

## LEGISLATIVE BILL 764

Approved by the Governor April 6, 1988

Introduced by Barrett, 39, Speaker, for the Governor

AN ACT relating to petroleum overcharges; to amend sections 81-1607, 81-1636, 81-1637, 81-1639, 81-1640, and 81-1641, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to the distribution of funds; to change and eliminate report requirements; to eliminate certain guidelines for distribution; to provide for hearings; to harmonize provisions; to provide severability; and to repeal the original sections.

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

Section 1. That section 81-1607, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1607. (1) On or before February 15 of each year, the Director of the State Energy Office shall transmit to the Governor and the Clerk of the Legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, and conservation and to specify the level of statewide energy need within the following sectors: Agricultural, commercial, residential, industrial, transportation, utilities, government, and any other sector that the director determines to be useful.

(2) The report shall include, but not be limited to:

(a) An assessment of the state's energy resources, including examination of the current energy supplies and any feasible alternative sources;

(b) The estimated reduction in annual energy consumption resulting from various energy conservation measures;

(c) The status of the office's ongoing studies; and

(d) Recommendations to the Governor and the Legislature for administrative and legislative actions to accomplish the purposes of sections 70-625, 70-704, 81-161, 81-1602, 81-1606, and 81-1607; and

(e) The use of funds disbursed during the previous year under sections 81-1635 to 81-1641. The use of such funds shall be reported each year until the

funds are completely disbursed and all contractual obligations have expired or otherwise terminated.

Sec. 2. That section 81-1636, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1636. (1) The Governor or the State Energy Office as representative of the Governor shall develop a plan for the disbursement of the money credited to the fund for submission to the United States Department of Energy. The plan shall be in accordance with the specifications and guidelines of the applicable federal court order, and any applicable federal law or regulations, and the guidelines provided in subsection (2) of this section.

(2) Except when such guidelines are inconsistent with federal specifications and guidelines for the use of the money, in ranking and selecting projects to be recipients of funds, the Governor or the State Energy Office shall comply with the following guidelines:

(a) Primary consideration shall be given to:  
(i) Projects which, for the amount of the allocation, provide maximum energy and resource conservation and efficiency benefits to the citizens of the state; and

(ii) Projects which are cost-effective and have long-term benefits for the citizens of the state;

(b) Projects selected shall in their totality reflect a generally equitable distribution of the benefits of the fund across the state considering both geographic and population factors;

(c) The benefits of any research or demonstration project using money allocated from the fund shall be available to the public at large; and

(d) No more than one-third of the funds in any plan or amendments thereto shall be allocated to private, nongovernmental entities, except that this restriction shall not apply to (i) any entity created by state statute or (ii) any entity which receives money from the fund through the federal Weatherization Assistance for Low-Income Persons program or the Institutional Conservation Program. Funds disbursed to public or governmental entities shall not be used to replace any public or tax funds which were or are being used on the project.

(3) The State Energy Office may adopt additional guidelines not inconsistent with federal law, regulations, or court orders or with subsection (2) of this section.

Sec. 3. That section 81-1637, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1637. (1) The Governor shall submit the a predisbursement plan and any amendment to the plan to the Legislature if in session or the Executive Board of the Legislative Council if the Legislature is not in session, by the sixtieth legislative day in the regular session held in an odd-numbered year or the thirtieth legislative day in the regular session held in an even-numbered year. The plan shall include (1)(a) broad categories of the types of proposed uses of the fund sufficiently described so as to allow the identification of the purpose and nature of the particular projects proposed or to be proposed for inclusion in each category and (b) within an applicable category, any project for which a single entity is proposed to be a direct or initial recipient of a total of more than fifty thousand dollars from the fund, except that this subdivision shall not apply to any project funded through the federal Weatherization Assistance for Low-income Persons program or the Institutional Conservation Program, (2) an indication of which particular award or settlement will fund each category or project included in the plan, and (3)

(2) The predisbursement plan shall generally outline the uses and beneficiaries of proposed disbursements from the fund, as well as the expected benefits to the state as a whole.

(3) The predisbursement plan shall also include a policy statement which shall indicate (a) a perception of the current and anticipated trends regarding energy availability, costs, and needs in the state, (b) assumptions regarding the impacts on energy needs of the state of current and anticipated state and federal policies and market forces affecting energy use, and (c) generally, how the types of projects selected or to be selected will address those trends and assumptions.

(4) The Legislature may hold a public hearing within thirty days of receipt of the predisbursement plan to solicit testimony on such plan. The Legislature may, no later than fifteen days following such hearing, make recommendations to the State Energy Office concerning the plan. No disbursement of or obligation to disburse any money in the fund shall be made after the effective date of this act until forty-five days after the predisbursement plan referring to such disbursement has been submitted to the Legislature or

the Executive Board of the Legislative Council, as the case may be. The Appropriations Committee of the Legislature shall, in conjunction with its review of appropriations of the fund, conduct a public hearing on the plan or amendments within ten legislative days of receiving such plan or amendments, and the Legislature shall pass any appropriations therefor within thirty legislative days of the hearing or before the end of the legislative session, whichever comes first. In reviewing the plan for purposes of determining appropriations from the fund, the Legislature shall consider the guidelines in subsection (2) of section 81-1636.

Sec. 4. That section 81-1639, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1639. No money shall be disbursed or expended from the fund unless:

(1) The disbursement is pursuant to an appropriation by the Legislature;

(2) The provisions of section 81-1636 have been complied with in regard to the project for which funds are being disbursed; and

(3) The project for which funds are being disbursed is within a category which is included in the plan or amendments to the plan submitted to the Legislature or, if required by section 81-1637, has been specifically included in such plan or amendments; and

(4) The use project for which funds are being disbursed meets any applicable federal law, regulation, or court order and has been approved by any and all state and federal authorities as may be required to meet the applicable court order and any applicable federal law or regulations.

Any appropriations of the fund shall be made for broad categories of projects, but no appropriation shall be made for any project not within a category which is included in the plan pursuant to section 81-1637.

Sec. 5. That section 81-1640, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1640. The State Energy Office shall conduct a public hearing on the proposed uses of the fund in the manner and to the extent required by specifications and guidelines of the applicable federal court order and any applicable federal law or regulations. On October 1 of each year for five years from April 9, 1987, the Governor shall submit a report

to the Legislature regarding the projects receiving money from the fund and the effectiveness of the uses of the money disbursed from the fund-

Sec. 6. That section 81-1641, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1641. Sections 81-1635 to 81-1641 shall apply to the disbursement of all funds which are subject to sections 81-1635 to 81-1641 except for funds appropriated by Legislative Bill 432, Ninetieth Legislature, First Session, 1987.

Sections 81-1636 and 81-1637 and subdivisions (2) and (3) of section 81-1639 shall not apply to any funds which are the subject of any written agreement or contract entered into by the State Energy Office or the Governor prior to April 9, 1987, for the awarding of any funds received by the state from United States v. Exxon Corporation.

Sec. 7. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 8. That original sections 81-1607, 81-1636, 81-1637, 81-1639, 81-1640, and 81-1641, Reissue Revised Statutes of Nebraska, 1943, are repealed.