

## LEGISLATIVE BILL 1207

Approved by the Governor April 20, 1994

Introduced by Beutler, 28; Day, 19

AN ACT relating to government; to amend sections 13-2001, 13-2003, 13-2022, 13-2034, 13-2036, 13-2038, 13-2039, 13-2042, and 77-27,147, Revised Statutes Supplement, 1992, and sections 60-335, 77-2703, 77-2704.15, and 81-15,176, Revised Statutes Supplement, 1993; to provide budget requirements for joint entities and agencies created pursuant to the Interlocal Cooperation Act and Integrated Solid Waste Management Act; to provide for rebate of a landfill disposal fee; to provide duties concerning and costs of actions involving solid waste facilities, rules and regulations, permits, and permit applications for such facilities; to change provisions relating to disposal of yard waste and the time of payment of a landfill disposal fee; to change the interest rate charged for late payments; to define a term; to provide duties for the Department of Environmental Quality, the Environmental Quality Council, and the Department of Administrative Services; to require approval of actions of sanitary and improvement districts relating to solid waste disposal sites; to change provisions relating to the Environmental Trust Fund; to exempt certain motor vehicles from registration fees; to exempt certain purchases from sales and use taxes; to change provisions relating to leases and sales tax; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 13-2001, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2001. Sections 13-2001 to 13-2043 and sections 2, 3, and 5 of this act shall be known and may be cited as the Integrated Solid Waste Management Act.

Sec. 2. Any joint entity or agency created to fulfill the purposes of the Integrated Solid Waste Management Act pursuant to the Interlocal Cooperation Act shall comply with the Municipal Proprietary Function Act for purposes of reporting its budgets. Proprietary budget statements for the joint entity or agency shall be placed on file with the office of the municipal clerk of each member which is a municipality as required by the Municipal Proprietary Function Act and with the county clerk of each member which is a county.

Sec. 3. (1) The Department of Environmental Quality shall rebate to the municipality or county of origin ten cents of the disposal fee required by section 13-2042 for each six cubic yards of uncompacted solid waste, for each three cubic yards of compacted solid waste, or for each ton of solid waste disposed of at landfills regulated by the department and originating in a municipality or county with a purchasing policy approved by the department. The fee shall be rebated quarterly on or before the thirtieth day after receipt of a quarterly report from the municipality or county of origin.

(2) Any municipality or county may apply to the department for the rebate authorized in subsection (1) of this section if the municipality or county has a written purchasing policy in effect requiring a preference for purchasing products, materials, or supplies which are manufactured or produced from recycled material. The policy shall provide that the preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality as determined by the municipality or county. Upon receipt of an application, the Department of Environmental Quality shall submit the application to the materiel division of the Department of Administrative Services for review. The materiel division shall review the application for compliance with this section and any rules and regulations adopted pursuant to this section and to determine the probable effectiveness in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material. The materiel division shall provide a report of its findings to the Department of Environmental Quality within thirty days after receiving the review request. The Department of Environmental Quality shall approve the application or suggest modifications to the application within sixty days after receiving the application based on the materiel division's report, any analysis by the Department of Environmental Quality, and any factors affecting compliance with

this section or the rules and regulations adopted pursuant to this section.

(3) A municipality or county shall file a report complying with the rules and regulations adopted pursuant to this section with the Department of Environmental Quality before April 1 of each year documenting purchasing practices for the past calendar year in order to continue receiving the rebate. The report shall include, but not be limited to, quantities of products, materials, or supplies purchased which were manufactured or produced from recycled material. The department shall provide copies of each report to the materiel division in a timely manner. If the department determines that a municipality or county is not following the purchasing policy presented in the approved application or that the purchasing policy presented in the approved application is not effective in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material, the department shall suspend the rebate until it determines that the municipality or county is giving a preference to products, materials, or supplies which are manufactured or produced from recycled material pursuant to a written purchasing policy approved by the department subsequent to the suspension. The materiel division may make recommendations to the department regarding suspensions and reinstatements of rebates.

(4) Any suspension of the rebate or denial of an application made under this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(5) The council shall adopt and promulgate rules and regulations establishing criteria for application procedures, for accepting and denying applications, for annual and quarterly reporting requirements, and for suspending and reinstating the rebate. The materiel division shall recommend to the council criteria for accepting and denying applications and for suspending and reinstating the rebate. The materiel division may make other recommendations to the council regarding rules and regulations authorized under this section. The Department of Administrative Services may adopt and promulgate rules and regulations establishing procedures for reviewing applications and for annual and quarterly reports.

Sec. 4. That section 13-2003, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2003. For purposes of the Integrated Solid Waste Management Act, the definitions found in sections 13-2004 to 13-2016 and section 5 of this act shall be used.

Sec. 5. Yard waste shall mean grass and leaves.

Sec. 6. That section 13-2022, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2022. A county, municipality, or agency shall close a facility, provide postclosure care, and undertake investigative and corrective action in accordance with rules and regulations adopted by the council. The costs associated with or reasonably anticipated for such closure, postclosure care, and investigative and corrective action may be included within the rates and charges authorized by section 13-2020 and within the amounts payable under service agreements adopted pursuant to section 13-2024.

Every county, municipality, and agency may approve, execute, and deliver contractual agreements to assume financial responsibility for the payment of costs of closure, postclosure care, or investigative or corrective action with respect to any facility. Such agreements may provide for a binding general obligation of such county, municipality, or agency obligating payments in future years.

For the payment or performance of the terms of any such agreement, any county or municipality may agree to levy or cause to be levied an annual tax upon the taxable property within such county or municipality in an amount sufficient for such purposes. Any such tax shall for all purposes of Nebraska law, including limitations upon budget, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such county or municipality.

Every county, municipality, and agency may also approve, execute, and deliver one or more trust agreements, with any bank having trust powers or a trust company, providing for the creation of one or more special trust funds to provide for the payment of costs of closure, postclosure care, or investigative or corrective action.

No county, municipality, or agency shall be required to provide proof of financial responsibility to obtain or renew a permit for a facility which is not used for disposal of solid waste.

Sec. 7. That section 13-2034, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2034. The council shall adopt and promulgate rules and regulations which shall include the following:

(1) A permit program for facilities providing for permits to be issued to owners and operators;

(2) Requirements for the collection, source separation, storage, transportation, transfer, processing, recycling, resource recovery, treatment, and disposal of solid wastes as well as developmental and operational plans for facilities. Regulations concerning operations may include waste characterization, composition, and source identification, site improvements, air and methane gas monitoring, ground water and surface water monitoring, daily cover, insect and rodent control, salvage operations, waste tire disposal, safety and restricted access, inspection of loads and any other necessary inspection or verification requirements, reporting of monitoring analysis, record keeping and other reporting requirements, handling and disposal of wastes with special characteristics, and any other operational criteria, location criteria, or design criteria necessary to minimize environmental and health risks and to provide protection of the air, land, and waters of the state; and

(3) Requirements for closure, ~~and~~ postclosure care and monitoring, ~~and~~ investigative and corrective action with respect to ~~of~~ landfills. Such rules and regulations shall require financial assurance for such activities after April 9, 1995, and shall impose any necessary requirements upon owners or operators in order to assure proper closure, care, ~~and~~ monitoring, ~~and~~ investigative and corrective action with respect to ~~of~~ landfills to minimize the need for future maintenance and eliminate, to the extent necessary to protect humans, animals, and the environment, releases or the threat of releases of contaminants or leachate.

Sec. 8. That section 13-2036, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2036. (1) The department shall review applications for permits for facilities and provide for the issuance, modification, suspension, denial, or revocation of permits after public notice. Applications shall be on forms provided by the department which solicit information necessary to make a determination on the application. The department shall issue public notice of its intent to grant or deny an application for a permit within sixty days after receipt of an application containing all required information. If an application is granted and the permit is issued or modified, any aggrieved person may file a petition for a contested case with the department within thirty days after the granting or modification of the permit, but such petition shall not act as a stay of the permit. If an application is denied, the department shall provide written rationale therefor to the applicant. Any change, modification, or other deviation from the terms or conditions of an approved permit must be approved by the director prior to implementation.

(2) The department shall condition the issuance of permits on terms necessary to protect the public health and welfare and the environment as well as compliance with all applicable regulations. Any applicant may apply to the department for a variance from rules and regulations. The director may grant such variance if he or she finds that the public health and welfare will not be endangered or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. The considerations, procedures, conditions and limitations set forth in section 81-1513 shall apply to any variance granted pursuant to this section.

(3) The director shall require the owner or operator of a facility to undertake investigation and corrective action in the event of contamination or a threat of contamination caused by the facility. Financial assurance for investigative or corrective action may be required in an amount determined by the director following notice and hearing.

(4) In addition to the information required by this section, the following specific areas shall be addressed in detail in any application filed in conjunction with the issuance, renewal, or reissuance of a permit for a facility:

(a) A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure of the facility as defined by the council. The plan shall include, but not be limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting the costs;

(b) A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of such control and treatment; and

(c) An emergency response and remedial action plan, including

provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment and the identification of possible occurrences that may endanger human health and environment.

If such application is modified after approval by the department, the application shall be resubmitted as a new proposal.

Sec. 9. That section 13-2038, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2038. The council shall adopt and promulgate rules and regulations which define ~~yard waste~~, lead-acid batteries, discarded household appliances, waste oil, and unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act.

Sec. 10. That section 13-2039, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2039. (1) On and after September 1, 1994, land disposal of yard waste shall be prohibited from April 1 through December 31 of each year, except that yard waste which has been separated at its source from other solid waste may be accepted by a landfill for the purpose of soil conditioning or composting. State and local governmental entities responsible for the maintenance of public lands shall give preference to the use of composted materials in all land maintenance activities. Nothing in this section shall be construed to prohibit the use of yard waste as land cover or as soil-conditioning material.

(2) On and after September 1, 1994, land disposal of lead-acid batteries and waste oil shall be prohibited.

(3) On and after September 1, 1995, land disposal of waste tires shall be prohibited except for waste tires processed in a manner established by the department. A landfill shall not refuse to accept a waste tire which has been properly processed.

(4) On and after September 1, 1995, land disposal of discarded household appliances shall be prohibited.

(5) On and after September 1, 1996, land disposal of unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act shall be prohibited unless such disposal occurs at a licensed hazardous waste disposal facility.

(6) For purposes of this section, land disposal shall include, but not be limited to, incineration at a landfill.

Sec. 11. That section 13-2042, Revised Statutes Supplement, 1992, be amended to read as follows:

13-2042. (1) A disposal fee of one dollar and twenty-five cents is imposed for each six cubic yards of uncompacted solid waste, one dollar and twenty-five cents for each three cubic yards of compacted solid waste, or one dollar and twenty-five cents per ton of solid waste disposed of at landfills regulated by the department. Each operator of a landfill disposal facility shall make the fee payment quarterly. The fee shall be paid quarterly to the department on or before the twentieth day of the month immediately following the end of each quarter on or before the forty-fifth day following the end of each quarter. For purposes of this section, landfill shall have the same definition as municipal solid waste landfill unit in 40 C.F.R. part 258, subpart A, section 258.2.

(2) The department shall exempt a landfill operator from the disposal fee imposed by this section for solid waste that is disposed pursuant to a contract shown to have been in effect on or before December 15, 1991, if such contract requires the landfill operator to dispose of solid waste without a mechanism for a price increase for a period of not less than one year. Such exemption shall terminate at the earlier of the following dates: (a) The date such contract allows for a price increase; (b) the expiration of such contract; or (c) July 1, 1994.

(3) Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the permitholder. The form shall state the total volume of solid waste disposed of at that facility during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the permitholder.

(4) If a permitholder fails to make a timely payment of the fee, he or she shall pay interest on the unpaid amount at a rate of five percent per month the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

(5) This section shall not apply to a site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

(6) Fifty percent of the total of such fees collected in each



quarter shall be remitted to the State Treasurer for credit to the Integrated Solid Waste Management Cash Fund and shall be used by the department to cover the direct and indirect costs of regulating and monitoring facilities during and after operation of facilities or performance of regulated activities under the Integrated Solid Waste Management Act. The remaining fifty percent of the total of such fees collected per quarter shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. For purposes of determining the total fees collected, any amount of fees rebated pursuant to section 3 of this act shall be included as if the fees had not been rebated, and the amount of the fees rebated pursuant to such section shall be deducted from the amount to be credited to the Waste Reduction and Recycling Incentive Fund.

(7) The council shall adopt and promulgate rules and regulations for the distribution of grants from the proceeds of the fees imposed by this section to counties, municipalities, and agencies for the purposes of planning and implementing facilities and systems to further the goals of the Integrated Solid Waste Management Act. The fees collected pursuant to this section shall not be used as grant proceeds to fund landfill closure site assessments, closure, monitoring, or remediation investigative or corrective action costs for existing landfills or landfills already closed prior to July 15, 1992. The rules and regulations shall base the awarding of grants on a project's reflection of the integrated solid waste management policy and hierarchy established in section 13-2018, the proposed amount of local matching funds, and community need.

Sec. 12. (1) In addition to any authority granted to a city, village, or county under sections 31-701 to 31-726 to review or approve any actions or proposed actions of a sanitary and improvement district, any sanitary and improvement district which includes real property located within one mile of the boundary of a solid waste disposal site for which a permit application is pending or for which a permit has been issued pursuant to section 13-2036 shall obtain the approval of the governing body of any county, municipality, or agency which has applied for or which is a holder of such permit prior to entering into any contract or agreement for or otherwise providing for building, reconstructing, purchasing, or otherwise acquiring or providing any improvements or facilities pursuant to section 31-708 prior to the acquisition of any property pursuant to section 31-712 or 31-714.

(2) Approval under this section shall be based upon a determination by the county, municipality, or agency:

(a) That the proposed action by the sanitary and improvement district will not hinder, impede, obstruct, interfere with, or unduly burden the county, municipality, or agency in the performance of its duties and responsibilities under the Integrated Solid Waste Management Act;

(b) That the proposed action by the sanitary and improvement district is consistent with the preservation of the public health, safety, and welfare under the provisions of such act; and

(c) That the proposed action by the sanitary and improvement district will not create financial burdens upon the county, municipality, or agency responsible for a facility in the construction, operation, management, closure, or postclosure care of the facility disproportionate to the benefits from the proposed action to be derived by the owners of the land within the sanitary and improvement district making a reasonable use of their land.

(3) For purposes of this section, county, municipality, facility, and agency shall have the definitions provided in the Integrated Solid Waste Management Act.

Sec. 13. (1) In addition to any authority granted to a city, village, or county under sections 31-727 to 31-762 to review or approve any actions or proposed actions of a sanitary and improvement district, any sanitary and improvement district which includes real property located within one mile of the boundary of a solid waste disposal site for which a permit application is pending or for which a permit has been issued pursuant to section 13-2036 shall obtain the approval of the governing body of any county, municipality, or agency which has applied for or which is a holder of such permit prior to entering into any contract or agreement for or otherwise providing for building, reconstructing, purchasing, or otherwise acquiring or providing any improvements or facilities pursuant to section 31-727, 31-740, or 31-744, and prior to the acquisition of any property pursuant to section 31-736, 31-737, or 31-738.

(2) Approval under this section shall be based upon a determination by the county, municipality, or agency:

(a) That the proposed action by the sanitary and improvement district will not hinder, impede, obstruct, interfere with, or unduly burden the county, municipality, or agency in the performance of its duties and

responsibilities under the Integrated Solid Waste Management Act:

(b) That the proposed action by the sanitary and improvement district is consistent with the preservation of the public health, safety, and welfare under the provisions of such act; and

(c) That the proposed action by the sanitary and improvement district will not create financial burdens upon the county, municipality, or agency responsible for a facility in the construction, operation, management, closure, or postclosure care of the facility disproportionate to the benefits from the proposed action to be derived by the owners of the land within the sanitary and improvement district making a reasonable use of their land.

(3) For purposes of this section, county, municipality, facility, and agency shall have the definitions provided in the Integrated Solid Waste Management Act.

Sec. 14. That section 60-335, Revised Statutes Supplement, 1993, be amended to read as follows:

60-335. No registration fee shall be charged for any motor vehicle owned or leased and used by any city or village of this state, used in connection with police, street, public transportation, park, library, or fire prevention activities, fire trucks owned and used by any rural fire protection district, a motor vehicle owned and operated by the Civil Air Patrol, any motor vehicle owned and used by any public school district, any county, the state, or the United States Government, any joint entity or agency formed pursuant to the Interlocal Cooperation Act or the Integrated Solid Waste Management Act, or any motor vehicles of any municipal public body or authority used in operating a public passenger transportation system. Any motor vehicle owned or leased and used by this state or any political subdivision as set forth in this section and exempt from a distinct marking as provided in section 81-1021 may carry number plates the same design and size as provided in subsection (3) of section 60-311.

Sec. 15. That section 77-2703, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2703. (1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state, the gross receipts of every person engaged as a public utility, as a community antenna television service operator or any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), or (d) of section 77-2702.07, or as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2702.07, the gross receipts from the sale of admissions in this state, and the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section. When there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to adopt and promulgate appropriate rules and regulations prescribing a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items, except that the Tax Commissioner may authorize computation and collection of the tax

uniformly on a straight percentage basis in lieu of brackets in situations involving machine or computer billing.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes, in good faith, from the purchaser a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it or takes, in good faith, an exemption certificate pursuant to subsection (7) of section 77-2705. Receipt of a resale certificate or exemption certificate, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, for periods of one year or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The sales tax shall be collected by the lessor from the lessee as part of the lease or rental payments. The sales tax shall constitute a debt owed by the lessor to the state and shall be remitted as in the case of tax collected by a retailer. Sales tax liability shall attach at the time the lease is executed at the place of registration of the automobile, truck, trailer, semitrailer, or truck-tractor. The lessor, at the time the lease or rental agreement is executed, shall provide to the lessee a statement of the lease or rental payments under the agreement. The statement shall also be provided to the county treasurer who shall certify the amount of sales tax due, including applicable local sales tax, and forward the statement to the Department of Revenue; and

(v) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(h) The tax imposed by this section on the sales of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be the liability of the purchaser and, with the exception of motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09, the tax shall be collected by the county treasurer or designated county official as provided in section 60-302 at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, trailer, or semitrailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as

disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, trailer, or semitrailer in this state and does not register it for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer, the designated county official, or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer, designated county official, or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer, designated county official, or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Interstate Registration Operations Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer, designated county official, or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(1) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax



Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. Such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax, except that for each month from October 1, 1991, to September 30, 1992, such collectors shall deduct and withhold from the amount of taxes collected three percent of the first five thousand dollars remitted each month and one percent of all amounts in excess of five thousand dollars remitted each month as reimbursement for the cost of collecting the tax and for each month from April 1, 1993, to March 31, 1994, such collectors shall deduct and withhold from the amount of taxes collected three-quarters of one percent of the first two thousand dollars remitted each month and one-quarter of one percent of all amounts in excess of two thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) It shall be further presumed, in the absence of evidence to the contrary, that property shipped or brought to this state by the purchaser after June 1, 1967, was purchased from a retailer on or after that date for storage, use, or other consumption in this state.

(g)(i) Except as provided in subdivisions (g)(ii), (g)(iii), and (g)(iv) of this subsection, when a person purchases property in another state, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country with the intent of using such property in such other state, commonwealth, territory, possession, or country and such property is actually used in the other state, commonwealth, territory, possession, or country for its intended purpose, the property shall not be subject to tax in this state.

(ii) Subdivision (g)(i) of this subsection shall only apply to a motor vehicle, trailer, or semitrailer as defined in section 60-301 when it is licensed for operation on the highways of the other state, commonwealth, territory, possession, or country prior to being brought into this state.

(iii) Subdivision (g)(i) of this subsection shall not apply to an aircraft which is brought into this state within one year of purchase and (A) is regularly based within this state or (B) more than one-half of the aircraft's operating hours are within this state.

For purposes of subdivision (g)(iii) of this subsection, operation of the aircraft for the purpose of maintenance, repair, or fabrication with subsequent removal from this state upon completion of such maintenance, repair, or fabrication shall not be considered operating hours.

(iv) Subdivision (g)(i) of this subsection shall not apply to any property that is manufactured, processed, or fabricated in another state and that is not used for its intended purpose in the other state after its manufacture, processing, or fabrication.

Sec. 16. That section 77-2704.15, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2704.15. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, or rural or suburban fire protection district, or joint entity or agency formed to fulfill the purposes described in the Integrated Solid Waste Management Act by any combination of two or more counties, townships, cities, or villages pursuant to the Interlocal Cooperation Act or the Integrated Solid Waste Management Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(2) The appointment of purchasing agents shall be recognized for the

purpose of altering the status of the construction contractor as the ultimate consumer of property which is physically annexed to the structure and becomes the property of the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to property being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the property physically annexed to real estate in the construction, improvement, or repair.

Sec. 17. That section 77-27,147, Revised Statutes Supplement, 1992, be amended to read as follows:

77-27,147. All relevant provisions of the Nebraska Revenue Act of 1967, as amended from time to time, and not inconsistent with the Local Option Revenue Act, shall govern transactions, proceedings, and activities pursuant to any tax imposed under the Local Option Revenue Act.

For the purposes of the Local Option Revenue Act, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are consummated:

(1) At the place where title, possession, or segregation takes place, with the exception of sales, leases, and rentals of motor vehicles, trailers, and semitrailers, if a purchaser takes possession of tangible personal property within a municipality which has enacted a tax under the Local Option Revenue Act, regardless of the business location of the Nebraska retailer;

(2) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that Nebraska intrastate message toll telephone and telegraph services shall be consummated in the municipality where the customer is normally billed for such service; and

(3) At the physical location of individual vending machines.

Sec. 18. That section 81-15,176, Revised Statutes Supplement, 1993, be amended to read as follows:

81-15,176. (1) Subject to subsection (3) of this section, the board shall establish environmental priorities for the trust. The board, after allowing opportunity for public comment, shall designate as priorities those environmental goals which most affect the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and areas of aesthetic or scenic values. In designating environmental priorities, the board shall attempt to focus on the areas which promise the greatest opportunities for effective action to achieve and preserve the future environmental quality in the state. The board shall establish priorities for five-year periods beginning July 1, 1995, except that the board may make annual modifications to refine and clarify its priorities. The board shall provide for public involvement in developing the priorities for such five-year periods, including public meetings in each of the three congressional districts.

(2) The board shall establish criteria for determining the eligibility of projects for assistance from the fund, which criteria shall include the following:

(a) The fund shall not provide direct assistance to regulatory programs or to implement actions mandated by regulations except remediation;

(b) Before January 1, 1997, no more than twenty-five percent of allocations in any year shall assist remediation of soils or ground water, and no allocation for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized. On and after January 1, 1997, no more than sixty percent of allocations in any year shall assist remediation of soils or ground water, and no allocation for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized;

(c) The fund shall not pay for private benefits or to relieve private liability for environmental damage;

(d) The fund shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing

serious financial hardship;

(e) The fund should assist those projects which offer the greatest environmental benefits relative to cost;

(f) The fund should assist those projects which provide clear and direct environmental benefits;

(g) The fund should assist those projects which will make a real contribution to achieving the board's environmental priorities; ~~and~~

(h) The fund should assist those projects which offer the greatest public benefits; and

~~(i) The fund shall not pay for land or easements acquired without the full and express consent of the landowner.~~

(3) Until the first five-year priorities become effective on July 1, 1995, the board shall observe the following ~~initial~~ priorities for allocating funds:

(a) Critical habitat areas, including wetlands acquisition, preservation, and restoration and acquisition and easements of areas critical to rare or endangered species; ~~Land and easements shall not be acquired without the full and express consent of the landowner;~~

(b) Surface water quality, including actions to preserve lakes and streams from degradation;

(c) Ground water quality, including fostering best management practices as defined in section 46-657, actions to preserve ground water from degradation, and remediation of soils or ground water; and

(d) Development of recycling markets and reduction of solid waste volume and toxicity.

(4) The board may refine and clarify these initial priorities.

Sec. 19. Sections 15, 17, 19, and 21 of this act shall become operative on January 1, 1989. Section 3 of this act shall become operative on January 1, 1995. The other sections of this act shall become operative on their effective date.

Sec. 20. 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. 21. That original section 77-27,147, Revised Statutes Supplement, 1992, and section 77-2703, Revised Statutes Supplement, 1993, are repealed.

Sec. 22. That original sections 13-2001, 13-2003, 13-2022, 13-2034, 13-2036, 13-2038, 13-2039, and 13-2042, Revised Statutes Supplement, 1992, and sections 60-335, 77-2704.15, and 81-15,176, Revised Statutes Supplement, 1993, are repealed.

Sec. 23. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.