suspected release of a regulated substance from any tank shall be investigated consistent with principles of risk-based corrective action by the State Fire Marshal and the Department of Environmental Quality. In the event that the State Fire Marshal or the department finds an adverse effect caused by a release of a regulated substance from a tank:

(1) The State Fire Marshal shall (a) determine the immediate danger presented by the release, (b) take all steps necessary to assure immediate public safety, and (c) assist the department in determining the source of the release and taking all steps necessary to ensure that the release is halted;

(2) By order of the department, the owner or operator of the tank

causing the release shall, after securing the source of the release, develop a plan for remedial action to be approved by the department. The department shall inform the owner or operator of its approval or disapproval of a plan for remedial action within one hundred twenty days after receipt of a remedial action plan which contains all required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved; and

(3) The approved remedial action plan shall then be carried out by the owner or operator of the tank causing the release. All expenses incurred during the remedial action shall be paid by the owner or operator subject to reimbursement pursuant to the Petroleum Release Remedial Action Act.

If it is determined that the source of the release is unknown or that the owner or operator of the facility causing the release is unknown or unavailable, a remedial action plan shall be developed by or under the direction of the department. Such remedial action plan shall be developed and carried out by the department with money from the Petroleum Products and Hazardous Substances Storage and Handling Fund if funds are available. If at a later date the owner or operator of the facility which caused the release is determined, he or she shall be responsible for remedial action costs incurred on his or her behalf subject to reimbursement pursuant to the Petroleum Release Remedial Action Act. Any money received from such person shall be deposited in the Petroleum Products and Hazardous Substances Storage and Handling Fund.

Sec. 44. Section 81-15,124.01, Revised Statutes Supplement, 1996, is amended to read:

81-15,124.01. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations consistent with principles of risk-based corrective action governing all phases of remedial action to be taken by owners, operators, and other persons in response to a release or suspected release of a regulated substance from a tank. Such rules and regulations shall include:

(a) Provisions governing remedial action to be taken by owners and operators pursuant to section 81-15,124;

(b) Provisions by which the Department of Environmental Quality may determine the cleanup levels to be achieved through soil or water remediation and the applicable limitations for air emissions at the petroleum release site or occurring by reason of such remediation; and

(c) Such other provisions necessary to carry out the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) In developing rules and regulations, the Environmental Quality Council shall take into account (a) risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action applicable to petroleum release sites and (b) rules and regulations proposed by the technical advisory committee established in section 81-15,189.

Sec. 45. The Department of Environmental Quality shall provide briefing on the use by the department of risk-based corrective action. The briefing shall be directed toward comprehension and knowledge of the use by the department of risk-based corrective action, and a fee may be charged for attending the briefing which shall be remitted to the State Treasurer for credit to the Petroleum Release Remedial Action Cash Fund. The department may contract for providing such briefing and shall maintain and make available to the public a list of attendees.

Sec. 46. Section 81-15,162.02, Revised Statutes Supplement, 1997, is amended to read:

81-15,162.02. (1) The department shall deduct and withhold from the Scrap Tire Reduction and Recycling Incentive Fund an amount sufficient to reimburse itself for its costs of administration of the fund.

(2) The department may disburse (a) to any person ~~a percentage~~ up to one hundred percent of costs incurred in cleaning up collection sites existing on June 11, 1997, if such cleanup is complete no later than June 1, 1999, or (b) to a political subdivision up to one hundred percent of costs incurred in cleaning up collection sites existing on June 11, 1997, or created on or after such date if such cleanup is complete no later than June 1, 1999.

~~If the cleanup is completed by August 31, 1998, the disbursement may be up to one hundred percent of the costs. The remaining cleanups under this section completed by June 1, 1999, may receive disbursements of up to seventy percent of the costs. All disbursements under this subsection are subject to~~

~~availability of money in the fund.~~

(3) Other eligible categories of disbursement which may be made from the fund to any person who applies to the department under subsection (4) of this section are:

(a) Studies to determine economic and technical feasibility of uses of scrap tire or tire-derived scrap tire product, with disbursements of up to one hundred percent of the cost of the study, depending on factors set out in subsection (4) of this section;

(b) Reimbursement for the purchase of tire-derived products which utilize a minimum of twenty-five percent recycled tire content, with disbursements not exceeding twenty-five percent of the product's retail cost;

(c) Participation in the capital costs of buildings, equipment, and other capital improvement needs or startup costs for scrap tire processing or manufacturing of tire-derived products, with disbursements not exceeding fifty percent of the costs or five hundred thousand dollars, whichever is less;

(d) Participation in the capital costs of equipment, buildings, or other startup costs needed to establish collection sites or to collect and transport scrap tires, with disbursements not exceeding fifty percent of such costs;

(e) Cost-sharing for the manufacturing of tire-derived products, with disbursements not exceeding twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(f) Cost-sharing for the processing of scrap tires, with disbursements not exceeding twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually; and

(g) Cost-sharing for the use of scrap tires for civil engineering applications for specified projects, with disbursements not exceeding twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually.

(4) The department shall develop an application form to be used by applicants for disbursement for cleanup costs as described in subsection (2) of this section or for disbursement of funds under subsection (3) of this section. The department shall prepare and distribute a schedule of eligible activities, conditions of funding, and application procedures, including any matching requirements, for disbursements made under this section. Decisions by the director on recipients of funding shall be made in a manner which furthers the purposes of recycling and reducing the number of scrap tires in Nebraska. In order to further the purposes of section 81-15,159.01, the director shall give preference to projects which utilize scrap tires generated in Nebraska.

(5) The director may deny any application which he or she determines (a) is not in conformance with this section, (b) does not reflect reasonable costs for the type of project proposed, (c) contains inaccurate, incomplete, or misleading information in the application, or (d) would require the expenditure of funds beyond the fund's unobligated balance or any other reason which the director determines is necessary to properly administer this section.

No disbursements may be made under this section for scrap tire processing related to tire-derived fuel. The director may provide partial funding to any applicant for any of the reasons set out in this subsection.

(6) All disbursements made under this section shall be formalized by a written agreement between the department and all recipients of the disbursement. The agreement may include, but need not be limited to, the following conditions designed to protect the fund and ensure completion of the project: (a) Mechanics of funding disbursement; (b) any bidding requirements; (c) completion timelines for any deliverables; (d) record-keeping and reporting requirements; (e) security interest and insurance requirements on equipment; (f) forfeiture and repayment of funds; and (g) other conditions necessary or desirable to carry out this section.

Sec. 47. Section 81-15,189, Revised Statutes Supplement, 1996, is amended to read:

81-15,189. In order to implement the Petroleum Products and Hazardous Substances Storage and Handling Act and the Petroleum Release Remedial Action Act, the Director of Environmental Quality shall appoint a technical advisory committee to work with the Department of Environmental Quality. The duties of the committee are advisory only. Committee members shall include, but not be limited to:

(1) The Director of Environmental Quality or his or her designee;

(2) The State Fire Marshal or his or her designee;

(3) The executive director of the Nebraska Petroleum Marketers and Convenience Store Association or his or her designee;

(4) The executive director of the League of Nebraska Municipalities

or his or her designee;

(5) The executive director of the Nebraska Association of County Officials or his or her designee;

(6) The executive director of the Nebraska Petroleum Council or his or her designee;

(7) The executive director of the American Consulting Engineers Council of Nebraska or his or her designee;

(8) The executive director of the Nebraska Chamber of Commerce and Industry or his or her designee;

(9) The executive director of the Associated Builders and Contractors or his or her designee;

(10) The executive director of the Nebraska Cooperative Council or his or her designee; ~~and~~

(11) A representative of the Department of Health and Human Services or a representative of the Department of Health and Human Services Regulation and Licensure; and

~~(11)~~ (12) A member of the public representing environmental interests.

Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 48. Section 81-15,190, Revised Statutes Supplement, 1996, is amended to read:

81-15,190. (1) The technical advisory committee created in section 81-15,189 shall meet at least once each quarter of the calendar year, as determined by the Department of Environmental Quality.

(2) The technical advisory committee shall:

(a) Annually review and make recommendations to the department on the current schedule of reasonable rates made available to the public by the department under section 66-1518;

(b) Review summaries of reimbursement determinations;

(c) Review and make recommendations to the department on the guidelines for pay-for-performance programs or any other innovative contracting methods;

(d) Review and make recommendations to the department on the department's audit programs in conjunction with the Petroleum Release Remedial Action Act;

(e) Review and make recommendations to the department on any other activities under the Petroleum Release Remedial Action Act and the Petroleum Products and Hazardous Substances Storage and Handling Act; and ~~make recommendations to the Natural Resources Committee of the Legislature relative to (a) whether those holding themselves out as consultants for remedial action projects should be certified and (b) the use of land in areas where contamination is left in place under risk-based corrective action.~~

~~(2) The technical advisory committee shall make recommendations for draft rules and regulations to implement the Petroleum Products and Hazardous Substances Storage and Handling Act and amendments to existing rules and regulations to implement the Petroleum Release Remedial Action Act. The technical advisory committee shall take~~

(f) Take into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action as applied at petroleum release sites. ~~The department shall submit the committee's recommendations regarding rules and regulations to the Environmental Quality Council for consideration.~~

~~(3) In an effort to assist the department in classifying petroleum contaminated sites and in planning for the remedial action at such sites, the technical advisory committee should make:~~

~~(a) Recommendations to the department relative to revisions to guidance manuals, protocols, or any other material generated by the department and used to administer the Petroleum Products and Hazardous Substances Storage and Handling Act and the Petroleum Release Remedial Action Act;~~

~~(b) Recommendations regarding revisions to the current site classification system, taking into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guide for risk-based corrective action applied at petroleum release sites;~~

~~(c) Recommendations for a guidance manual directing the collection~~

~~of specific information at the time of tank excavation for purposes of assessing preliminary technical data and to more quickly determine appropriate classification of a site; and~~

~~(d) Recommendations regarding numbers of monitoring wells required in conjunction with site assessment and cleanup.~~

~~(4) The technical advisory committee shall make recommendations to the department regarding:~~

~~(a) A reasonable number of remedial actions per year to be undertaken at petroleum release sites;~~

~~(b) A reasonable number of evaluations at petroleum release sites to be conducted per year to determine whether appropriate cleanup levels have been met and the site closed; and~~

~~(c) A reasonable number of monitored petroleum sites to be evaluated per year for purposes of determining whether monitoring requirements should be minimized or terminated and the site closed.~~

~~(5) The technical advisory committee shall submit a written report to the department detailing the committee's recommendations regarding rules, regulations, and other recommendations listed in this section.~~

~~(6)~~ (3) The technical advisory committee shall cease to exist on March 1, ~~1998~~ 2002.

Sec. 49. Sections 49 to 89 of this act shall be known and may be cited as the Geologists Regulation Act.

Sec. 50. In order to safeguard life, health, and property and to promote the public welfare, the profession of geology is declared to be subject to regulation in the public interest. It is unlawful for any person to (1) practice or offer to practice geology in this state, (2) use in connection with his or her name or otherwise assume the title professional geologist, or (3) advertise any title or description tending to convey the impression that he or she is a licensed geologist, unless the person is duly licensed or exempt from licensure under the Geologists Regulation Act. The practice of geology and use of the title geologist is a privilege granted by the state.

Sec. 51. For purposes of the Geologists Regulation Act, the definitions found in sections 52 to 67 of this act shall be used.

Sec. 52. Board means the Board of Geologists.

Sec. 53. Consulting geologist means a professional geologist whose principal occupation is the independent practice of geology; whose livelihood is obtained by offering geologic services to the public; who serves clients as an independent fiduciary; who is devoid of public, commercial, and product affiliation that might tend to imply a conflict of interest; and who is cognizant of his or her public and legal responsibilities and is capable of discharging them.

Sec. 54. Continuing education means the process of training and developing knowledge related to a profession after licensure is attained.

Sec. 55. Direct supervision means the degree of supervision by a person overseeing the work of another person by which the supervisor has control over and detailed professional knowledge of the work being done.

Sec. 56. Emeritus, referring to a geologist, means a professional who relinquishes or does not renew his or her licensure and who is approved by the board to receive publications and use the honorary title emeritus.

Sec. 57. Geologist means a person who is qualified to practice geology by reason of special knowledge and use of the earth sciences and the principles of geology and geologic data collection and analysis acquired by geologic education and geologic experience as provided in section 86 of this act.

Sec. 58. Geology means the science which includes treatment of the earth and its origin and history, in general; investigation of the earth's constituent rocks, soils, minerals, solids, fluids including underground waters, gases, and other materials; the study of the natural agents, forces, and processes which cause changes in the earth or on its surface; and the application of this knowledge of the earth.

Sec. 59. Geology specialty means a branch of geology which has been recognized for the purposes of licensure, including, but not limited to, environmental geology, engineering geology, geophysics, hydrogeology, petroleum geology, mining geology, and structural geology.

Sec. 60. Good character means such character as will enable a person to discharge the fiduciary duties of a geologist to his or her client and to the public for the protection of the public health, safety, and welfare. Evidence of inability to discharge such duties includes the commission of an offense justifying discipline.

Sec. 61. Occasional, part-time, or consulting services means services not provided by a full-time member of an organization engaged in

geology.

Sec. 62. Organization includes a partnership, limited liability company, corporation, or other form of business entity.

Sec. 63. Practice of geology means any service or creative work if the adequate performance of the service or work requires geologic education, training, and experience to include such services or creative work as geological consultation, investigation, planning, surveying, mapping, and inspection of geological work, and the responsible supervision thereof, the performance of which is related to public welfare or the safeguarding of life, health, property, and the environment, and teaching, including research and service, of advanced geological subjects. A person shall be construed to practice or offer to practice geology if he or she: (1) Practices any branch of the profession of geology; (2) by verbal claim, sign, advertisement, letterhead, or card or in any other way, represents himself or herself to be a professional geologist; (3) through the use of some other title, implies that he or she is licensed under the Geologists Regulation Act; or (4) holds himself or herself out as able to perform or does perform any geologic service or work recognized by the board as the practice of geology.

Sec. 64. Professional geologist means a geologist who has a current certificate of licensure issued by the board.

Sec. 65. Registration (or licensure) means a certificate of registration (or licensure) issued by the board. For the purposes of the Geologists Regulation Act, license and registration have the same meaning.

Sec. 66. Responsible charge means direct control, direction, and personal supervision by use of initiative and independent judgment for geological work.

Sec. 67. Technical submissions means designs, drawings, specifications, studies, and other technical reports.

Sec. 68. (1) The Board of Geologists is created to administer the Geologists Regulation Act. The board may use any funds available to obtain suitable office space within Lincoln, Nebraska, for the board. The board shall consist of seven members appointed by the Governor for terms of five years each, ending on the last day of February. The members shall include one education member appointed pursuant to subsection (2) of this section and one public member. All members of the board shall be professional geologists with the exception of the one public member. Each member shall hold office after the expiration of his or her term until his or her successor is duly appointed and qualified. The length of the initial terms shall be staggered, as determined by the board. The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies on the board, however created, shall be filled for the unexpired term by appointment by the Governor.

(2) The membership of the board shall include one education member who is licensed in geology representing the professional faculty of the geology departments, including the Conservation and Survey Division, all within the University of Nebraska, as recommended by the president of the university, and appointed by the Governor.

(3) The membership of the board shall include one public member appointed by the Governor. The appointment is for five years.

(4) The board may designate a former member of the board as an emeritus member. Emeritus member status, when conferred, must be renewed annually. The emeritus member shall be a nonvoting member.

Sec. 69. Each member of the board shall be a citizen of the United States and a resident of the State of Nebraska for at least one year immediately preceding his or her appointment. Each professional member shall have been engaged in the active practice of geology for at least ten years, shall have had responsible charge of work for at least five years at the time of his or her appointment, and shall be licensed in geology. Each member of the board shall receive as compensation the same per diem and travel expenses as other state employees for each day actually spent in traveling to and from and while attending sessions of the board and its committees or authorized meetings of the National Association of State Boards of Geology, or their subdivisions or committees, and all necessary expenses incident to the performance of his or her duties under the Geologists Regulation Act as provided in sections 81-1174 to 81-1177.

Sec. 70. Each member of the board shall receive a certificate of appointment from the Governor and, before beginning the term of office, shall file with the Secretary of State the constitutional oath of office. The board or any committee of the board is entitled to the services of the Attorney General in connection with the affairs of the board, and the board may compel the attendance of witnesses, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction. The Attorney General shall

act as legal advisor to the board and render such legal assistance as may be necessary in carrying out the Geologists Regulation Act. The board may employ counsel and necessary assistance to aid in carrying out the act. The board shall adopt and have an official seal, which shall be affixed to all certificates of licensure granted, and shall adopt and promulgate rules and regulations to carry out the act.

Sec. 71. The board shall hold at least one regular meeting each year. Special meetings shall be held as provided in the rules and regulations and at such places as the board elects. Notice of all meetings shall be given in such manner as provided in the rules and regulations. The board shall elect annually at its first meeting after March 1, from its members, a chairperson, vice-chairperson, and secretary. A quorum of the board shall consist of not less than five members.

Sec. 72. The Geologists Regulation Fund is created. The secretary of the board shall receive and account for all money derived from the operation of the Geologists Regulation Act. The board shall remit the money to the State Treasurer for credit to the Geologists Regulation Fund, which shall be continued from year to year and shall be drawn against only as provided for in this section and, when reappropriated for the succeeding biennium, shall not revert to the General Fund. All expenses certified by the board as properly and necessarily incurred in the discharge of duties, including compensation and administrative staff, and any expense incident to the administration of the act relating to other states, shall be paid out of the fund. Warrants for the payment of expenses shall be issued by the Director of Administrative Services and paid by the State Treasurer upon presentation of vouchers regularly drawn by the chairperson and secretary of the board and approved by the board. At no time shall the total amount of warrants exceed the total amount of the fees collected under the act and to the credit of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 73. The secretary of the board shall publish a complete roster showing the names and last-known addresses of all professional geologists at intervals as established by board rules and regulations. The secretary shall file the roster with the Secretary of State and may mail a copy to each person so licensed as well as county and municipal officials. The secretary may also sell or distribute copies of the roster to the public.

Sec. 74. (1) The Legislature hereby finds and declares that a code of practice established by the board by which the members could govern their professional conduct would be beneficial to the state and would safeguard the life, health, and property of the citizens of this state.

(2) The code of practice established by this section shall include provisions on:

(a) Professional competence;

(b) Conflict of interest;

(c) Full disclosure of financial interest;

(d) Full disclosure of matters affecting public safety, health, and welfare;

(e) Compliance with laws;

(f) Professional conduct and good character standards; and

(g) Practice of geology.

(3) The board may establish such code of practice through rules and regulations adopted and promulgated by the board.

(4) The board may publish commentaries regarding the code of practice. Such commentaries shall explain the meaning of interpretations given to the code by the board.

(5) The board shall have the power to suspend or revoke a geologist's licensure for a violation of the code of practice.

Sec. 75. (1) Application for licensure as a geologist shall be made on a form prescribed and furnished by the board. It shall contain statements made under oath showing the applicant's education and a detailed summary of technical experience and shall include the names and complete mailing addresses of the references, none of whom shall be members of the board. The board may accept the verified information contained in the National Association of State Boards of Geology for applicants in lieu of the same information that is required on the form prescribed and furnished by the board.

(2) Application and licensure fees shall be established by the board and shall accompany the application. Original and reciprocal fees shall not exceed three hundred dollars and shall be in addition to the examination fee which shall be set to recover the costs of the examination and its administration.

(3) The certificate of authorization fee for organizations shall be established by the board and shall accompany the application. The fee shall not exceed three hundred dollars per year.

(4) The fee for emeritus status shall be established by the board and shall accompany the application. The fee shall not exceed one hundred dollars per year.

(5) If the board denies the issuance of a certificate to any applicant, including the application of an organization for a certificate of authorization, the board shall retain the fee.

Sec. 76. (1) The practice or offer to practice for others of geology by individuals licensed under the Geologists Regulation Act through an organization is permitted if the criteria for organizational practice established by the board are met and the organization has been issued a certificate of authorization by the board. All technical submissions by an organization involving the practice of geology when issued or filed for public record shall be dated and bear the signature and seal of the licensed geologist who prepared the submission or under whose immediate direction it was prepared.

(2) An organization desiring a certificate of authorization shall file with the board an application, using the form provided by the board, which also contains a list of the names and addresses of all officers of the organization, duly licensed to practice geology in the state through the organization. Any change in the list of officers during the certificate period shall be designated on the same form and filed with the board within thirty days after the effective date of the change. If the requirements of this section are met, the board shall issue a certificate of authorization to the organization and the organization may contract for and collect fees for furnishing professional services.

(3) The Geologists Regulation Act shall not prevent an organization from performing professional services for itself.

(4) An organization is not relieved of its responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section. An individual practicing geology is not relieved of his or her responsibility for services performed by reason of employment or any other relationship with an organization holding a certificate of authorization.

(5) Commencing one year after the operative date of this section, the Secretary of State shall not issue a certificate of authority to an applicant or a registration of name to a foreign firm to an organization which includes among the objectives for which it is established geology or any modification or derivation of geology, unless the board has issued the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive a certificate of authorization. The organization shall supply the certificate or letter with its application for incorporation or licensure.

(6) Commencing one year after the operative date of this section, the Secretary of State shall not register any trade name or service mark which includes the words professional geologist, or any modification or derivative of such word, in its firm name or logotype except to those organizations holding a certificate of authorization issued by the board.

(7) The certificate of authorization shall be renewed periodically as required by the board.

(8) A geologist who renders occasional, part-time, or consulting services to or for an organization may not for purposes of this section be designated as being responsible for the professional activities of the organization.

Sec. 77. (1) The board shall issue to any applicant who, on the basis of education, experience, and examination, has met the requirements of the Geologists Regulation Act a certificate of licensure giving the licensed geologist proper authority to carry out the prerogatives of the act. The certificate of licensure shall carry the designation Licensed Professional Geologist. The certificate of licensure shall give the full name of the licensee and the license number and shall be signed by the chairperson of the board and the secretary of the board.

(2) The certificate shall be prima facie evidence that the person is entitled to all rights, privileges, and responsibilities of a professional geologist while the certificate of licensure remains unrevoked and unexpired.

(3)(a) Each licensee authorized to practice geology must obtain a seal. It shall be unlawful for a licensee to affix his or her seal and signature or to permit his or her seal and signature to be affixed to any document after the expiration of the certificate of licensure or for the purpose of aiding or abetting any other person to evade or attempt to evade

any provisions of the act.

(b) The seal may be a rubber stamp or may be generated electronically. Whenever the seal is applied, the licensee's written signature and the date shall be across the seal. No further words or wording are required. Electronic signatures applied to electronic seals shall be protected with an electronic revision approval system. Documents without electronic revision approval system protection that are transmitted electronically to a client or a governmental agency shall have the seal removed from the file. The electronic media shall have the following inserted in lieu of the seal, signature, and date:

This document was originally issued and sealed by (name of sealer), (license number), on (date of sealing). This media should not be considered a certified document.

(c) The seal, signature, and date shall be placed on all technical submissions and calculations whenever presented to a client or any public or governmental agency.

(d) The seal, signature, and date shall be placed on all originals, copies, tracings, or other reproducible documents in such a manner that the seal, signature, and date will be reproduced. The application of the licensee's seal and signature shall constitute certification that the work was done by the licensee or under the licensee's control. In the case of multiple sealings, the first or title page shall be sealed, signed, and dated by all involved. In addition, each sheet shall be sealed, signed, and dated by the licensee responsible for each sheet. In the case of an organization, each sheet shall be sealed, signed, and dated by the licensee involved. The geologist in responsible charge shall sign, seal, and date the title or first sheet.

(e) In the case of a temporary permit issued to a licensee of another state, the licensee shall use his or her state of licensure seal and shall affix his or her signature and temporary permit to all his or her work.

(f) The design of the seal shall be determined by the board. The following information shall be on the seal: State of Nebraska; licensee's name; licensee's license number; and the words Professional Geologist.

Sec. 78. Certificates of licensure and certificates of authorization shall expire on a date established by the board and shall become invalid after that date unless renewed. The secretary of the board shall notify every person licensed under the Geologists Regulation Act and every organization holding a certificate of authorization under the act of the date of the expiration of the certificate of licensure or certificate of authorization and the amount of the fee required for renewal. The notice shall be mailed to the licensee or organization at the last-known address on file with the board at least one month in advance of the date of the expiration. Renewal may be effected at any time prior to or during the period established by the board upon application and payment of a renewal fee. The fee shall not exceed two hundred dollars per year. Renewal of an expired certificate may be effected under rules and regulations of the board regarding requirements for reexamination and for penalty fees. The board may adopt a program of continuing education for individual licensees.

Sec. 79. A new certificate of licensure or certificate of authorization to replace any certificate lost, destroyed, or mutilated may be issued by the board. A fee not to exceed one hundred dollars shall be charged for each issuance.

Sec. 80. The board shall enforce the Geologists Regulation Act and the rules and regulations, including enforcement against any unlicensed person. If any person refuses to obey any decision or order of the board, the board or, upon the request of the board, the Attorney General or the appropriate county attorney shall file an action for the enforcement of the decision or order, including injunctive relief, in the district court. After hearing, the court shall order enforcement of the decision or order, or any part thereof, if legally and properly made by the board and, if appropriate, injunctive relief.

Sec. 81. Except as provided in sections 86 to 88 of this act, an individual shall not directly or indirectly engage in the practice of geology in the state or use the title Professional Geologist or display or use any words, letters, figures, titles, sign, card, advertisement, or other symbol or device indicating or tending to indicate that he or she is a geologist or is practicing geology unless he or she is licensed under the Geologists Regulation Act. A licensed geologist shall not aid or abet any person not licensed under the act in the practice of geology.

Sec. 82. Any person who performs any of the following actions is guilty of a Class II misdemeanor for the first offense and a Class I misdemeanor for the second or any subsequent offense:

(1) Practices or offers to practice geology in this state without being licensed in accordance with the Geologists Regulation Act and is not exempted by sections 86 to 88 of this act;

(2) Knowingly and willfully employs or retains a person to practice geology in this state who is not licensed in accordance with the act and who is not exempted by sections 86 to 88 of this act;

(3) Uses the word Geologist, or any modification or derivative of such word, in its name or form of business activity except as authorized in the act;

(4) Presents or attempts to use the certificate of licensure or the seal of another person;

(5) Gives any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate of authorization;

(6) Falsely impersonates any other licensee of like or different name;

(7) Attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure or practices or offers to practice when not qualified;

(8) Falsely claims that he or she is licensed or authorized under the act; or

(9) Violates any of the provisions of the act.

Sec. 83. Charges against any person involving any matter coming within the jurisdiction of the board shall be in writing and shall be filed with the board. The charges, at the discretion of the board, shall be heard within a reasonable time in accordance with the rules and regulations which may include use of a hearing officer. The accused shall have the right to appear personally with or without counsel, to cross-examine adverse witnesses, and to produce evidence and witnesses in his or her defense. The board shall set the time and place for the hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing, to be sent by registered mail to the accused, at his or her last-known business or residence address known to the board, at least thirty days before the hearing. If, after the hearing, the board finds the accused has violated the Geologists Regulation Act or any rules or regulations, it may issue any order described in section 84 of this act. If the board finds no violation, it shall enter an order dismissing the charges. If the order revokes, suspends, or cancels a license, the board shall notify, in writing, the Secretary of State and the clerk of the city or village in the state where the person has a place of business, if any. The board may reissue a license to any person whose license has been revoked. Application for the reissuance of a license shall be made in such a manner as the board directs and shall be accompanied by a fee established by the board.

Sec. 84. (1) The board may after hearing, by majority vote, take any or all of the following actions, upon proof satisfactory to the board that any person or organization has violated the Geologists Regulation Act or any rules or regulations adopted and promulgated pursuant to the act:

(a) Issuance of censure or reprimand;

(b) Suspension of judgment;

(c) Placement of the offender on probation with the board;

(d) Placement of a limitation or limitations on the holder of a license and upon the right of the holder of a license to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;

(e) Imposition of a civil penalty not to exceed ten thousand dollars. The amount of the penalty shall be based on the severity of the violation;

(f) Entrance of an order of revocation, suspension, or cancellation of the certificate of licensure;

(g) Issuance of a cease and desist order;

(h) Imposition of costs as in an ordinary civil action in the district court, which may include attorney's fees and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or

(i) Dismissal of the action.

In hearings under this section, the board may take into account suitable evidence of reform.

(2) Civil penalties collected under subdivision (1)(e) of this section shall be remitted to the State Treasurer for credit to the permanent school fund. All costs collected under subdivision (1)(h) of this section shall be remitted to the State Treasurer for credit to the Geologists Regulation Fund.

Sec. 85. A public official charged with the duty or responsibility of accepting or approving plans, specifications, geologic maps, and reports shall not accept or approve plans, specifications, geologic maps, or reports which have not been prepared in accordance with the Geologists Regulation Act.

Sec. 86. Applications for licensure as a professional geologist or for temporary or reciprocal licensure shall be on forms prescribed and furnished by the board and shall be accompanied by the fee established by the board. The requirements of subdivisions (1) through (3) of this section may be considered by the board to be fulfilled if the applicant maintains a current certificate of licensure to practice geology issued pursuant to the authority of any state or possession of the United States or the District of Columbia based on requirements that do not conflict with the Geologists Regulation Act and were of a standard not lower than that specified in the applicable licensure law in effect in this state at the time the certification was issued. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional geologist:

(1) The applicant is of good character and reputation and submits four references with his or her application for licensure as a professional geologist. Two of the references shall be professional geologists having personal knowledge of his or her geological experience. During the twelve-month period beginning on the operative date of this section, the board shall consider, for the purpose of application references, as a professional geologist a person who meets the education and experience requirements for licensure as a professional geologist specified in the act;

(2) The applicant has successfully completed a minimum of thirty semester hours or forty-five quarter hours of course work in geology and has received a baccalaureate or advanced degree in geology or a geologic specialty from a program accredited by an organization recognized by the board. During the twelve-month period beginning on the operative date of this section, the board may waive the education requirements for a person who derives his or her livelihood from the practice of geology and who does not meet the academic requirements but who can demonstrate to the satisfaction of the board his or her competency and who has at least eight years of progressive experience in geologic work of a grade and character which indicates to the board that the applicant is qualified to assume responsible charge of such work upon licensure as a geologist;

(3) Except as otherwise provided in subdivision (2) of this section, the applicant has a documented record of a minimum of five years of progressive experience, obtained subsequent to completion of the education requirements, in geologic work of a grade and character which indicates to the board that the applicant is qualified to assume responsible charge of such work upon licensure as a geologist; and

(4) The applicant has completed an examination covering the fundamentals and practice of geology prescribed by the board. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice geology in this state if otherwise qualified. During the twelve-month period beginning with the operative date of this section, the board shall waive the examination requirement for applicants qualified by education and experience. A person who holds a valid certificate of licensure to engage in the practice of geology, issued pursuant to the authority of any state or possession of the United States or the District of Columbia based on requirements that do not conflict with the act and were of a standard not lower than that specified in the applicable licensing law in effect in this state at the time the certificate was issued, may, upon application, be licensed without further examination. Geologic teaching of advanced subjects and the design of geologic research and projects in a college or university offering an accredited geologic curriculum may be considered by the board as geologic experience.

Sec. 87. (1) The board shall direct the time and place of geology examinations. The board shall determine the acceptable grade on examinations.

(2) The examination shall be given in two sections as follows:

(a) A fundamentals of geology examination designed to test the academic preparation of the applicant in geology. At the board's discretion, the examination may be taken at any time following completion of the applicant's educational requirements; and

(b) A principles and practice of geology examination designed to test the applicant's ability to apply geologic knowledge and to assume responsible charge of geologic work. The geologic practice examination may be taken only after the applicant has acquired the experience required for licensure as a geologist.

(3) A candidate failing one examination may apply for reexamination,

which may be granted upon payment of a fee established by the board. In the event of a second failure, the examinee may, at the discretion of the board, be required to appear before the board with evidence of having acquired the necessary additional knowledge to qualify before admission to the examination.

(4) The board may prepare and adopt specifications for the examinations. The specifications shall be published and be available to any person interested in being licensed.

Sec. 88. (1) The following activities do not require licensure as a geologist under the Geologists Regulation Act:

(a) Geological work performed by an employee or a subordinate of a professional geologist if the work does not include responsible charge of geological work and is performed under the direct supervision of a professional geologist who is and remains responsible for such work;

(b) Geological work performed exclusively in the exploration for and development of energy resources and base, precious, and nonprecious minerals, including sand, gravel, and aggregate, and not having a substantial impact upon the public health, safety, and welfare, as determined by the board;

(c) Geologic research conducted through academic institutions, agencies of the federal or state governments, or nonprofit research institutions;

(d) Teaching in geology or related physical or natural sciences;

(e) Work performed by a professional engineer appropriately licensed in this state that is within the generally accepted scope of engineering practice;

(f) The practice of any other legally recognized profession;

(g) The practice of or offer to practice geology by a person not a resident of and having no established place of business in this state who desires to practice geology for a specific project. The person shall make application to the board in writing, and after payment of a fee established by the board by rule and regulation, such person may be issued a temporary permit for a definite period of time not to exceed one year if the person is legally qualified by licensure to practice geology in his or her own state or country. No right to practice geology shall accrue to such applicant with respect to any other work not set forth in the permit;

(h) Work, which includes subsurface excavation and routine environmental monitoring, such as sample collection and water level gauging, performed by an organization for itself and in accordance with other requirements of law, which does not require geologic analysis;

(i) The work of employees of a political subdivision or state agency charged with natural resources conservation performing, in accordance with other requirements of law, their customary duties in operations, maintenance, and environmental monitoring;

(j) The work of employees and agents of a political subdivision or rural electric cooperative performing, in accordance with other requirements of law, their customary duties in routine utility line construction, operations, and maintenance; and

(k) Work customarily performed by chemists, hydrologists, archeologists, geographers, pedologists, agronomists, and soil scientists.

(2) If the board determines with respect to a particular function that the public is adequately protected without the necessity of a professional geologist performing certain services, the board may waive the requirements of the act with respect to the function.

(3) This section shall not be construed so as to prohibit the testimony of any individual before the Nebraska Oil and Gas Conservation Commission.

Sec. 89. (1) A professional geologist shall only use his or her seal and signature when he or she was in responsible charge of the work being stamped.

(2) A professional geologist shall use his or her seal and signature on geologic reports, documents, maps, plans, logs, and sections, or other public records offered to the public and prepared or issued by or under the direct supervision of the professional geologist.

Sec. 90. Section 87-112, Reissue Revised Statutes of Nebraska, is amended to read:

87-112. A trademark, mark, or service mark, by which the goods or services of any applicant for registration may be distinguished from the goods or services of others, shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;

(4) Consists of or comprises the name, signature, or portrait of any living individual, except with his or her written consent;

(5) Consists of a mark which (a) when applied to the goods of the applicant, is merely descriptive or deceptively misdescriptive of them, (b) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname. Nothing ~~, PROVIDED, that nothing~~ in this section shall prevent the registration of a trademark used in this state by the applicant which has become distinctive of the applicant's goods. The Secretary of State may accept as evidence that the trademark has become distinctive, as applied to the applicant's goods, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five years next preceding the date of the filing of the application for registration; ~~or~~

(6) Consists of or comprises a trademark which so resembles a trademark registered in this state or a trademark previously used in this state by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive; or

(7) Consists of the word geologist or any modification or derivative of such word, and the applicant does not meet the requirements of subsection (6) of section 76 of this act.

Sec. 91. Section 87-209, Revised Statutes Supplement, 1997, is amended to read:

87-209. A trade name shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter;

(2) Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with, persons living or dead, institutions, beliefs, or national symbols;

(3) Consists of, comprises, or simulates the flag or coat of arms or other insignia of the United States, any state or municipality, or any foreign nation;

(4) Consists of or comprises the name, signature, or portrait of any living individual without his or her consent;

(5)(a) Is merely descriptive or misdescriptive, or is primarily geographically descriptive or geographically misdescriptive as applied to the business of the applicant, or (b) is primarily merely a surname, but nothing in this subdivision shall prevent the registration of a trade name which has become distinctive of the applicant's business in this state. The Secretary of State may accept as evidence that a trade name has become distinctive proof of continuous use by the applicant as a trade name in this state or elsewhere for five years preceding the date of the filing of the application for registration; ~~or~~

(6) Consists of or comprises a trade name which so resembles a trade name registered under sections 87-208 to 87-220, registered in this state, or the name of a business entity on file or registered with the Secretary of State pursuant to Nebraska law as to be likely to cause confusion, mistake, or deception of purchasers, except that a name, although similar, may be used if the business entity affected consents in writing and such writing is filed with the Secretary of State. The word incorporated, inc., or corporation shall not be a part of the trade name being registered unless the firm is duly incorporated in the State of Nebraska or some other state; or

(7) Consists of the word geologist or any modification or derivative of such word, and the applicant does not meet the requirements of subsection (6) of section 76 of this act.

Sec. 92. Sections 14 to 23, 29, 31, 94, and 99 of this act become operative on July 1, 1998. Sections 49 to 91 and 95 of this act become operative January 1, 1999. Sections 2 to 12, 24, 46, 96, and 98 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 93. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 94. Original sections 66-482, 66-486, 66-4,141, 66-4,143, 66-678, 66-680, 66-681, 66-6,113, 66-713, and 66-1519.01, Reissue Revised Statutes of Nebraska, and sections 66-4,144 and 66-1521, Revised Statutes Supplement, 1997, are repealed.

Sec. 95. Original section 87-112, Reissue Revised Statutes of Nebraska, and section 87-209, Revised Statutes Supplement, 1997, are repealed.

Sec. 96. Original sections 32-608, 66-718, and 81-15,162.02, Revised Statutes Supplement, 1997, are repealed.

Sec. 97. Original sections 66-1501, 66-1519, 66-1520, 66-1523, 66-1525, 66-1529.01, 66-1529.02, 81-8,297, 81-8,299, 81-8,301, 81-15,121, and 81-15,124, Reissue Revised Statutes of Nebraska, sections 46-656.29, 81-15,117, 81-15,119, 81-15,120, 81-15,124.01, 81-15,189, and 81-15,190, Revised Statutes Supplement, 1996, and section 66-1518, Revised Statutes Supplement, 1997, are repealed.

Sec. 98. The following sections are outright repealed: Sections 2-2428 to 2-2449, Reissue Revised Statutes of Nebraska.

Sec. 99. The following section is outright repealed: Section 66-1522, Reissue Revised Statutes of Nebraska.

Sec. 100. Since an emergency exists, this act takes effect when passed and approved according to law.