

LEGISLATIVE BILL 858

Approved by the Governor August 06, 2020

Introduced by Hughes, 44.

A BILL FOR AN ACT relating to natural resources; to amend sections 18-2409, 18-2410, 18-2413, 18-2414, 18-2420, 18-2427, 18-2435, 18-2436, 18-2439, 18-2445, 18-2446, 18-2451, 18-2461, 66-1519, 66-1523, 66-1525, 72-2007, and 81-1566, Reissue Revised Statutes of Nebraska, section 81-1558, Revised Statutes Cumulative Supplement, 2018, and section 66-1529.02, Revised Statutes Supplement, 2019; to redefine terms and change provisions of the Municipal Cooperative Financing Act relating to directors, municipalities, bonds, audits, and agency restrictions; to extend use of the Petroleum Release Remedial Action Cash Fund; to eliminate legislative confirmation for certain Niobrara Council members; to eliminate provisions relating to fund transfers and extend a termination date under the Nebraska Litter Reduction and Recycling Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 18-2409, Reissue Revised Statutes of Nebraska, is amended to read:

18-2409 Governing body shall mean the council in the case of a city, the board of trustees in the case of a village, ~~and the equivalent body in the case of a municipality incorporated under the laws of another state, and the board in the case of an agency primarily comprised of municipalities.~~

Sec. 2. Section 18-2410, Reissue Revised Statutes of Nebraska, is amended to read:

18-2410 Municipality shall mean (1) any city or village incorporated under the laws of this state, any equivalent entity incorporated under the laws of another state, or any separate municipal utility which has autonomous control and was established by such a city, village, or equivalent entity or by the citizens thereof for the purpose of providing electric energy for such municipality, ~~or~~ (2) any public entity organized under Chapter 70, article 6, and incorporated under the laws of this state for the sole purpose of providing wholesale electric energy to a single municipality which is incorporated under the laws of this state, or (3) any agency primarily comprised of municipalities.

Sec. 3. Section 18-2413, Reissue Revised Statutes of Nebraska, is amended to read:

18-2413 Power project shall mean any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, conservation, transformation, distribution, purchase, sale, exchange, or interchange of electric power and energy, or any interest therein or right to capacity thereof, any energy conservation system or device for reducing the energy demands or any interest therein, and the acquisition of energy sources or fuel of any kind, for any such purposes, including, without limitation, facilities for the acquisition, transformation, collection, utilization, and disposition of nuclear fuel or solar, geothermal, hydroelectric, or wind energy and the acquisition or construction and operation of facilities for extracting fuel including agricultural ethyl alcohol from natural deposits or agricultural products, for converting it for use in another form, for burning it in place, or for transportation and storage.

Sec. 4. Section 18-2414, Reissue Revised Statutes of Nebraska, is amended to read:

18-2414 Project shall mean any power project, sewerage project, solid waste disposal project, waterworks project, or any combination of two or more thereof or any interest therein or right to capacity thereof. Project does not include the construction, maintenance, or remodeling of an agency's headquarters office building or any other improvements thereto.

Sec. 5. Section 18-2420, Reissue Revised Statutes of Nebraska, is amended to read:

18-2420 The governing body of each of the municipalities participating in the creation of such agency shall by appropriate action by ordinance or resolution determine that there is a need for such agency and set forth the names of the proposed participating municipalities of the agency. Such an action may be taken by a municipality's governing body on its own motion upon determining, in its discretion, that a need exists for an agency. In determining whether such a need exists, a governing body may take into consideration the present and future needs of the municipality with respect to the commodities and services which an agency may provide, the adequacy and suitability of the supplies of such commodities and services to meet such needs, and economic or other advantages or efficiencies which may be realized by cooperative action through an agency. Upon the adoption of an ordinance or passage of a resolution as provided in this section, the mayor, in the case of a city, the chairperson of the board of trustees, in the case of a village, or

the chairperson of the governing body, of each of the proposed participating municipalities, with the approval of the respective governing body, shall appoint a director ~~who shall be an elector of the municipality for which he or she acts as director. The qualifications for appointment as a director shall be as determined by the board in its bylaws.~~ The directors shall constitute the board in which shall be vested all powers of the agency.

Sec. 6. Section 18-2427, Reissue Revised Statutes of Nebraska, is amended to read:

18-2427 Upon adoption of ordinances or resolutions in accordance with section 18-2420, a petition shall be addressed to the Nebraska Power Review Board stating that it is the intent and purpose to create an agency pursuant to sections 18-2426 to 18-2434, subject to approval by the Nebraska Power Review Board. The petition shall state the name of the proposed agency, the names of the proposed participating municipalities, the name ~~and residence~~ of each of the directors so far as known, a certified copy of each of the ordinances or resolutions of the participating municipalities determining the need for such an agency, a certified copy of the proceedings of each municipality evidencing the director's right to office, a general description of the operation in which the agency intends to engage, and the location and method of operation of the proposed plants and systems of the agency.

Sec. 7. Section 18-2435, Reissue Revised Statutes of Nebraska, is amended to read:

18-2435 A director may be removed for any cause at any time by the governing body of the municipality for which such director ~~acts or by the board pursuant to its bylaws.~~ A certificate of the appointment or reappointment of any director shall be filed with the clerk of the municipality for which such director acts and such certificate shall be conclusive evidence of the due and proper appointment of such director. Each director appointed prior to the operative date of this section shall serve for a term of three years or until his or her successor has been appointed and has qualified in the same manner as the original appointment. Beginning on the operative date of this section, each director shall serve for a term as established by the bylaws of the board. A director shall be eligible for reappointment upon the expiration of his or her term. A vacancy shall be filled for the balance of the unexpired term of the person who has ceased to hold office in the same manner as the original appointment. A director shall receive no compensation for his or her services but shall be entitled to the necessary expenses, including travel expenses, incurred in the discharge of his or her official duties, including mileage at the rate provided in section 81-1176 for state employees.

Sec. 8. Section 18-2436, Reissue Revised Statutes of Nebraska, is amended to read:

18-2436 Each participating municipality shall be entitled to appoint one director, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any of the participating municipalities to appoint more than one director and specifying the number of directors to be appointed by each of the participating municipalities of the agency. The number of directors may be increased or decreased from time to time by an amendment to the bylaws approved by each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof. ~~The board may establish in its bylaws classes of membership which provide for allocated voting rights. Each participating municipality shall at all times be entitled to appoint at least one director. Each director shall be entitled to one vote, but with the approval of each of the participating municipalities as evidenced by an ordinance or resolution of the governing body thereof, an agency's bylaws may contain a provision entitling any director or directors to cast more than one vote and specifying the number or numbers of votes such director or directors may cast.~~ Unless the bylaws of the agency shall require a larger number, a quorum of the board shall be constituted for the purpose of conducting the business and exercising the powers of the agency and for all other purposes when directors are present who are entitled to cast a majority of the total votes which may be cast by all of the board's directors. Action may be taken upon a vote of a majority of the votes which the directors present are entitled to cast unless the bylaws of the agency shall require a larger number. The manner of scheduling regular board meetings and the method of calling special board meetings, including the giving or waiving notice thereof, shall be as provided in the bylaws. Such meetings may be held by any means permitted by the Open Meetings Act.

Sec. 9. Section 18-2439, Reissue Revised Statutes of Nebraska, is amended to read:

18-2439 (1) An agency shall be dissolved upon the adoption, by the governing bodies of at least half of the participating municipalities, of an ordinance or resolution setting forth the determination that the need for such municipality to act cooperatively through an agency no longer exists. An agency shall not be dissolved so long as the agency has bonds outstanding, unless provision for full payment of such bonds and interest thereon, by escrow or otherwise, has been made pursuant to the terms of such bonds or the ordinance, resolution, trust indenture, or security instrument securing such bonds. If the governing bodies of one or more, but less than a majority, of the participating municipalities adopt such an ordinance or resolution, such municipalities shall be permitted to withdraw from participation in the agency, but such withdrawal shall not affect the obligations of such municipality pursuant to any contracts or other agreements with such agency. Such withdrawal shall not impair the

payment of any outstanding bonds or interest thereon. In the event of the dissolution of an agency, its board shall provide for the disposition, division, or distribution of the agency's assets among the participating municipalities by such means as such board shall determine, in its sole discretion, to be fair and equitable. The board may provide in its bylaws a method by which to terminate a municipality's participation in an agency.

(2)(a) No participating municipality of an agency may be expelled or suspended, and no participation in such agency may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(i) The charter or bylaws set forth a procedure that provides:

(A) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

(B) An opportunity for the participating municipality to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, suspension, or termination not take place; or

(ii) A procedure takes into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first-class or certified mail sent to the last-known address of the participating municipality shown on the agency's records.

(d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(e) A participating municipality that has been expelled, suspended, or terminated may be liable to the agency for dues, assessments, fees, or contractual obligations as a result of obligations incurred or commitments made prior to expulsion, suspension, or termination.

Sec. 10. Section 18-2445, Reissue Revised Statutes of Nebraska, is amended to read:

18-2445 (1) In the event of sudden or unexpected damage, injury, or impairment of such project, plant, works, system, or other property belonging to the agency, or an order of a regulatory body which would prevent compliance with section 18-2442, the board of directors may, in its discretion, declare an emergency, and proceed with the necessary construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement without first complying with the provisions of sections 18-2442 to 18-2444.

(2) When, by reason of disturbed or disrupted economic conditions due to war or due to the operation of laws, rules, or regulations of governmental authorities, whether enacted, passed, promulgated, or issued under or due to the emergency or necessities of war or national defense, the contracting or purchasing by the agency is so restricted, prohibited, limited, allocated, regulated, rationed, or otherwise controlled, that the letting of contracts therefor, pursuant to the requirements of such sections, is legally or physically impossible or impractical, ~~the provisions of sections 18-2442 to 18-2444 shall not apply to such contracts or purchases.~~

(3) Such contract shall provide that, to the extent practicable, workers who are citizens of Nebraska shall be given preference for employment by the contractor.

(4) ~~Section All provisions of section 52-118, with reference to contractors' bonds, shall be applicable and effective as to any contract let pursuant to the Municipal Cooperative Financing Act, except that for any electric generation facility the penal sum of any contractor's bond shall be the lesser of the contract amount or two hundred million dollars. The bond required by section 52-118 may be satisfied by a corporate surety bond or letter of credit, or a combination thereof, as approved by the agency sections 18-2401 to 18-2485.~~

Sec. 11. Section 18-2446, Reissue Revised Statutes of Nebraska, is amended to read:

18-2446 (1) Money of the agency shall be paid out or expended only upon the authorization or approval of the board of directors by specific agreement, by a written contract, ~~or by a resolution, or by adoption of the budget.~~ All money of the agency shall be paid out or expended only by check, draft, warrant, or other instrument ~~authorized by the agency in writing, signed by the treasurer, assistant treasurer, or such other officer, employee, or agent of the agency as shall be authorized by the treasurer to sign in his or her behalf. Such authorization shall be in writing and filed with the secretary of the agency.~~

(2) ~~A report of the money~~ Money of the agency paid out or expended shall be provided to examined by the board of directors at the next regular meeting following such expenditure.

(3) In the event that there is no treasurer's bond that expressly insures the agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any and every person authorized to sign checks, drafts, warrants, or other instruments ~~authorized by the agency in writing, there shall be bonds or insurance policies which adequately cover such risk procured and filed with the secretary of the agency, together with the written authorization filed with the secretary of the~~

~~board, a surety bond, effective for protection against such loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the agency other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.~~

Sec. 12. Section 18-2451, Reissue Revised Statutes of Nebraska, is amended to read:

18-2451 The books and records of an agency created pursuant to sections 18-2426 to 18-2434 shall be public records and shall be kept at the principal place of business of such agency. The agency books and records shall be open to public inspection at reasonable times and upon reasonable notice. The agency shall annually cause to be filed with the Auditor of Public Accounts an audit of the books, records, and financial affairs of the agency. Such audit shall be made by a certified public accountant or firm of such accountants selected by the agency and shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the agency and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred eighty days after the close of the fiscal year of the agency December 31 of each year. If any agency created pursuant to sections 18-2426 to 18-2434 fails to file a copy of an audit within the time prescribed in this section, the books, records, and financial affairs of such agency shall, within one hundred eighty days after the close of the fiscal year of the agency, be audited by a certified public accountant or firm of accountants selected by the Auditor of Public Accounts. The cost of the audit shall be paid by the agency.

Sec. 13. Section 18-2461, Reissue Revised Statutes of Nebraska, is amended to read:

18-2461 (1) Any agency may sell to any public power district, public power and irrigation district, irrigation district, city or village, any power project, power plant, electric generation plant, electric distribution system, or any parts thereof, for such sums and upon such terms as the board of such agency may deem fair and reasonable. Except as provided in this section, no ~~power plant, system, or works owned by an agency shall be sold, alienated, or mortgaged by such agency. Nothing in the Municipal Cooperative Financing Act sections 18-2401 to 18-2485 shall prevent an agency from assigning, pledging, or otherwise hypothecating, its revenue, incomes, receipts, or profits to secure the payment of indebtedness, but the credit or funds of the State of Nebraska or any political subdivision thereof shall never be pledged for the payment or settlement of any indebtedness or obligation whatever of any agency created pursuant to sections 18-2426 to 18-2434.~~

(2) Except as provided in sections 18-412.07 to 18-412.09, 18-2457 to 18-2460, or 18-2462, neither ~~Neither~~ by sale under foreclosure, receivership, or bankruptcy proceedings, nor by alienation in any other manner, may the property of such an agency become the property of or come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This restriction does not apply to (a) joint participation in any electric generation or transmission facility pursuant to sections 18-412.07 to 18-412.09 or 18-2457 to 18-2460, or (b) a nonprofit cooperative corporation that has provided financing for property, projects, or undertakings when such property is covered by a mortgage, pledge of revenue, or other hypothecation to secure the payment of a loan or loans made to an agency. This restriction does not apply to a sale, transfer, or lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas, which cooperative corporation is organized under the laws of the State of Nebraska or domesticated in the State of Nebraska, except that such property so acquired by a cooperative nonprofit corporation organized to provide financing or by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit.

(3) In order to protect and safeguard the security and the rights of the purchasers or holders of revenue debentures, notes, bonds, warrants, or other evidences of indebtedness, issued by any agency created pursuant to sections 18-2426 to 18-2434, such agency may agree with the purchasers or holders that in the event of default in the payment on, or principal of, any such evidences of indebtedness or in the event of default in performance of any duty or obligation of such agency in connection therewith, such purchasers or holders, or trustees selected by them, may take possession and control of the business and property of the agency and proceed to operate the same, and to collect and receive the income thereof, and after paying all necessary and proper operating expenses and all other proper disbursements or liabilities made or incurred, use the surplus, if any, of the revenue of the agency as follows: (a) ~~(1)~~ In the payment of all outstanding past-due interest on each issue of revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, so far as such net revenue will go, and paying pro rata the interest due on each issue thereof when there is not enough to pay in full all of the interest; and (b) ~~(2)~~ if any sums shall remain after the payment of interest, then in the payment of the revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, which, by the terms thereof, shall be due and payable on each outstanding issue in accordance with the terms thereof, and paying pro rata

when the money available is not sufficient to pay in full. When all legal taxes and charges, all arrears of interest, and all matured revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, have been paid in full, the control of the business and the possession of the property of the agency shall then be restored to such agency. The privilege granted in this section shall be a continuing one as often as the occasion therefor may arise.

Sec. 14. Section 66-1519, Reissue Revised Statutes of Nebraska, is amended to read:

66-1519 (1) 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:

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

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

(c) 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.

(2) Money in the fund may 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 June 30, ~~2024~~ ~~2020~~, 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; (g) claims approved by the State Claims Board authorized under section 66-1531; (h) the direct and indirect costs incurred by the department in responding to spills and other environmental emergencies related to petroleum or petroleum products; and (i) up to one million five hundred thousand dollars each fiscal year of the department's cost-share obligations and operation and maintenance obligations under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.

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

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

(5) Any money in the Petroleum Release Remedial Action Cash 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. 15. 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 for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, ~~2024~~ ~~2020~~, 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 66-1531 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 for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, ~~2024~~ ~~2020~~, 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 66-1531 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) ~~There 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, 2024~~ 2020.

(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. 16. 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 June 30, ~~2024~~ 2020, 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. 17. Section 66-1529.02, Revised Statutes Supplement, 2019, 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 June 30, 2024 ~~2020~~, 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 Environment and Energy, 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. 18. Section 72-2007, Reissue Revised Statutes of Nebraska, is amended to read:

72-2007 (1) The Niobrara Council is created. The council membership shall include:

(a) A commissioner from each of the county boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the county board of the respective county;

(b) A representative of the Middle Niobrara Natural Resources District and the Lower Niobrara Natural Resources District chosen by the board of the respective district;

(c) The secretary of the Game and Parks Commission or his or her designee;

(d) The regional director for the National Park Service or his or her designee and the regional director for the United States Fish and Wildlife Service or his or her designee. The members under this subdivision shall be nonvoting members unless and until the agencies represented by these members

formally authorize such members to vote on all matters before the council by notifying the council and the Governor in writing;

(e) An individual from each of Brown, Cherry, Keya Paha, and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, from each county submitted by the county board members on the council;

(f) A representative from a recreational business operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council;

(g) A timber industry representative operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council; and

(h) A representative of a recognized, nonprofit environmental, conservation, or wildlife organization chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council.

~~The appointments made pursuant to subdivisions (1)(e) through (h) of this section shall be subject to confirmation by the Legislature. The council members shall hold office for three-year terms and until a successor is appointed and qualified. The council members shall serve at the pleasure of the appointing board or the Governor.~~

(2) The council shall elect a chairperson, a vice-chairperson, a secretary, and a treasurer who shall jointly serve as the executive committee for the council. The council shall meet on a regular basis with a minimum of six meetings per year. Special meetings may be called by any member of the executive committee or at the request of a simple majority of the members of the council.

(3) A quorum shall be present at a meeting before any action may be taken by the council. A quorum shall be a majority of the members who are selected and serving and who vote on issues before the council. All actions of the council require a majority vote of the quorum present at any meeting, except that any vote to reject or adopt any zoning regulation or variance under section 72-2010 requires a vote of two-thirds of all the council members who are selected and serving and who vote on issues before the council.

(4) Members shall be reimbursed for actual and necessary expenses incurred in carrying out their duties on the council as provided in sections 81-1174 to 81-1177.

Sec. 19. Section 81-1558, Revised Statutes Cumulative Supplement, 2018, is amended to read:

81-1558 There is hereby created within the state treasury a fund to be known as the Nebraska Litter Reduction and Recycling Fund. The proceeds of the fee imposed by sections 81-1559 to 81-1560.02, money received by the department as gifts, donations, or contributions toward the goals stated in section 81-1535, and money received by the department for nonprofit activities concerning litter reduction and recycling, including, but not limited to, honoraria, literature furnished by the department, and funds realized as reimbursement for expenses in conducting educational forums, shall be remitted to the State Treasurer for credit to such fund to be used for the administration and enforcement of the Nebraska Litter Reduction and Recycling Act. ~~Transfers may be made from the fund to the General Fund at the direction of the Legislature.~~ Any money in the Nebraska Litter Reduction and Recycling 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. 20. Section 81-1566, Reissue Revised Statutes of Nebraska, is amended to read:

81-1566 The Nebraska Litter Reduction and Recycling Act shall terminate on ~~September 30, 2025~~ 2020, unless extended by the Legislature. In order to determine whether such extension shall occur, the department shall review and evaluate the extent to which the purposes of the act have been and are being achieved and the need for continuation of the program and requirements established by the act. Such review and evaluation shall be completed at least six months prior to the date established by this section for termination of the act.

Sec. 21. Sections 14, 15, 16, 17, and 22 of this act become operative on June 30, 2020. The other sections of this act become operative on their effective date.

Sec. 22. Original sections 66-1519, 66-1523, and 66-1525, Reissue Revised Statutes of Nebraska, and section 66-1529.02, Revised Statutes Supplement, 2019, are repealed.

Sec. 23. Original sections 18-2409, 18-2410, 18-2413, 18-2414, 18-2420, 18-2427, 18-2435, 18-2436, 18-2439, 18-2445, 18-2446, 18-2451, 18-2461, 72-2007, and 81-1566, Reissue Revised Statutes of Nebraska, and section 81-1558, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 24. Since an emergency exists, this act takes effect when passed and approved according to law.