

AM7020
LB 126
NPN-01-26

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E & R AMENDMENTS TO LB 126

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 "Section 1. Section 81-1505, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 81-1505. (1) In order to carry out the purposes of the
6 Environmental Protection Act, the Integrated Solid Waste Management
7 Act, and the Livestock Waste Management Act, the council shall
8 adopt and promulgate rules and regulations which shall set
9 standards of air, water, and land quality to be applicable to the
10 air, waters, and land of this state or portions thereof. Such
11 standards of quality shall be such as to protect the public health
12 and welfare. The council shall classify air, water, and land
13 contaminant sources according to levels and types of discharges,
14 emissions, and other characteristics which relate to air, water,
15 and land pollution and may require reporting for any such class or
16 classes. Such classifications and standards made pursuant to this
17 section may be made for application to the state as a whole or to
18 any designated area of the state and shall be made with special
19 reference to effects on health, economic and social factors, and
20 physical effects on property. Such standards and classifications
21 may be amended as determined necessary by the council.

22 (2) In adopting the classifications of waters and water
23 quality standards, the primary purpose for such classifications and
24 standards shall be to protect the public health and welfare and the

1 council shall give consideration to:

2 (a) The size, depth, surface area, or underground area
3 covered, the volume, direction, and rate of flow, stream gradient,
4 and temperature of the water;

5 (b) The character of the area affected by such
6 classification or standards, its peculiar suitability for
7 particular purposes, conserving the value of the area, and
8 encouraging the most appropriate use of lands within such area for
9 domestic, agricultural, industrial, recreational, and aquatic life
10 purposes;

11 (c) The uses which have been made, are being made, or are
12 likely to be made, of such waters for agricultural, transportation,
13 domestic, and industrial consumption, for fishing and aquatic
14 culture, for the disposal of sewage, industrial waste, and other
15 wastes, or other uses within this state and, at the discretion of
16 the council, any such uses in another state on interstate waters
17 flowing through or originating in this state;

18 (d) The extent of present pollution or contamination of
19 such waters which has already occurred or resulted from past
20 discharges therein; and

21 (e) Procedures pursuant to section 401 of the Clean Water
22 Act, as amended, 33 U.S.C. 1251 et seq., for certification by the
23 department of activities requiring a federal license or permit
24 which may result in a discharge.

25 (3) In adopting effluent limitations or prohibitions, the
26 council shall give consideration to the type, class, or category of
27 discharges and the quantities, rates, and concentrations of

1 chemical, physical, biological, and other constituents which are
2 discharged from point sources into navigable or other waters of the
3 state, including schedules of compliance, best practicable control
4 technology, and best available control technology.

5 (4) In adopting standards of performance, the council
6 shall give consideration to the discharge of pollutants which
7 reflect the greatest degree of effluent reduction which the council
8 determines to be achievable through application of the best
9 available demonstrated control technology, processes, operating
10 methods, or other alternatives, including, when practicable, a
11 standard permitting no discharge of pollutants.

12 (5) In adopting toxic pollutant standards and
13 limitations, the council shall give consideration to the
14 combinations of pollutants, the toxicity of the pollutant, its
15 persistence, degradability, the usual or potential presence of the
16 affected organisms in any waters, the importance of the affected
17 organisms, and the nature and extent of the effect of the toxic
18 pollutant on such organisms.

19 (6) In adopting pretreatment standards, the council shall
20 give consideration to the prohibitions or limitations to
21 noncompatible pollutants, prohibitions against the passage through
22 a publicly owned treatment works of pollutants which would cause
23 interference with or obstruction to the operation of publicly owned
24 treatment works, damage to such works, and the prevention of the
25 discharge of pollutants therefrom which are inadequately treated.

26 (7) In adopting treatment standards, the council shall
27 give consideration to providing for processes to which wastewater

1 shall be subjected in a publicly owned wastewater treatment works
2 in order to make such wastewater suitable for subsequent use.

3 (8) In adopting regulations pertaining to the disposal of
4 domestic and industrial liquid wastes, the council shall give
5 consideration to the minimum amount of biochemical oxygen demand,
6 suspended solids, or equivalent in the case of industrial
7 wastewaters, which must be removed from the wastewaters and the
8 degree of disinfection necessary to meet water quality standards
9 with respect to construction, installation, change of, alterations
10 in, or additions to any wastewater treatment works or disposal
11 systems, including issuance of permits and proper abandonment, and
12 requirements necessary for proper operation and maintenance
13 thereof.

14 (9)(a) The council shall adopt and promulgate rules and
15 regulations for controlling mineral exploration holes and mineral
16 production and injection wells. The rules and regulations shall
17 include standards for the construction, operation, and abandonment
18 of such holes and wells. The standards shall protect the public
19 health and welfare and air, land, water, and subsurface resources
20 so as to control, minimize, and eliminate hazards to humans,
21 animals, and the environment. Consideration shall be given to:

22 (i) Area conditions such as suitability of location,
23 geologic formations, topography, industry, agriculture, population
24 density, wildlife, fish and other aquatic life, sites of
25 archeological and historical importance, mineral, land, and water
26 resources, and the existing economic activities of the area
27 including, but not limited to, agriculture, recreation, tourism,

1 and industry;

2 (ii) A site-specific evaluation of the geologic and
3 hydrologic suitability of the site and the injection, disposal, and
4 production zones;

5 (iii) The quality of the existing ground water, the
6 effects of exemption of the aquifer from any existing water quality
7 standards, and requirements for restoration of the aquifer;

8 (iv) Standards for design and use of production
9 facilities, which shall include, but not be limited to, all wells,
10 pumping equipment, surface structures, and associated land required
11 for operation of injection or production wells; and

12 (v) Conditions required for closure, abandonment, or
13 restoration of mineral exploration holes, injection and production
14 wells, and production facilities in order to protect the public
15 health and welfare and air, land, water, and subsurface resources.

16 (b) The council shall establish fees for regulated
17 activities and facilities and for permits for such activities and
18 facilities. The fees shall be sufficient but shall not exceed the
19 amount necessary to pay the department for the direct and indirect
20 costs of evaluating, processing, and monitoring during and after
21 operation of regulated facilities or performance of regulated
22 activities.

23 (c) With respect to mineral production wells, the council
24 shall adopt and promulgate rules and regulations which require
25 restoration of air, land, water, and subsurface resources and
26 require mineral production well permit applications to include a
27 restoration plan for the air, land, water, and subsurface resources

1 affected. Such rules and regulations may provide for issuance of a
2 research and development permit which authorizes construction and
3 operation of a pilot plant by the permittee for the purpose of
4 demonstrating the permittee's ability to inject and restore in a
5 manner which meets the standards required by this subsection and
6 the rules and regulations.

7 The rules and regulations adopted and promulgated may
8 also provide for issuance of a commercial permit after a finding by
9 the department that the injection and restoration procedures
10 authorized by the research and development permit have been
11 successful in demonstrating the applicant's ability to inject and
12 restore in a manner which meets the standards required by this
13 subsection and the rules and regulations.

14 (d) For the purpose of this subsection, unless the
15 context otherwise requires, restoration shall mean the employment,
16 during and after an activity, of procedures reasonably designed to
17 control, minimize, and eliminate hazards to humans, animals, and
18 the environment, to protect the public health and welfare and air,
19 land, water, and subsurface resources, and to return each resource
20 to a quality of use consistent with the uses for which the resource
21 was suitable prior to the activity.

22 (10) In adopting livestock waste control regulations, the
23 council shall consider the discharge of livestock wastes into the
24 waters of the state or onto land not owned by the livestock
25 operator, conditions under which permits for such operations may be
26 issued, including design, location, and proper management of such
27 facilities, protection of ground water from such operations, and

1 revocation, modification, or suspension of such permits for cause
2 and all requirements of the Livestock Waste Management Act.

3 (11) In adopting regulations for the issuance of permits
4 under the National Pollutant Discharge Elimination System created
5 by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the
6 council shall consider when such permits shall be required and
7 exemptions, application and filing requirements, terms and
8 conditions affecting such permits, notice and public participation,
9 duration and review of such permits, and monitoring, recording, and
10 reporting under the system.

11 (12) The council shall adopt and promulgate rules and
12 regulations for air pollution control which shall include:

13 (a) A construction permit program which requires the
14 owner or operator of an air contaminant source to obtain a permit
15 prior to construction;

16 (b) An operating permit program consistent with
17 requirements of the Clean Air Act, as amended, 42 U.S.C. 7401 et
18 seq., and an operating permit program for minor sources of air
19 pollution, which programs shall require permits for both new and
20 existing sources;

21 (c) Provisions for operating permits to be issued after
22 public notice, to be terminated, modified, or revoked for cause,
23 and to be modified to incorporate new requirements;

24 (d) Provisions for applications to be on forms provided
25 by the department and to contain information necessary to make a
26 determination on the appropriateness of issuance or denial. The
27 department shall make a completeness determination in a timely

1 fashion and after such determination shall act on the application
2 within time limits set by the council. Applications for operating
3 permits shall include provisions for certification of compliance by
4 the applicant;

5 (e) Requirements for operating permits which may include
6 such conditions as necessary to protect public health and welfare,
7 including, but not limited to (i) monitoring and reporting
8 requirements on all sources subject to the permit, (ii) payment of
9 annual fees sufficient to pay the reasonable direct and indirect
10 costs of developing and administering the air quality permit
11 program, (iii) retention of records, (iv) compliance with all air
12 quality standards, (v) a permit term of no more than five years
13 from date of issuance, (vi) any applicable schedule of compliance
14 leading to compliance with air quality regulations, (vii) site
15 access to the department for inspection of the facility and
16 records, (viii) emission limits or control technology requirements,
17 (ix) periodic compliance certification, and (x) other conditions
18 necessary to carry out the purposes of the Environmental Protection
19 Act. For purposes of this subsection, control technology shall
20 mean a design, equipment, a work practice, an operational standard
21 which may include a requirement for operator training or
22 certification, or any combination thereof;

23 (f) Classification of air quality control regions;

24 (g) Standards for air quality that may be established
25 based upon protection of public health and welfare, emission
26 limitations established by the United States Environmental
27 Protection Agency, and maximum achievable control technology

1 standards for sources of toxic air pollutants. For purposes of
2 this subdivision, maximum achievable control technology standards
3 shall mean an emission limit or control technology standard which
4 requires the maximum degree of emission reduction that the council,
5 taking into consideration the cost of achieving such emission
6 reduction, any health and environmental impacts not related to air
7 quality, and energy requirements, determines is achievable for new
8 or existing sources in the category or subcategory to which the
9 standard applies through application of measures, processes,
10 methods, systems, or techniques, including, but not limited to,
11 measures which accomplish one or a combination of the following:

12 (i) Reduce the volume of or eliminate emissions of the
13 pollutants through process changes, substitution of materials, or
14 other modifications;

15 (ii) Enclose systems or processes to eliminate emissions;
16 or

17 (iii) Collect, capture, or treat the pollutants when
18 released from a process, stack, storage, or fugitive emission
19 point;

20 (h) Restrictions on open burning and fugitive emissions;

21 (i) Provisions for issuance of general operating permits,
22 after public notice, for sources with similar operating conditions
23 and for revoking such general authority to specific permittees;

24 (j) Provisions for implementation of the sulfur dioxide
25 allowance system of the Clean Air Act, as amended, 42 U.S.C. 7401
26 et seq., through the operating permit program;

27 (k) A provision that operating permits will not be issued

1 if the Environmental Protection Agency objects in a timely manner;

2 (l) Provisions for periodic reporting of emissions;

3 (m) Limitations on emissions from process operations,
4 fuel-burning equipment, and incinerator emissions and such other
5 restrictions on emissions as are necessary to protect the public
6 health and welfare;

7 (n) Time schedules for compliance;

8 (o) Requirements for owner or operator testing and
9 monitoring of emissions;

10 (p) Control technology requirements when it is not
11 feasible to prescribe or enforce an emission standard; and

12 (q) Procedures and definitions necessary to carry out
13 payment of the annual emission fee set in section 81-1505.04.

14 (13)(a) In adopting regulations for hazardous waste
15 management, the council shall give consideration to generation of
16 hazardous wastes, labeling practices, containers used, treatment,
17 storage, collection, transportation including a manifest system,
18 processing, resource recovery, and disposal of hazardous wastes.
19 It shall consider the permitting, licensing, design and
20 construction, and development and operational plans for hazardous
21 waste treatment, storage, and disposal facilities, and conditions
22 for licensing or permitting of hazardous waste treatment, storage,
23 and disposal areas. It shall consider modification, suspension, or
24 revocation of such licenses and permits, including requirements for
25 waste analysis, site improvements, fire prevention, safety,
26 security, restricted access, and covering and handling of hazardous
27 liquids and materials. Licenses and permits for hazardous waste,

1 treatment, storage, and disposal facilities shall not be issued
2 until certification by the State Fire Marshal as to fire prevention
3 and fire safety has been received by the department. The council
4 shall further consider the need at treatment, storage, or disposal
5 facilities for required equipment, communications and alarms,
6 personnel training, and contingency plans for any emergencies that
7 might arise and for a coordinator during such emergencies.

8 In addition the council shall give consideration to (i)
9 ground water monitoring, (ii) use and management of containers and
10 tanks, (iii) surface impoundments, (iv) waste piles, (v) land
11 treatment, (vi) incinerators, (vii) chemical or biological
12 treatment, (viii) landfills including the surveying thereof, and
13 (ix) special requirements for ignitable, reactive, or incompatible
14 wastes.

15 In considering closure and postclosure of hazardous waste
16 treatment, storage, or disposal facilities, the council shall
17 consider regulations that would result in the owner or operator
18 closing his or her facility so as to minimize the need for future
19 maintenance, and to control, minimize, or eliminate, to the extent
20 necessary to protect humans, animals, and the environment,
21 postclosure escape of hazardous waste, hazardous waste
22 constituents, and leachate to the ground water or surface waters,
23 and to control, minimize, or eliminate, to the extent necessary to
24 protect humans, animals, and the environment, waste decomposition
25 to the atmosphere. In considering corrective action for hazardous
26 waste treatment, storage, or disposal facilities, the council shall
27 consider regulations that would require the owner or operator, or

1 any previous owner or operator with actual knowledge of the
2 presence of hazardous waste at the facility, to undertake
3 corrective action or such other response measures necessary to
4 protect human health or the environment for all releases of
5 hazardous waste or hazardous constituents from any treatment,
6 storage, or disposal facility or any solid waste management unit at
7 such facility regardless of the time at which waste was placed in
8 such unit.

9 Such regulations adopted pursuant to this subsection
10 shall in all respects comply with the Environmental Protection Act
11 and the Resource Conservation and Recovery Act, as amended, 42
12 U.S.C. 6901 et seq.

13 (b) In adopting regulations for hazardous waste
14 management, the council shall consider, in addition to criteria in
15 subdivision (a) of this subsection, establishing criteria for (i)
16 identifying hazardous waste including extraction procedures,
17 toxicity, persistence, and degradability in nature, potential for
18 accumulation in tissue, flammability or ignitability,
19 corrosiveness, reactivity, and generation of pressure through
20 decomposition, heat, or other means, and other hazardous
21 characteristics, (ii) listing all materials it deems hazardous and
22 which should be subject to regulation, and (iii) locating
23 treatment, storage, or disposal facilities for such wastes. In
24 adopting criteria for flammability and ignitability of wastes
25 pursuant to subdivision (b)(i) of this subsection, no regulation
26 shall be adopted without the approval of the State Fire Marshal.

27 (c) In adopting regulations for hazardous waste

1 management, the council shall establish a schedule of fees to be
2 paid to the director by licensees or permittees operating hazardous
3 waste processing facilities or disposal areas on the basis of a
4 monetary value per cubic foot or per pound of the hazardous wastes,
5 sufficient but not exceeding the amount necessary to reimburse the
6 department for the costs of monitoring such facilities or areas
7 during and after operation of such facilities or areas. The
8 licensees may assess a cost against persons using the facilities or
9 areas. The director shall remit any money collected from fees paid
10 to him or her to the State Treasurer who shall credit the entire
11 amount thereof to the General Fund.

12 (d) In adopting regulations for solid waste disposal, the
13 council shall consider storage, collection, transportation,
14 processing, resource recovery, and disposal of solid waste,
15 developmental and operational plans for solid waste disposal areas,
16 conditions for permitting of solid waste disposal areas,
17 modification, suspension, or revocation of such permits,
18 regulations of operations of disposal areas, including site
19 improvements, fire prevention, ground water protection, safety and
20 restricted access, handling of liquid and hazardous materials,
21 insect and rodent control, salvage operations, and the methods of
22 disposing of accumulations of junk outside of solid waste disposal
23 areas. Such regulations shall in all respects comply with the
24 Environmental Protection Act, the Integrated Solid Waste Management
25 Act, and the Resource Conservation and Recovery Act, as amended, 42
26 U.S.C. 6901 et seq.

27 (14) In adopting regulations governing discharges or

1 emissions of oil and other hazardous materials into the waters, in
2 the air, or upon the land of the state, the council shall consider
3 the requirements of the Integrated Solid Waste Management Act,
4 methods for prevention of such discharges or emissions, and the
5 responsibility of the discharger or emitter for cleanup, toxicity,
6 degradability, and dispersal characteristics of the substance.

7 (15) In adopting regulations governing composting and
8 composting sites, the council shall give consideration to:

9 (a) Approval of a proposed site by the local governing
10 body, including the zoning authority, if any, prior to issuance of
11 a permit by the department;

12 (b) Issuance of permits by the department for such
13 composting operations, with conditions if necessary;

14 (c) Submission of construction and operational plans by
15 the applicant for a permit to the department, with approval of such
16 plans before issuance of such permit;

17 (d) A term of five years for such permits, which shall
18 not be transferable;

19 (e) Renewal of permits if the operation has been in
20 substantial compliance with composting regulations adopted pursuant
21 to this subsection, permit conditions, and operational plans;

22 (f) Review by the department of materials to be
23 composted, including chemical analysis when found by the department
24 to be necessary;

25 (g) Inspections of such compost sites at least
26 semiannually followed by ratings, with a copy of such ratings to be
27 given to the site management. Operations out of compliance with

1 composting regulations, permit conditions, or operational plans
2 shall be given a reasonable time for voluntary compliance, and
3 failure to do so within the specified time shall result in a
4 hearing after notice is given, at which time the owner or operator
5 shall appear and show cause why his or her permit should not be
6 revoked;

7 (h) Special permits of the department for demonstration
8 projects not to exceed six months;

9 (i) Exemptions from permits of the department; and

10 (j) The Integrated Solid Waste Management Act.

11 (16) Any person operating or responsible for the
12 operation of air, water, or land contaminant sources of any class
13 for which the rules and regulations of the council require
14 reporting shall make reports containing information as may be
15 required by the department concerning quality and quantity of
16 discharges and emissions, location, size, and height of contaminant
17 outlets, processes employed, fuels used, and the nature and time
18 periods or duration of discharges and emissions, and such other
19 information as is relevant to air, water, or land pollution and is
20 available.

21 (17) Prior to adopting, amending, or repealing standards
22 and classifications of air, water, and land quality and rules and
23 regulations under the Integrated Solid Waste Management Act or the
24 Livestock Waste Management Act, the council shall, after due
25 notice, conduct public hearings thereon. Notice of public hearings
26 shall specify the waters or the area of the state for which
27 standards of air, water, or land are sought to be adopted, amended,

1 or repealed and the time, date, and place of such hearing. Such
2 hearing shall be held in the general area to be affected by such
3 standards. Such notice shall be given in accordance with the
4 Administrative Procedure Act. Copies of such notice shall be:

5 (a) ~~Published at least twice in a newspaper regularly~~
6 ~~published or circulated in a county or counties bordering or~~
7 ~~through which flow the waters or the atmosphere of which is~~
8 ~~affected, or the particular portion of land which is affected, for~~
9 ~~which standards are sought to be adopted. The first date of~~
10 ~~publication shall not be more than thirty days nor less than twenty~~
11 ~~days before the date fixed for such hearing, and~~

12 (b) ~~Mailed at least twenty days before such hearing to~~
13 ~~such persons and political subdivisions as the council has reason~~
14 ~~to believe may be affected by the proposed standards.~~

15 (18) Standards of quality of the air, water, or land of
16 the state and rules and regulations adopted under the Integrated
17 Solid Waste Management Act or the Livestock Waste Management Act or
18 any amendment or repeal of such standards or rules and regulations
19 shall become effective upon adoption by the council and filing in
20 the office of the Secretary of State. In adopting standards of
21 air, water, and land quality or making any amendment thereof, the
22 council shall specify a reasonable time for persons discharging
23 wastes into the air, water, or land of the state to comply with
24 such standards and upon the expiration of any such period of time
25 may revoke or modify any permit previously issued which authorizes
26 the discharge of wastes into the air, water, or land of this state
27 which results in reducing the quality of such air, water, or land

1 below the standards established therefor by the council.

2 (19) All standards of quality of air, water, or land and
3 all rules and regulations adopted pursuant to law by the council
4 prior to May 29, 1981, and applicable to specified air, water, or
5 land are hereby approved and adopted as standards of quality of and
6 rules and regulations for such air, water, or land.

7 (20) In addition to such standards as are heretofore
8 authorized, the council shall adopt and promulgate rules and
9 regulations to set standards of performance, effluent standards,
10 pretreatment standards, treatment standards, toxic pollutant
11 standards and limitations, effluent limitations, effluent
12 prohibitions, and quantitative limitations or concentrations which
13 shall in all respects conform with and meet the requirements of the
14 National Pollutant Discharge Elimination System in the Clean Water
15 Act, as amended, 33 U.S.C. 1251 et seq.

16 (21)(a) The council shall adopt and promulgate rules and
17 regulations requiring all new or renewal permit or license
18 applicants regulated under the Environmental Protection Act, the
19 Integrated Solid Waste Management Act, or the Livestock Waste
20 Management Act to establish proof of financial responsibility by
21 providing funds in the event of abandonment, default, or other
22 inability of the permittee or licensee to meet the requirements of
23 its permit or license or other conditions imposed by the department
24 pursuant to the acts. The council may exempt classes of permittees
25 or licensees from the requirements of this subdivision when a
26 finding is made that such exemption will not result in a
27 significant risk to the public health and welfare.

1 (b) Proof of financial responsibility shall include any
2 of the following made payable to or held in trust for the benefit
3 of the state and approved by the department:

4 (i) A surety bond executed by the applicant and a
5 corporate surety licensed to do business in this state;

6 (ii) A deposit of cash, negotiable bonds of the United
7 States or the state, negotiable certificates of deposit, or an
8 irrevocable letter of credit of any bank or other savings
9 institution organized or transacting business in the United States
10 in an amount or which has a market value equal to or greater than
11 the amount of the bonds required for the bonded area under the same
12 terms and conditions upon which surety bonds are deposited;

13 (iii) An established escrow account; or

14 (iv) A bond of the applicant without separate surety upon
15 a satisfactory demonstration to the director that such applicant
16 has the financial means sufficient to self-bond pursuant to bonding
17 requirements adopted by the council consistent with the purposes of
18 this subdivision.

19 (c) The director shall determine the amount of the bond,
20 deposit, or escrow account which shall be reasonable and sufficient
21 so the department may, if the permittee or licensee is unable or
22 unwilling to do so and in the event of forfeiture of the bond or
23 other financial responsibility methods, arrange to rectify any
24 improper management technique committed during the term of the
25 permit or license and assure the performance of duties and
26 responsibilities required by the permit or license pursuant to law,
27 rules, and regulations.

1 (d) In determining the amount of the bond or other method
2 of financial responsibility, the director shall consider the
3 requirements of the permit or license or any conditions specified
4 by the department, the probable difficulty of completing the
5 requirements of such permit, license, or conditions due to such
6 factors as topography, geology of the site, and hydrology, and the
7 prior history of environmental activities of the applicant.

8 This subsection shall apply to hazardous waste treatment,
9 storage, or disposal facilities which have received interim status.

10 (22) The council shall adopt and promulgate rules and
11 regulations no more stringent than the provisions of section 1453
12 et seq. of the federal Safe Drinking Water Act for public water
13 supply system source water assessment programs.

14 The council may adopt and promulgate rules and
15 regulations to implement a source water petition program no more
16 stringent than section 1454 et seq. of the federal Safe Drinking
17 Water Act.

18 Sec. 2. Original section 81-1505, Reissue Revised
19 Statutes of Nebraska, is repealed.".

20 2. On page 1, strike lines 2 through 6 and insert
21 "section 81-1505, Reissue Revised Statutes of Nebraska; to
22 eliminate certain notice requirements as prescribed; and to repeal
23 the original section.".