

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 856

Introduced by Moser, 22.

Read first time January 09, 2020

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Petroleum Release Remedial Action Act;
2 to amend sections 66-1519, 66-1523, and 66-1525, Reissue Revised
3 Statutes of Nebraska, and section 66-1529.02, Revised Statutes
4 Supplement, 2019; to extend use of the Petroleum Release Remedial
5 Action Cash Fund as prescribed; to harmonize provisions; to repeal
6 the original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1519, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 66-1519 (1) There is hereby created the Petroleum Release Remedial
4 Action Cash Fund to be administered by the department. Revenue from the
5 following sources shall be remitted to the State Treasurer for credit to
6 the fund:

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

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

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

13 (2) Money in the fund may be spent for: (a) Reimbursement for the
14 costs of remedial action by a responsible person or his or her designated
15 representative and costs of remedial action undertaken by the department
16 in response to a release first reported after July 17, 1983, and on or
17 before June 30, ~~2024~~ 2020, including reimbursement for damages caused by
18 the department or a person acting at the department's direction while
19 investigating or inspecting or during remedial action on property other
20 than property on which a release or suspected release has occurred; (b)
21 payment of any amount due from a third-party claim; (c) fee collection
22 expenses incurred by the State Fire Marshal; (d) direct expenses incurred
23 by the department in carrying out the Petroleum Release Remedial Action
24 Act; (e) other costs related to fixtures and tangible personal property
25 as provided in section 66-1529.01; (f) interest payments as allowed by
26 section 66-1524; (g) claims approved by the State Claims Board authorized
27 under section 66-1531; (h) the direct and indirect costs incurred by the
28 department in responding to spills and other environmental emergencies
29 related to petroleum or petroleum products; and (i) up to one million
30 five hundred thousand dollars each fiscal year of the department's cost-
31 share obligations and operation and maintenance obligations under the

1 federal Comprehensive Environmental Response, Compensation, and Liability
2 Act of 1980, 42 U.S.C. 9601 et seq.

3 (3) Transfers may be made from the Petroleum Release Remedial Action
4 Cash Fund to the General Fund at the direction of the Legislature.

5 (4) Transfers may be made from the Petroleum Release Remedial Action
6 Cash Fund to the Superfund Cost Share Cash Fund at the direction of the
7 Legislature.

8 (5) Any money in the Petroleum Release Remedial Action Cash Fund
9 available for investment shall be invested by the state investment
10 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
11 State Funds Investment Act.

12 Sec. 2. Section 66-1523, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 66-1523 (1) Except as provided in subsection (2) of this section,
15 the department shall provide reimbursement from the fund in accordance
16 with section 66-1525 to eligible responsible persons for the cost of
17 remedial action for releases reported after July 17, 1983, and on or
18 before June 30, 2024 ~~2020~~, and for the cost of paying third-party claims.
19 The reimbursement for the cost of remedial action shall not exceed nine
20 hundred seventy-five thousand dollars per occurrence. The total of the
21 claims paid under section 66-1531 and the reimbursement for third-party
22 claims shall not exceed one million dollars per occurrence. The
23 responsible person shall pay the first ten thousand dollars of the cost
24 of the remedial action or third-party claim, twenty-five percent of the
25 remaining cost of the remedial action or third-party claim not to exceed
26 fifteen thousand dollars, and the amount of any reduction authorized
27 under subsection (5) of section 66-1525. If the department determines
28 that a responsible person was ordered to take remedial action for a
29 release which was later found to be from a tank not owned or operated by
30 such person, (a) such person shall be fully reimbursed and shall not be
31 required to pay the first cost or percent of the remaining cost as

1 provided in this subsection and (b) the first cost and percent of the
2 remaining cost not required to be paid by the person ordered to take
3 remedial action shall be paid to the fund as a cost of remedial action by
4 the owner or operator of the tank found to be the cause of the release.
5 In no event shall reimbursements or payments from the fund exceed the
6 annual aggregate of one million nine hundred seventy-five thousand
7 dollars per responsible person. Reimbursement of a cost incurred as a
8 result of a suspension ordered by the department shall not be limited by
9 this subsection if the suspension was caused by insufficiency in the fund
10 to provide reimbursement.

11 (2) Upon the determination by the department that the responsible
12 person sold no less than two thousand gallons of petroleum and no more
13 than two hundred fifty thousand gallons of petroleum during the calendar
14 year immediately preceding the first report of the release or stored less
15 than ten thousand gallons of petroleum in the calendar year immediately
16 preceding the first report of the release, the department shall provide
17 reimbursement from the fund in accordance with section 66-1525 to such an
18 eligible person for the cost of remedial action for releases reported
19 after July 17, 1983, and on or before June 30, 2024 ~~2020~~, and for the
20 cost of paying third-party claims. The reimbursement for the cost of
21 remedial action shall not exceed nine hundred eighty-five thousand
22 dollars per occurrence. The total of the claims paid under section
23 66-1531 and the reimbursement for third-party claims shall not exceed one
24 million dollars per occurrence. The responsible person shall pay the
25 first five thousand dollars of the cost of the remedial action or third-
26 party claim, twenty-five percent of the remaining cost of the remedial
27 action or third-party claim not to exceed ten thousand dollars, and the
28 amount of any reduction authorized under subsection (5) of section
29 66-1525. If the department determines that a responsible person was
30 ordered to take remedial action for a release which was later found to be
31 from a tank not owned or operated by such person, (a) such person shall

1 be fully reimbursed and shall not be required to pay the first cost or
2 percent of the remaining cost as provided in this subsection and (b) the
3 first cost and percent of the remaining cost not required to be paid by
4 the person ordered to take remedial action shall be paid to the fund as a
5 cost of remedial action by the owner or operator of the tank found to be
6 the cause of the release. In no event shall reimbursements or payments
7 from the fund exceed the annual aggregate of one million nine hundred
8 eighty-five thousand dollars per responsible person. Reimbursement of a
9 cost incurred as a result of a suspension ordered by the department shall
10 not be limited by this subsection if the suspension was caused by
11 insufficiency in the fund to provide reimbursement.

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

15 (4) If the fund is insufficient for any reason to reimburse the
16 amount set forth in this section, the maximum amount that the fund shall
17 be required to reimburse is the amount in the fund. If reimbursements
18 approved by the department exceed the amount in the fund, reimbursements
19 with interest shall be made when the fund is sufficiently replenished in
20 the order in which the applications for them were received by the
21 department, except that an application pending before the department on
22 January 1, 1996, submitted by a local government as defined in section
23 13-2202 shall, after July 1, 1996, be reimbursed first when funds are
24 available. This exception applies only to local government applications
25 pending on and not submitted after January 1, 1996.

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

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

1 July 1, 2024 ~~2020~~.

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

5 Sec. 3. Section 66-1525, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 66-1525 (1) Any responsible person or his or her designated
8 representative who has taken remedial action in response to a release
9 first reported after July 17, 1983, and on or before June 30, 2024 ~~2020~~,
10 or against whom there is a third-party claim may apply to the department
11 under the rules and regulations adopted and promulgated pursuant to
12 section 66-1518 for reimbursement for the costs of the remedial action or
13 third-party claim. Partial payment of such reimbursement to the
14 responsible person may be authorized by the department at the approved
15 stages prior to the completion of remedial action when a remedial action
16 plan has been approved. If any stage is projected to take more than
17 ninety days to complete partial payments may be requested every sixty
18 days. Such partial payment may include the eligible and reasonable costs
19 of such plan or pilot projects conducted during the remedial action.

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

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

30 (b) Either the State Fire Marshal or the department was given notice
31 of the release in substantial compliance with the rules and regulations

1 adopted and promulgated pursuant to the Environmental Protection Act and
2 the Petroleum Products and Hazardous Substances Storage and Handling Act.
3 Substantial compliance shall be determined by the department taking into
4 consideration the purposes of the Petroleum Release Remedial Action Act
5 and the adverse effect that any violation of the notice provisions of the
6 rules and regulations may have had on the remedial action being taken in
7 a prompt, effective, and efficient manner;

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

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

23 (e) The costs for the remedial action were actually incurred by the
24 responsible person or his or her designated representative after May 27,
25 1989, and were eligible and reasonable;

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

30 (g) The responsible person or his or her designated representative
31 has paid the amount specified in subsection (1) or (2) of section

1 66-1523.

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

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

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

- 17 (a) The extent of and reasons for noncompliance;
- 18 (b) The likely environmental impact of the noncompliance; and
- 19 (c) Whether noncompliance was negligent, knowing, or willful.

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

28 Sec. 4. Section 66-1529.02, Revised Statutes Supplement, 2019, is
29 amended to read:

30 66-1529.02 (1) The department may undertake remedial actions in
31 response to a release first reported after July 17, 1983, and on or

1 before June 30, ~~2024~~ 2020, with money available in the fund if:

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

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

5 (c) Immediate remedial action is necessary, as determined by the
6 Director of Environment and Energy, to protect human health or the
7 environment.

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

12 (3) Reimbursement for any damages caused by the department or a
13 person acting at the department's direction while investigating or
14 inspecting or during remedial action on property other than property on
15 which a release or suspected release has occurred shall be considered as
16 part of the cost of remedial action involving the site where the release
17 or suspected release occurred. The costs shall be reimbursed from money
18 available in the fund. If such reimbursement is deemed inadequate by the
19 party claiming the damages, the party's claim for damages caused by the
20 department shall be filed as provided in section 76-705.

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

27 Sec. 5. Original sections 66-1519, 66-1523, and 66-1525, Reissue
28 Revised Statutes of Nebraska, and section 66-1529.02, Revised Statutes
29 Supplement, 2019, are repealed.

30 Sec. 6. Since an emergency exists, this act takes effect when
31 passed and approved according to law.